

Combating Corruption

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Abstract

India is democratic . secular and social state. There should be equal liberty, access to justice at equal proportionate etc. Corruption is main problem which is facing by developing as well as developed countries. India is also facing complication of corruption and tried to over come with this problem by introducing new system. The corruption is practice which is prevalent not from today but it is immemorial phenomenon. Public resources are exploited by people who are in power. Corruption is not only at higher level but it persist at lower level. Fighting problem of corruption is difficult task for every country. It is discussed at domestic level as well as at international level. The Indian government besides legislation passed out certain concept like right to information, ombudsman and whistleblower. This paper will be dealt with concept of corruption; its effect and new concept which introduced by Government for combating corruption.

As one of the oldest and most perplexing phenomenon in human society, political corruption exist in every country in the contemplorary world and it is not exclusively a problem of developing countries.¹ Corruption is a word with a broad range of uses in everyday speech. Corrupt is used to describe a wide spectrum of behaviors in an individual's economic and political environment from illicit or illegitimate behavior to behavior that is simply considered undesirable by the person using the word.² The definition of corruption

differ with societal structure but it is that problem from which every nation has being suffering. To eradicate problem of corruption is challenge at national as well as global level. It led to wide range of discussion by policymakers, businesses and civil society organizations. Corruption has been blamed for the failures of certain “developing” countries to develop, and recent empirical research has confirmed a link between higher perceived corruption and lower investment and growth.³ Corruption in developed countries generally exists only at the highest level; it is not encountered by the general public in their day-to-day dealings. In developing economies however, corruption is often prevalent at all levels and has to be dealt with on a day-to-day basis by the common person as well as the sophisticated business person.⁴

¹ Frunzik voskanyan, “A study of effects of corruption on economic and political development of Armenia”, 2000, p.10, available at <http://unpan1.un.org/intradoc/groups/public/documents/aspa/unpan000533.pdf>, (last visited on 3rd January 2012).

² Georg Cremer, “Corruption & Delvelopment Aid- Confronting the challenges”, 1st ed.,2010, p.9.

³ Daniel Treisman, “The causes of corruption: A cross National study”,1998, available at http://www.isr.umich.edu/cps/pewpa/archive/archive_98/19980019.pdf, (last visited on 9th January 2012).

⁴ Anand S. Dayal, “overcoming fcpa compliance challenges in India” p.1, available at <http://www.amchamindia.com/fcpa2.pdf>, last visited on 30th December 2011.

The oxford definition of corruption is “having or showing a willingness to act dishonestly in return for money or personal gain”.⁵ Thus corruption is defined as the use of the public office for private gain, or in other words, use of official position, rank or status by an office bearer for his own personal benefits.⁶ There are diverse types of corruption but known or common to public is bribery. Other types of corruption are nepotism; fraud and embezzlement (misappropriation). Basically there are two types of corruption at national level i.e. political corruption (Corruption that influences the formulation of laws, regulations, and policies, such as revoking all licenses, and gaining the sole right to operate the beer or gas monopoly)⁷ and Administrative corruption (Corruption that alters the implementation of policies).⁸ It is clearly considered by most to be an immoral, if not always illegal act. When corruption does occur, there is no doubt that it is harmful to society.⁹

Before going into depth in subject-matter, it is pertinent to define types of corruption. Bribery is a trade off between two participants or two groups of participants, one who bribes and one who accepts a bribe. The one who bribes receives, in exchange for money (the bribe) or some kind of good, a service that he would otherwise not have received at all or not with certainty or not until a later point in time. The one who bribes is commonly referred to as the ‘active’ participant whereas the one who accepts a bribe is referred to as the ‘passive’ participant.¹⁰ The second type is Misappropriation, which means acquiring funds entrusted to them within the framework of their official duties. And the third category is nepotism means giving preference to individuals or groups with whom the officer has a close relationship.¹¹ The last type is fraud, means Cheating the government through deceit.¹²

