



## LAW RELATED TO PREVENTION OF CORRUPTION IN INDIA: A CRITICAL EVALUATION AND NEED FOR REFORM

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### AUTHOR'S CONTRIBUTION

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### ABSTRACT

Corruption is a factor leading to several problems such as hindrance in infrastructure development, inequality in the society and reduction of economic efficiency in a country. The objective of this research paper is to study the effects of corruption in the society and analysis of various legislations, policies, and schemes etc. which have been implemented so far in the country. This research paper is also an effort to analyze the challenges which are being faced in prevention of corruption in the Country and certain suggestions/ reforms required for prevention of corruption in the Country.

**Keywords:** Corruption; administrative discretion; public servant.

### 1. INTRODUCTION

Corruption is a form of offence undertaken by a person or organization entrusted with a position of authority, to acquire illicit benefit or abuse of power for one's private gain. Corruption can occur in many sectors whether they are public or private industry or even NGOs. Public corruption includes corruption of the political process, allocation and distribution of public funds (Political Corruption), Corruption in enforcement of law (Administrative corruption) as well as corruption in judicial and adjudication process (Judicial Corruption).

**Political corruption** is the abuse of public power, office or resources by elected government officials for personal gain, by extortion, soliciting or offering bribes. The political act of graft is a well known and now global form of political corruption, being the

unscrupulous and illegal use of a politician's authority for personal gain, when funds intended for public projects are intentionally misdirected in order to maximize the benefits to illegally private interests of the corrupted individuals and their agents.

**Administrative corruption** is a specific form of official misconduct designed to obtain financial benefits, personal gain, and career advancement for officers in exchange for not pursuing or selectively pursuing an investigation or arrest to protect other members from accountability.

**Judicial corruption** refers to corruption-related misconduct of judges, through receiving or giving bribes, improper sentencing of convicted criminals, bias in the hearing and judgement of arguments and other such misconduct. Corruption in judiciary also involves the government in power using

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the judicial arm of government to oppress the opposition parties in the detriments of the state [1, 2].

Corruption in India is an issue which affects the economy of central, state and local government agencies in many ways. Corruption is blamed for stunting the economy of India. The largest contributors to corruption are entitlement programs and social spending schemes enacted by the Indian government. The causes of corruption in India include excessive regulations, complicated tax and licensing systems, numerous government departments with opaque bureaucracy and discretionary powers, monopoly of government controlled institutions on certain goods and services delivery, and the lack of transparent laws and processes.

Corruption in India is a problem that has serious implications for protecting the rule of law and ensuring access to justice. Many of the biggest scandals have involved high level government officials. A study<sup>1</sup> found that more than 92% of the people had firsthand experience of paying bribes or peddling influence to get services performed in a public office. Officials are alleged to steal state property. In cities and villages throughout India, groups of municipal and other government officials, elected politicians, judicial officers, real estate developers and law enforcement officials are indulged in corrupt practices in one or the other way. Such officials and politicians are very well protected by the immense power and influence they possess.

In a 2004 report on Corruption in India<sup>2</sup>, high taxes and excessive regulation has been cited as a major cause of corruption in India. India has high marginal tax rates and numerous regulatory bodies with the power to stop any citizen or business from going about their daily affairs. This power of Indian authorities to search and question individuals creates opportunities for corrupt public officials to extract bribes. Each individual or business decides if the effort required for due process and the cost of delay is worth paying the bribe demanded. In cases of high taxes, paying off the corrupt official is cheaper than the tax. The desire to pay lower taxes than those demanded by the state explains the demand side of corruption. The net result is that the corrupt officials collect bribes, the government fails to collect taxes for its own budget, and corruption grows. The report suggests regulatory reforms, process simplification and lower taxes as means to increase tax receipts and reduce causes of corruption.

Corruption may lead to further bureaucratic delay and inefficiency if corrupted bureaucrats introduce red tape in order to extort more bribes. Such inadequacies in institutional efficiency could affect growth indirectly by lowering the private marginal product of capital and investment rate. Bureaucratic inefficiency also affects growth directly through misallocation of investments in the economy. Additionally, corruption results in lower economic growth for a given level of income. If corruption levels in India were decreased to levels in developed economies such as Singapore or the United Kingdom, India's GDP growth rate could increase at a higher rate annually.

