

## Combating corruption in India: role of anti-corruption agencies

Deepak Ratti

Assistant Professor, Department of Law, Chaudhary Devi Lal University, Sirsa, Haryana, India

### Abstract

Corruption is an offering or taking bribe or misuse of public position or power for the fulfillment of self-motives or to gain personal gratifications. Very inception of corruption starts from the leaders but ends nowhere. It is so deeply rooted in the Indian System that honest persons are considered to be foolish in the society. It is the result of a nexus between politicians, bureaucrats and criminals. Bribes are paid for both wrong and right things to be done. Moreover, it remained no more a social stigma in India. Income under the table matters more while looking a match for the daughter. Less weighing of products, adulteration in edible items and bribery of various kinds prevail in the society, due to which people get themselves involved in unscrupulous activities. Corruption is hollowing the roots of nation, so the time has come to address this vital issue by introduction of all sorts of social, political and legal reforms by taking collective measures by the people from all spheres of life.

**Keywords:** Personal gratifications, adulteration and unscrupulous activities

### Introduction

Since Independence, corruption is the major problem in India. In fact, it is quite common problem in underdeveloped and developing countries. Corruption contains a wide range of corrosive effects on societies, which undermines the rule of law and democracy. Corruption further leads to violation of human rights and erodes the quality of life. At some place, it may be organized crime. It encourages terrorism and causes threats to the security of nation. It is key obstacle to poverty alleviation and development. No sphere of Indian society is intact from its influence. It is like a disease which infects the whole system. A bunch of scams like Bofors scam, Hawala Case, Fodder Scam, Commonwealth games scandal Taj Corridor scam, etc. have lime lighted this issue in India. According to a Report released by Transparency International, India's rank is 84th position amongst 180 countries. It has become the biggest threats to the nation. It not only degrades the quality of the services but also paralysis the system of law and unfortunately, India is highly affected by this vice. India has been placed among the three most corrupt countries. India is not considered as a soft state as everything is considered possible here with consideration.

### Definition of Corruption

Corruption can be defined as an act of bribery! Or misuse of the power or position or power for the fulfillment of selfish motives or to gain personal gratifications. It has also been defined as "Misuse of authority as a result of consideration of personal gain which need not be monetary". Corruption is an anti-people and anti-development ubiquitous endemic in India. It has paralysis governance process. Corruption is the abuse of entrusted power and elected authority for private profit. According to Transparency International India (TII) corruption is "the abuse of entrusted power for private gain".

### Major Causes of Corruption in India

There are various causes of corruption in India. Lack of ethical values, morality among administrators and politicians,

illiteracy, unawareness, political structure, poor economic infrastructure, fear of social security are the major reasons for corruption. Complex laws to curb the corruption itself discourage the people for taking action against corruption. Corruption has hollowed! The political body and damaged the importance of the law in the society. Nowadays power is manipulated from corruption and corruption from power. Excessive regulations, complicated taxes and opaque system of law and discretionary powers leading to monopoly are also the major causes of corruption. However, there are some other causes of corruption in India like Less salaries, Shortage of Job opportunities, Lack of Strict punishments, Lack of ill fame, Opaque public affairs and deals, Lack of Independent detective agency, Lack of enough powers to the judicial system and other independent organization, Lack of accountability. In a 2011, one of the world's largest audit reports on Corruption in India suggested the major causes of corruption in India as high taxes and excessive regulation bureaucracy. However, the report further suggested some regulatory reforms, process simplification so as to reduce causes of corruption.

### Legal Framework to Combat Corruption

Number of scams have halted the development and welfare of the Nation. In order to protect the system from the evil of corruption, law makers enacted Anti-Corruption Laws in India. The Government of India has enacted Prevention of Corruption Act, 1988, besides relevant statutory provisions which are precisely presented in this chapter.

#### • Prevention of Corruption Act, 1947

The Act did not redefine nor expand the definition of offences pertaining to corruption the already existing IPC. Similarly, the same definition of 'Public Servant' as in the IPC has been adopted. However the law defined a new offence 'criminal misconduct in discharge of official duty'- for which enhanced punishment from one year to seven years. Moreover, the burden of proof to the accused was shifted to public servant,

where it is found that he had accepted any gratification and shall be presumed that it has been accepted as a motive or reward under sections 161,164 and 165. Immunity was proposed to be given to the bribe-giver presuming that he might be forced by circumstances to do so but this immunity was not provided; all complaints would become liable for punishment, which would deter them from giving complaints against any public official who accepted bribe. Later, the Criminal Law (Amendment) Act, 1952 brought some changes in laws pertaining to corruption. The punishment was enhanced to three years instead of existing two years under Section 165 of IPC. Also a new Section 165A was inserted in the IPC, which made abetting of offences, defined in Sections 161 and 165 of IPC. It was also proposed that all corruption related offences should be tried only by Special Judges.