Corruption in the Indian society has prevailed from time immemorial in one form or the other. The origin of corruption has been mentioned in ancient civilization. Way back in 200 B.C., Kautilya meticulously described 40 different kinds of corruption in his Arthashastra. He has aptly commented: "Just as it is impossible not to taste honey or poison when it is at the tip of the tongue, so it is impossible for a government servant not to eat up a bit of revenue."¹³ As early as 1000 BC, the laws of Manu laid down those corrupt officials who accept bribes from the villagers are to be banished and have their property seized.¹⁴ Condemnation of bribery, of greed, of misappropriation of property has accompanied Hindu thought throughout the ages and yet corruption is deep-rooted in India today.¹⁵ Thus practice of corruption is not recent to India but it has been practiced for ages.

Many institutions, organizations (either private or governmental) has been tried to define corruption. It is found to difficult to delimitate definition of corruption as the term is changing with advanced technological gild. The apex court also raised and discussed the issue of corruption in various precedent. In the case of State of Madhya Pradesh v. Sri Ram Singh, Apex Court as follows, “*Corruption is opposed to democracy and social order, being not only anti people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest,*

⁵ Corrupt available at <http://oxforddictionaries.com/definition/corrupt>, (last visited -15th January 2012).

⁶ U Myint, “Corruption : causes, consequences and cures”, Asia-Pacific Development Journal, Vol.7 No. 2, December 2000,p. 35.

⁷ Youth for good governance by world Bank, p.6 ,available at http://img.modernghana.com/images/content/report_content/youthforgoodgovernance.pdf, last visited on 12th January 2012.

⁸ Ibid,p.7.

⁹ Godfrey Harris, “Corruption :how to deal with its impact on business and society” ,2005,p.14.

¹⁰ Supra no.5, p. 10.

¹¹ Ibid ,pp.13-14.

¹² Supra no.8 , p.7.

¹³ D .Narashimha Reddy, “Crime, Corruption and development” ,reprinted in 2008, p.13.

¹⁴ How to stop corruption by Atul Joshi available at <http://www.preservearticles.com/201106037455/how-to-stop-corruption-in-india-essay.html>, last visited on 9th January 2012.

¹⁵ Ibid.

it is likely to cause turbulence – shaking the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.”¹⁶

The law commission of India also attempted to define it. As per The Law Commission of India’s 179th Report, the definition of corruption and corrupt practices varies from country to country. The World Bank and other multilateral institutions refer to it as “the abuse of public office for private gain”¹⁷. It involves the seeking or extracting of promise or receipt of a gift or any other advantage by a public servant in consideration of the performance or omission of an act, in violation of the duties required of the office. The report quoted Mark Philip, a political scientist, who identified three broad definitions of corruption, viz., public office centered, public interest centered and market centered.¹⁸

1. The public office centered corruption was defined as a behaviour that digresses from the formal public duties of an official for reasons of private benefit.
2. Corruption is the behaviour, which deviates from the formal duties of a public role because of private regarding (personal, close family, private clique) pecuniary status gains; or violates rules against the exercise of certain types of private regarding influence. This includes such behavior as bribery (use of reward to pervert the judgment of a person of in a position of trust), nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit) and misappropriation (illegal appropriation of public resources for private-regarding uses).¹⁹
3. The public office interest centered corruption focuses on behaviour which has a negative impact on the welfare of the public. Such a behaviour, in the words of Carl Friedrich, is said to exist “whenever a power holder, who is charged with doing certain things is by monetary or other rewards not legally provided for, induced to take actions which favour whoever provides for the rewards and thereby does damage to the public and its interest.”²⁰
4. The market centered corruption points towards utilizing an economic methodology by individuals or groups to gain influence over the actions of the bureaucracy. Accordingly, for a civil servant who regards his office as a business, the office becomes the maximizing unit.²¹
5. As per the Report, the most functional definition adopted by various International Organizations, such as Transparency International and Asian Development Bank is the “misuse of public office for private profit or political gain”, because, by and large, it covers all types of corruption/corrupt practices and abuses of public office.