## 2. LAW RELATED TO PREVENTION OF CORRUPTION IN INDIA

Public servants in India can be penalized for corruption under the Indian Penal Code, 1860 [3] and the Prevention of Corruption Act, 1988 [4]. The Benami Transactions (Prohibition) Act, 1988 [5] prohibits benami transactions. The Prevention of Money Laundering Act, 2002 [6] penalizes public servants for the offence of money laundering. India is also a signatory (not ratified) to the UN Convention against Corruption since 2005. The Convention covers a wide range of acts of corruption and also proposes certain preventive policies.

Key Features of the Acts related to corruption are as follows:

**Indian Penal Code, 1860 [3]:** The Indian Penal Code, 1860 defines "public servant" as a government employee, officers in the military, navy or air force; police, judges, officers of Court of Justice, and any local authority established by a central or state Act. Indian Penal Code, Chapter-IX deals with all offences by or relating to public servant. This Chapter does not deal with misconduct and abuse of power by the public servant. Section 161 to 165 of the Indian Penal Code, 1860 deals with various offences of corruption and this is the first step to fight against corruption committed by the public servants. Section 161 of the Indian Penal Code deals with a public servant, who accepts or obtains or agrees to accept from any person for himself or for any other person, any gratification other than the legal remuneration. Section 162 of the Indian Penal Code deals with a person who accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any gratification by corrupt or illegal means to influence a public servant. Section 163 of Indian Penal Code deals with a person who accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any gratification for inducing and by exercise of personal influence with any public servant. Section 164 of

<sup>1</sup> Transparency International Study in India, 2005

<sup>2</sup> Corruption Perception Index Report, 2004

Indian Penal Code deals with abetment of offence with respect to section 162 and 163 of Indian Penal Code. Section 165 of Indian Penal Code deals with a public servant who accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any valuable thing without any consideration or less consideration. Section 169 pertains to a public servant unlawfully buying or bidding for property. The public servant shall be punished with imprisonment of upto two years or with fine or both. If the property is purchased, it shall be confiscated. There was no offence till 1952 for abetment of any offence under section 161 or 165. Hence, in 1952, by way of Criminal Law Amendment, 165-A was inserted to make abettor of section 161 or 165 of Indian Penal Code as offenders. Section 409 pertains to criminal breach of trust by a public servant. The public servant shall be punished with life imprisonment or with imprisonment of upto 10 years and a fine [7].

**The Prevention of Corruption Act, 1988 [4]:** In addition to the categories included in the Indian Penal Code, the definition of “public servant” includes office bearers of cooperative societies receiving financial aid from the government, employees of universities, Public Service Commission and banks. If a public servant takes gratification other than his legal remuneration in respect of an official act or to influence public servants is liable to minimum punishment of six months and maximum punishment of five years and fine. The Act also penalizes a public servant for taking gratification to influence the public by illegal means and for exercising his personal influence with a public servant. If a public servant accepts a valuable thing without paying for it or paying inadequately from a person with whom he is involved in a business transaction in his official capacity, he shall be penalized with minimum punishment of six months and maximum punishment of five years and fine. It is necessary to obtain prior sanction from the central or state government in order to prosecute a public servant.

Prevention of Corruption act, 1988 deals with Corruption related to following three categories.

1. **Bribery and its abettors:** Section 7 of Prevention of Corruption Act, 1988 deals with public servant taking gratification other than legal remuneration. The public servant becomes *functus officio* when money offered to him as a bribe. Section 8 and 9 of Prevention of Corruption Act, 1988 are complimentary to section 7 of the Prevention of Corruption Act, 1988 and are intended to reach to the aiders and abettors of the offence. Section 8 and 9 of the

Prevention of Corruption Act, 1988 are applicable to public servants as well as to private persons. The abettors of the offences of section 7 and 11 are dealt under section 12 of the Prevention of Corruption Act, 1988 for the abetment. The abettors of the offences under section 8 and 9 are dealt under section 10 of the Prevention of Corruption Act, 1988. The habitual abettors for the offences under section 8, 9 and 12 of Prevention of Corruption Act, 1988 are dealt under section 14 of the Prevention of Corruption Act, 1988. The aggravated form of bribe i.e. habitual acceptance of bribe is a criminal misconduct. The habitual acceptance of valuable thing without consideration or inadequate consideration is also criminal misconduct.