- **Prevention of Corruption Act, 1988**

In the Prevention of Corruption Act, 1988, the provisions of the Prevention of Corruption Act, 1947, the Criminal Law Amendment Act, 1952 and sections 161 to 165 of IPC were consolidated. Certain new provisions were also brought into force to effectively combat corruption among public servants.

- **Inclusion of M.L.A./M.P. under the definition of public servant**

In *Habibulla Khan v. State of Orissa* The High Court of Orissa opined that an M.L.A., is not a public servant under Section 21 of the Indian Penal Code, but he comes within the purview of sub-clause (viii) of clause(c) of Section 2 of the 1988 Act as he "holds an office" and "performs public duty". In the appeal, the Supreme Court proceeded "assuming" that M.L.A. is a public servant.

In a later decision in the case of *P.V. Narasimha Rao v. State*, a five Judge bench of the Supreme Court laid down that a Member of Parliament holds an office and by virtue of such office he is required or authorized to perform duties and such duties are in the nature of public duties. Therefore, M.P. falls within the ambit of sub-clause (viii) of clause(c) of section 2 of the Prevention of Corruption Act, 1988.

- **Inclusion of Minister under the definition of public servant**

In the case of *M. Karunanidhi v. Union of India*, the Apex Court opined that a Minister, Prime Minister or Chief Minister is a public servant in terms of clause (12) of Section 21 Indian Penal Code itself, which corresponds to clause (i) of clause(c) of Section 2 of the 1988 Act. The Court further held that a Minister is appointed and dismissed by the Governor and is therefore subordinate to him, that he gets salary for the public work done or the public duty performed by him and that the said salary is paid to him from the Government funds.

- **Prevention of Money Laundering Act, 2002**

The Prevention of Money Laundering Act, 2002 was framed to combat money laundering. The Act and the Rules came into force with effect from July 1, 2005. Director, Financial Intelligence Unit - IND and Director (Enforcement) have been vested with exclusive and concurrent powers to implement the provisions of the Act. The scheduled crime means a crime under the Act mentioned in the schedule to the Bill. By keeping the main source of generation of black money in the

country, the Bill provides an incentive for the money launderers.

Many public servants are able to keep their black money in foreign countries and further they transfer it to their homeland through money laundering. This Act empowers the Directorate of Enforcement, India and Financial Intelligence Unit, India to investigate and prosecute such persons under this Act.

- **Right to Information Act, 2005**

Too much secrecy in public administration brings corruption. The Right to Information Act, 2005 has been enacted upon the assent of President of India on 15.6.2005. The Act secures access of information under the control of public authorities and promotes transparency and accountability in the working of every public authority. According to the Act, an information seeker shall make a request in writing or through electronic means in English or Hindi or in official regional language by accompanying such fee as may be prescribed to the Central Public Information Officer or the Central Assistant Public Information Officer or State Assistant Public Information Officer as the case may be and can seek desired information. The Central Public Information Officer or State Public Officer, as the case may be, on receipt of a request under section 6 shall as soon as possible and in any case within 30 days of receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified the section 8 and 9. In case, the information sought for, concerns the life of liberty of a person, the same shall be provide within 48 hours of the receipt of the request. If the Central Public Information Officer or State Public Information Officer fails to give decision on the request for information within the period specified, they shall be deemed to have refused the request.

- **Anti-Corruption Initiatives in India**

- **Bills:** There are a number of anti-corruption bills, which are traveling from one table to other. The bills include the Judicial Standards and Accountability Bill 2010, the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill 2011, the Whistle Blowers Protection Bill 2011 and the Public Procurement Bill 2012
- **Government Strategies:** Central Vigilance Commission in September 2010 brought a Draft National Anti-Corruption Strategy. However, the implementation of the strategy couldn't be determined, vide which independence of civil servants was recommended by rotating the senior officials on sensitive positions on the interval of two to three years and further they were prohibited from accepting gifts/lavish hospitality.
- **Anti-Corruption Agencies:** There are various federal and state level institutions to deal the cases of corruption. These federal anti-corruption institutions herein below:
  - **Ombudsman:** Creation of a corruption ombudsman is made under the Lokpal and Lokayuktas Act 2014, who can prosecute civil servants as well as politicians. The Central Vigilance Commission shall be the ombudsman body for the central government.
  - **Central Vigilance Commission:** The Central Vigilance Commission is an independent agency, which is empowered with supervisory powers over the Central

Bureau of Investigation. However, it does not have direct powers to investigate. CVC is also empowered to inquire about the offences committed by officials under the Prevention of Corruption Act 1988. It has to deal with strictly at federal level. It has also a whistleblower mechanism, where after registration, anyone can lodge a complaint but unfortunately, the government does not often act on its findings.