As per the Report, the definitions, enumerations and discussions of various types/forms of corruption focus essentially on behaviour of officials in the public sector who unlawfully or improperly enrich themselves by the misuse of public power entrusted to them.

There are steps taken by the government to combat corruption from all level. The corruption not only effect to economically to country but extend its effect to socially and administrative level. Effects of corruption are follow on different sector of society.

• **On Administration :**

Measured to improve administrative performance may prove ineffective should corruption be permitted to run rampant. Administrative productivity, effectiveness and efficiency may be undermined by

¹⁶ AIR 2000 SC 870.

¹⁷Published by Transparency International World Bank in Financial Times September 16, 1997.

¹⁸Mark Philip, “Defining Political Corruption” political studies, Vol.45 No.3, special issue 1997.

¹⁹ J.S. Nye, “Political Corruption: A Cost Benefit analysis”, in A.J. Heidenheimer, M.Johnston and V. le Vine (ed.), POLITICAL: A HAND BOOK, 1989, p. 966, as referred in “The Asia Foundation Working Paper Series, 1998, p. 10”.

²⁰ Id.

²¹Naphaniel Leff, “Economic Development through Corruption”, in Heidenheimer, Id at 389.

corruption. Improved administrative performance provides an opportunity for the more efficient mobilization of scarce resources. Corruption may subvert allocative and regulatory mechanism in the absence of adequate controls and increased accountability.

- **On good governance :**

As per the United Nation's Commission on Human Rights, the key attributes of good governance include transparency, responsibility, accountability, participation and responsiveness to the needs of the people. Good governance is thus linked to an enabling environment conducive to the enjoyment of Human Rights and promoting growth and sustainable human development. The expectation of every civil society of its Government thus is that it would fulfill its commitments and provide an equitable atmosphere conducive for individual's growth. A Government is expected to be fully accountable to its people and transparent in the use of public resources. It enforces the Human Rights including economic, social and cultural rights and has no place for corruption of any kind since corruption is a blight that invariably proves to be retrograde for development.

Mr. R. Venkataraman, former President of India, in his address on "Good Governance" at a function organized by FICCI in November 1999. He said that a good Government is one which: -

- is stable and truly representative of the majority of the people,
- maintains its territorial integrity and national sovereignty,
- accelerates economic growth and development
- ensures the welfare of all sections of people,
- and renders justice without delay.

Since human rights are also designed to attain human development, good government has the protection of human rights as the top most priority on its agenda. Corruption retards development since public money allocated for development unjustly reaches private coffers depriving the citizenry of its use for their welfare.

Legislature, Judiciary and Executive are the three pillars that sustain the goal of national development. A corrupt political system denies true participation of people in the democratic process. A corrupt judicial system works not only to deny Constitutional safeguards against the basic human rights but also discriminates in the implementation of laws. A corrupt executive can cripple the implementation of all welfare measures aimed at achieving the target of Welfare State.²²

- **Economic impact :**

Corruption leads to economic inefficiency and waste, because of its effects on allocation of funds, on production and on consumption. Corruption also reduces the government's resources and hence its capacity for investment, since tax revenues are depleted by tax evasion.²³ This has two adverse effects: first, shifts away from investments in development areas occur as bribe takers are less likely to invest in activities with significant positive social benefits like education and health. Second, overall investment levels may fall, since conspicuous consumption or flight of illegal earning is probably higher than legal earning.²⁴

- **Social impacts :**

In Social sphere, corruption discourages people to work together for the common good. Frustration and

²² Y K Sabharwal, "Valedictory Address in the National Conference on "effects of corruption on good governance and human rights", pp.5-7, available at http://supremecourtfindia.nic.in/speeches/speeches_2006/nhrc.pdf, last visited on 4th January 2012.

²³ Supra no. 27, p.16.