In **Mohinder Lal Bagai v/s Delhi Administration**, it was held that the payment of a sum to a public servant whether paid before or after the act would constitute bribe.<sup>3</sup>

In **re Ambujam Ammal**, it was held that the practice of laying traps employing spies and trap witnesses for detection of offences has been recognized in this country.<sup>4</sup>

In **Sri Bharadwaj Media Pvt. Ltd. v/s State**, Sting operation by a private television channel for detection of crime was also accepted.<sup>5</sup> In this case, a telecast program was shown from MPs receiving money for raising question in Parliament. The Delhi High Court observed that FIR could be quashed only if all facts stated when considered true did not disclose cognizable offence.

2. **Abuse of official position:** Abuse means misuse i.e. using his position for something for which it is not intended. The abuse of official position is wider than the offence of bribery. All bribery cases squarely fall under “obtaining any pecuniary advantage” in addition to section 7 of the Prevention of Corruption Act, 1988. The abuse may be by corrupt or illegal means.

1. To obtain pecuniary advantage or any valuable thing for himself or for any other person.
2. To obtain pecuniary advantage or any valuable thing for himself or for any other person without any public interest.

<sup>3</sup> *Mohinder Lal Bagai v/s Delhi Administration (1970 Cr LJ 793)*

<sup>4</sup> *In re Ambujam Ammal, AIR 1954 Madras 326*

<sup>5</sup> *Sri Bharadwaj Media Pvt. Ltd. v/s State, 2008 (2) Crimes 244 Delhi.*

In **M Narayanan Nambiar v/s State of Kerala**, it was held that the causing wrongful loss to the Government to obtain pecuniary advantage for a third party falls under abuse of Power.<sup>6</sup> In **Narbahadur Bhandari v/s State**<sup>7</sup> and **Sikkim, Ghulam Din Butch v/s State of Jammu & Kashmir**<sup>8</sup>, it was held that the issue of contracts to the bidders at higher rates would also fall under abuse of powers.

- 3. Possession of disproportionate assets:** Large numbers of public servants indulge in corrupt activities on regular basis and sometimes it would be difficult to catch them while accepting the bribe by laying a trap and the ill-gotten money so collected by them are converted into assets. Hence, to detect such officer, disproportionate asset was made as an offence in Prevention of Corruption Act, 1988.

In **K. Veera Swami v/s Union of India**<sup>9</sup>, the Hon'ble Supreme Court observed that if one possesses assets beyond his legitimate means, it goes without saying that the excess is out of ill-gotten gain. The assets are not drawn like Nitrogen from the air.

In **P. Nallamal v/s State**<sup>10</sup>, the Hon'ble Supreme Court held that the abettor can also be prosecuted for aiding to acquire disproportionate assets by the public servant. Every public servant is legally bound to inform the receipt of income otherwise the same cannot be treated as income.

**The Benami Transactions (Prohibition) Act, 1988 [5]:** The Act prohibits any benami transaction (purchase of property in false name of another person who does not pay for the property) except when a person purchases property in his wife's or unmarried daughter's name. Any person who enters into a benami transaction shall be punishable with imprisonment of upto three years and/or a fine. All properties that are held to be benami can be acquired by a prescribed authority and no money shall be paid for such acquisition.

**The Prevention of Money Laundering Act, 2002 [6]:** The Act states that an offence of money laundering has been committed if a person is a party to any process connected with the proceeds of crime and projects such proceeds as untainted property. "Proceeds of crime" means any property obtained by a person as a result of criminal activity related to certain offences listed in the schedule to the Act. A

person can be charged with the offence of money laundering only if he has been charged with committing a scheduled offence. The penalty for committing the offence of money laundering is rigorous imprisonment for three to seven years and a fine of upto Rs 5 lakh. If a person is convicted of an offence under the Narcotics Drugs and Psychotropic Substances Act, 1985 the term of imprisonment can extend upto 10 years. The Adjudicating Authority, appointed by the central government, shall decide whether any of the property attached or seized is involved in money laundering. An Appellate Tribunal shall hear appeals against the orders of the Adjudicating Authority and any other authority under the Act. Every banking company, financial institution and intermediary shall maintain a record of all transactions of a specified nature and value, and verify and maintain records of all its customers, and furnish such information to the specified authorities.