- **Central Bureau of Investigation:** Central Bureau of Investigation consists of three divisions i.e. the Anti-Corruption Division, the Special Crimes Division, and the Economic Offences Division. It has power to investigate in all branches of the central government, ministries, public sector entities and Union Territories but can't investigate in the states without its permission. However, CBI can do this, if so ordered by the Supreme and High Courts. However, its independence has been questioned many a times. Its track record is not so good with in cases pertaining to the ruling party. It has also been alleged that CBI has become a tool in the hands of the ruling party.
- **Comptroller & Auditor General of India:** CAG, located in New Delhi, is the supreme audit agency in India, however, Accountant Generals offices are also established in state headquarters, who are accountable only to the CAG. It is reported that public funds mostly suffers poor monitoring and corrupt practices, due to which the actual beneficiary can't get the benefits meant for him. CAG is empowered to audit the accounts of public-private partnership projects. However, CAG does not have the power to initiate investigations as its own but its independence has been questioned many a times due to the conflicts of interest with politicians.
- **Supreme Court:** No doubt, Supreme Court, in India, enjoys a high degree of recognition and has shown great interest in matters of public interest over official corruption, environmental issues and other matters. The Supreme Court has been taking corruption seriously in general and political domains.
- **Central Information Commission:** CIC set up under the Right to Information Act, which established in 2005 to act upon complaints and appeals from the individuals who have denied legal information in any mode. The CIC can delivers decision upon government, courts, universities, police and development NGOs upon the mode of sharing information but as Human Rights Report 2013, it is unable to adequately implement the RTI Act.
- **E-Governance:** Technology has a lot of power to make a restrain over the corruption upto a remarkable extent. Therefore, a number of public services have been digitized and government services have been paced up. Due to this, possibilities for extraction of bribes have been removed.
- **Whistleblowing:** After long lasting protests by the public and organizations, Central Vigilance Commission is authorised to protect whistleblowers. Action can be taken in case names of whistleblowers are disclosed and upon request police assistance is provided to the witnesses. No doubt, the Right to Information Act 2005 has improved bureaucratic transparency but at least 12 whistleblowers were killed since January 2010, while at least 40 people were assaulted after seeking information under the law. In August 2010, the Public Interest Disclosure and

Protection to Persons Making the Disclosure Bill known as the Whistleblowers' Bill was introduced in the Parliament empowering the CVC to take strict action against the persons revealing the identity of whistleblowers. However, this bill is yet to be passed by the Upper House.

### Suggestions

Corruption, in India, has become a serious problem. In future, if necessary step to combat this problem are not taken, it will hollow the roots of the system. Therefore, following suggestions have been offered on the basis of study:

1. There is a need to establish a clear, Strong and enforceable legal framework by providing with all the tools necessary to perform its functions effectively.
2. Provisions should be made so as to ensure independence and freedom of agencies to taken to take action. Bureaucrats and authorities should be made free from political influence.
3. Undue interference of political leaders must be strictly and rigorously avoid.
4. Strict punishment should be given who indulge in corruption activities.
5. Speedy trial In case of corruption, as it is observed that Special Judges are appointed in corruption case but the cases remain pending for indefinite period, which leads to delay in grant of justice. So, there is need to recruit more Special Judges
6. The NGOs and Civil societies can play vital role to educate the public and make them aware of the impact of corruption
7. There should be zero tolerance policy towards corruption.
8. Increase of wages and incentives for honest behaviors can encourage the employees to avoid corruption activities.
9. Article 311 of the Constitution should be repelled.
10. A toll free number to report cases of corruption should be created for the immediate access of the public.

### Conclusion

Corruption not only causes adverse impact on the economy of nation but also maligns the image of country at international level. In the Commonwealth games, players from various country participated and the whole world had its eyes on the Commonwealth games but the scam exposed in Commonwealth games has maligns the image of India in the global scenario. In order to combat this vice, collective measures are required to be taken. There is a need to make the bureaucracy more citizen friendly, accountable and transparent. New courts should be established to pace-up the justice delivery system. Lokpals and Vigilance Commissions should be able to take independent decision. Political interference must be stopped, people should have a right to question, funding of political parties should be transparent, election expenses for candidates and political parties should be transparent. Initiatives may be taken to literate the people. Whistle blowing policy must be there with apparent guidelines. Only the corruption free nation can be made secure. Media should also play its role to abolish the corruption by exposing the corruption. In gist, every citizen should feel his/her duty to make joint efforts to eradicate this evil from the country.

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