²⁴ Id.

general apathy among the public result in a weak civil society. Demanding and paying bribes becomes the tradition. It also results in social inequality and widened gap between the rich and poor, civil strife, increased poverty and lack of basic needs like food, water and drugs, jealousy and hatred and insecurity.²⁵

Here there are steps which is taken into consideration by Indian Government for combating problem of corruption.

1. Ombudsman :

Ombudsman came from Sweden and it's derived from Old Norse, meaning, literally, 'administrative man'. It has come to denote someone in any organization who receives complaints, investigate and acts on them, who mediate disputes, and in general attends to problem involving interpersonal working relationships. An ombudsman is thus someone who handles complaints and attempts to find mutually satisfactory solutions. According to the Concise Oxford Dictionary 2000 (New Edition), the word 'ombudsman' means "an official appointed by Government to investigate individual's complaint against public authority etc." it therefore, presupposes that the institution of 'ombudsman' when so appointed is to look into or investigate into the complaint against the 'public body' made by the public, who are adversely affected or their interest is jeopardised due to laxity or deficiency of services, so rendered by 'public body'.²⁶The concept of ombudsman is employed in every aspects of field i.e. Banking sector, infrastructure sector, insurance company etc.

Corruption can also be defined as acts involving the misuse of entrusted power for personal or sectional gain. Corrupt practices in government undermine democracy, for they distort normal decision-making processes and subvert the policy objectives of legitimate democratic government. Corruption perpetuates discrimination as it results in unfair advantage or undeserved benefit. Ultimately, corruption, if unchecked, can destroy a democratic society. Thus ombudsman is required to analyze trends in these behavioural areas in government and to recommend specific or systemic corrective action in order to remove the cause of repetitive aberrations of corrupt behaviour.²⁷

2. Whistle-blowing :

There is no universally accepted concept of whistle blowing. Some defined as reporting of illegal activities in narrower sense and other prefer a more broad definition which includes a broad range of wrongdoing. Whistle-blowing has been defined as the disclosure by organization members (former or current) of non-trivial illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action.²⁸ Therefore, the act of disclosure is deliberate and non-obligatory in nature and gets into the public record and is usually made by a person who has or had privileged access to data or information of an organization.²⁹

As Ralph Nader defined whistle blowing in 1972 as Whistle-blowing is an act of a man or a woman who, believing that the public interest overrides the interest of the organization he serves, and discloses the information that the organization is involved in corrupt, illegal, fraudulent or harmful activity.³⁰ It

²⁵ What are the effects of corruption? Available at <http://transparencyethiopia.org/index.php?option=com>, last visited on 12th February 2012.

²⁶By Sabaha Khan on 9th December , 2010

²⁷ The role of ombudsman in fighting corruption by Adv. Gary Pienaar, Available at http://9iacc.org/papers/day3/ws3/dnld/d3ws3_gpienaar.pdf , last visited on 24th January 2012.

²⁸Janet P. Near and Marcia P. Miceli, Effective Whistle-Blowing, The Academy of Management Review, Vol. 20, No. 3 (Jul., 1995), pp. 679 at 680.

²⁹WimVandekerckhove, Whistleblowing and organizational social responsibility: a global assessment, p 22, Ashgate Publishing.

³⁰WimVandekerckhove, Whistleblowing and organizational social responsibility: a global assessment, p 8, Ashgate Publishing.

has been defined in simple words as taking mental note of wrongdoing, asking the wrongdoer to desist, discussing the situation with colleagues without seeking their action, or leaving the organization without voicing dissent does not constitute whistle blowing: Kolarska & Aldrich 1980.³¹ Dr Lucy Vicker defined as watchdog and protect whistleblowers. The former discover and then expose wrongdoing in order to avoid safety or financial disaster.³²