**Lokpala and Lokayukta Act, 2013 [8]:** The Lokpal and Lokayuktas Act, 2013 is an anti-corruption Act of Indian Parliament in India which seeks to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain important public functionaries including the Prime Minister, cabinet ministers, members of parliament, Group A officials of the Central Government and for matters connecting them. Salient features of the acts are as below:

#### Structure and appointment of Lokpal

- I. Lokpal is a multi-member body that consists of one chairperson and a maximum of 8 members.
- II. Chairperson of the Lokpal should be either the former Chief Justice of India or the former Judge of Supreme Court or an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- III. Out of the maximum eight members, half will be judicial members and minimum 50% of the Members will be from SC/ ST/ OBC/ Minorities and women.
- IV. The judicial member of the Lokpal should be either a former Judge of the Supreme Court or a former Chief Justice of a High Court.
- V. The non-judicial member should be an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance

<sup>6</sup> M Narayanan Nambiar v/s State of Kerala AIR 1963 SC 1116

<sup>7</sup> Narbahadur Bhandari v/s State 2003 Cr. LJ 2799

<sup>8</sup> Sikkim, Ghulam Din Butch v/s State of J& K AIR 1996 SC 1568

<sup>9</sup> K. Veera Swami v/s Union of India (1991) 3 SCC

<sup>10</sup> In P. Nallamal v/s State 1999 Cr LJ 3967

including insurance and banking, law and management.

- VI. The term of office for Lokpal Chairman and Members is 5 years or till the age of 70 years.
- VII. The members are appointed by the president on the recommendation of a Selection Committee.
- VIII. The selection committee is composed of the Prime Minister who is the Chairperson; Speaker of Lok Sabha, Leader of Opposition in Lok Sabha, Chief Justice of India or a Judge nominated by him/her and One eminent jurist.
- IX. For selecting the chairperson and the members, the selection committee constitutes a search panel of at least eight persons.
- X. The 2013 Act also provides that all states should set up the office of the Lokayukta within one year from the commencement of the Act [9].

Under the Lokpal Act of 2013, the DoPT is supposed to put together a list of candidates interested to be the chairperson or members of the Lokpal. This list would then go to the proposed eight-member search committee, which would shortlist names and place them before the selection panel headed by the Prime Minister. The selection panel may or may not pick names suggested by the search committee. In September 2018, the government had constituted a search committee headed by former Supreme Court judge Justice Ranjana Prakash Desai.

### **Jurisdiction and Powers of Lokpal**

Jurisdiction of Lokpal includes Prime Minister, Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central Government. Jurisdiction of the Lokpal included the Prime Minister except on allegations of corruption relating to international relations, security, the public order, atomic energy and space. The Lokpal does not have jurisdiction over Ministers and MPs in the matter of anything said in Parliament or a vote given there. Its jurisdiction also includes any person who is or has been in charge (director/ manager/ secretary) of anybody/ society set up by central act or any other body financed/ controlled by central government and any other person involved in act of abetting, bribe giving or bribe taking. The Lokpal Act mandates that all public officials should furnish the assets and liabilities of themselves as well as their respective dependents. It has the powers to superintendence over, and to give direction to CBI. If Lokpal has referred a case to CBI, the investigating officer in such case cannot be transferred without the approval of Lokpal. The Inquiry Wing of the Lokpal has been vested with the powers of a civil court. Lokpal has powers of confiscation of assets, proceeds,

receipts and benefits arisen or procured by means of corruption in special circumstances. Lokpal has the power to recommend transfer or suspension of public servant connected with allegation of corruption. Lokpal has the power to give directions to prevent the destruction of records during the preliminary inquiry.

### **3. INVESTIGATING AGENCIES FOR PREVENTION OF CORRUPTION IN INDIA**

The three main authorities involved in inquiring, investigating and prosecuting corruption cases are the Central Vigilance Commission (CVC), the Central Bureau of Investigation (CBI) and the state Anti-Corruption Bureau (ACB). Cases related to money laundering by public servants are investigated and prosecuted by the Directorate of Enforcement and the Financial Intelligence Unit, which are under the Ministry of Finance.

The CBI and state ACBs investigate cases related to corruption under the Prevention of Corruption Act, [4] and the Indian Penal Code, 1860. [3] The CBI's jurisdiction is the central government and Union Territories while the state ACBs investigate cases within the states. States can refer cases to the CBI. In addition to this, each department of central government, State government and autonomous bodies have established an internal anti corruption bureau.

The CVC is a statutory body that supervises corruption cases in government departments. The CBI is under its supervision. The CVC can refer cases either to the Central Vigilance Officer (CVO) in each department or to the CBI. The CVC or the CVO recommends the action to be taken against a public servant but the decision to take any disciplinary action against a civil servant rests on the department authority.

Prosecution can be initiated by an investigating agency only after it has the prior sanction of the central or state government. Government appointed prosecutors undertake the prosecution proceeding in the courts. All cases under the Prevention of Corruption Act, 1988 are tried by Special Judges who are appointed by the central or state government.

### **4. CHALLENGES BEFORE PREVENTION OF CORRUPTION IN INDIA**

Despite various legislations and schemes of the government and various agencies for enforcement of prevention of corruption in the country, it is one of the

grave and serious problem of our country. Some of the factors which may be considered for failure of prevention of corruption in the country are as below:

**Absence of any independent investigating agency:**

CBI acts as the major investigating agency for anti corruption in the centre and ACB in states. However, CBI and ACB are not independent agencies and acts under the pursuit of union home minister and state home minister respectively. In Coal Scam Case, apex court remarked that CBI is not an independent agency and CBI is a caged parrot.

**Non efficacy of various laws/ Mechanism:** Central government have enacted RTI act in 2005 for accountability of various government departments and CPGRAM for redressal of grievances related to central Government. However, Majority of RTI applications and CPGRAMs are disposed without providing any reply or unambiguous reply. These mechanisms are ineffective in the absence of any accountability to the enforcement agencies.

**Lacuna in Lokpal and Lokayukta act, 2013:**

Lokpala and Lokayukta act, 2013 was enacted to curb the menace of corruption in India. However, the act has various lacunae and exemptions which makes it ineffective. Lokpal is not free from political influence as the appointing committee itself consist of members from political parties. The appointment of Lokpal can be manipulated in a way as there is no criterion to decide who is an 'eminent jurist' or 'a person of integrity.' The biggest lacuna is the exclusion of judiciary from the ambit of the Lokpal. The Lokpal is not given any constitutional backing and there is no adequate provision for appeal against the Lokpal.

Lengthy and time taking procedure of Courts: Litigation in India is a lengthy, tremendous and time taking process. About 3 Crore cases are pending in various courts of India. Therefore, People are unwilling to go to courts for redressal of their grievances against the corrupt officers.

## 5. CONCLUSION AND PROPOSAL FOR REFORM

Corruption in India is a problem that has serious implications for protecting the rule of law and ensuring access to justice. Additionally, corruption results in lower economic growth for a given level of income. If corruption levels in India were decreased to levels in developed economies such as Singapore or the United Kingdom, India's GDP growth rate could increase at a higher rate annually. In this regard, various measures have been adopted by the government, but most of them are ineffective to the extent what required. There is a need for a multiplicity

of decentralized institution with appropriate accountability and Check and balance mechanism, to avoid the concentration of too much power in any one institution or authority.

In view of the above, following suggestions may be made for prevention of corruption in India.

- a. **Reduction in Tax rate:** Higher tax rate is one of the major reasons for corruption in India. People want to avoid taxes by paying a small amount of bribe to the law enforcement agencies. Thus, when tax rate will be less, people would avoid paying bribe in lieu of taxes.
- b. **Establishment of Independent and Unbiased agencies for anti corruption-** The Investigating agency should be independent like Judiciary so that they can work with Transparency and without any pressure. Further, Internal disciplinary committee is biased for its employee. Therefore, investigating agency must be external and Independent.
- c. **Implementation of E-governance-** E-governance and use of Information Technology is being slowly implemented in all the departments of the government. This is reducing administrative discretion and thus helpful in prevention of Corruption in India.
- d. **Stricter law for Prevention of Corruption-** The anti corruption law should prescribe harsh and strict punishment for the offender to deter the public servant from indulging in any offence related to corruption.
- e. **Strong Ombudsman:** The institution of ombudsman should be strengthened both in terms of functional autonomy and availability of manpower. Lokpal and Lokayukta must be financially, administratively and legally independent agencies and there should not be any interference or pressure from those to whom they are called upon to investigate and prosecute. Lokpal and Lokayukta appointments must be done transparently so as to minimize the chances of the wrong sorts of people getting in.

## COMPETING INTERESTS

Author has declared that no competing interests exist.

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