The function of a whistleblower to report the misconduct the firm in which he is an employee, to outside firms or institutions, which in turn have the authority to impose sanctions or take other corrective action against the wrongdoers. While some definitions of whistle-blowing require that the misconduct be reported to people outside the organization, other definitions also include reporting misconduct up the chain of command within an organization. Where one is blowing the whistle against an entire way of doing business or against people at or near the very top of a company, as was the case with Enron, reporting the behavior up the chain of command is not actually whistle-blowing. After all, it is hardly whistle-blowing to report misconduct to the very people engaged in the misconduct. But where the misconduct involved is that committed by public officials, instead of individuals in the private sector, disclosure to those outside the organization may constitute a crime if the information is classified pursuant to administrative action or subject to an executive order of confidentiality.³³

Whistle-blowing has three stages³⁴:-

- The first stage is known as *causation*, in which a person perceives an activity as illegal, unethical or immoral. This stage involves complex moral judgment and a conflict of ethics.
- The second stage is *disclosure*, in which the person concerned chooses to disclose controversial information to the relevant authorities. This stage is where a person, having already made a moral judgment in the first stage, has to find the requisite moral strength to go along with it i.e. a moral decision.
- The third stage, *retaliation*, is where the employer, by virtue of knowing the informant's identity, takes retaliatory measures against him, such as dismissal, intimidation, harassment, etc. The employee here faces the brunt and the consequences of his moral judgment and decision.

Indian perspective:

In India, there exists no law on the protection of whistle-blowers. However, The Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010 has been introduced in the Parliament for the protection of persons making disclosures against Public servants who either commits or attempts to commit an offence under the Prevention of Corruption Act or wilfully misuses his power or discretion.³⁵ The aim of the bill is to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or willful misuse of power or willful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimization of the person making such complaint and for matters connected therewith and incidental thereto. The bill is expected to encourage disclosure of information in

³¹ Blowing the whistle : the organizational and legal implication for companies and employees , Marcia P Miceli, Janet P Near, 1st ed. 1992. P. 15.

³² Whistleblowing at work, by David Lewis 2001 1st ed. The athlone press. London p.4.

³³ Jonathan Macey, Getting The Word Out About Fraud: A Theoretical Analysis Of Whistleblowing And Insider Trading, 105 Mich. L. Rev. 1899

³⁴ Abhinav Chandrachud, "Protection for Whistle-blowers: Analysing the Need for Whistleblower Protection in India", (2004) 6 SCC (Jour) 91.

³⁵ Section 2(d) The Public Interest Disclosure and Protection to Persons Making the Disclosure Bill 2010.

public interest and people who expose corruption in government. The bill has clauses which provide fine and penalties to people, who punish those exposing corruption. The CVC will be the nodal authority to handle complaints against the state, central government or PSU employees. The CVC will also have powers to punish those making frivolous complaints in accordance with the bill's provisions.³⁶

3. Right to information:

Legislations granting or facilitating 'Freedom of Information' (FoI) or Right to Information (RTI) are a fairly worldwide phenomenon today. Such laws also referred to as "open-government laws" / "sunshine laws" ensure that prospective requesters of information have access to it in a simple, cost-effective and time-bound manner. Internationally right to information is acknowledged. Article 10 of the 'UN Convention against Corruption' states: "... to combat corruption, each (member State) shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision making processes and take (certain) measures (for adopting procedures / regulations, simplifying administrative procedures and publishing information...)" RTI is expected to lead to an informed citizenry and transparency of information, which are vital to the functioning of a democracy. It is also expected to contain corruption and enable holding Governments and their instrumentalities accountable to the governed.

Conclusion:

A useful conclusion that has emerged from the current discussion and ongoing debate on the corruption issue is that corruption is a symptom of deep-seated and fundamental economic, political and institutional weaknesses and shortcomings in a country. To be effective, measures against corruption must therefore address these underlying causes and not the symptoms. The important point is that corruption and such institutional weaknesses are linked together and that they feed upon each other. So, getting rid of corruption helps a country to overcome other institutional weaknesses, just as reducing other institutional weaknesses helps to curb corruption.

³⁶<http://timesofindia.indiatimes.com/india/Cabinet-approves-bill-to-protect-whistleblowers/articleshow/6279981.cms>, last visited November 09, 2010.