

Corruption: A Curse and Role of Whistle Blowers in Combating Corruption

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ABSTRACT

Corruption in a civilized society is a disease like cancer, which if not detected in time is sure to malign the policy of country leading to disastrous consequences. Corruption is defined as wide spread moral deterioration, use of corrupt practices, such as fraud and bribery. Monopoly, wide discretion in decision making, lack of adequate State protection to whistle blowers and poor accountability systems are more proximate causes of corruption. Corruption is opposed to democracy and social order. It affects economy and destroys the cultural heritage. Whistle blowers play a very important role in providing information about corruption and mal-administration. People working in the same department best know who is corrupt but they are not bold enough to convey this information to their higher authorities as there is fear of reprisals. If adequate State protection is granted there can be no doubt that the government will be able to get more information regarding wrong-doings.

A. Introduction

"Corruption is today a world-wide phenomenon and social evil which prevents proper and balanced social growth and economic development. Corruption is termed as a plague which is not only contagious but if not controlled, spreads like a fire in jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects economy and destroys the cultural heritage. Unless nipped in bud at the earliest, it is likely to cause turbulence shaking the socio-economic system in an otherwise healthy, wealthy, effective and vibrating society".² Today, there is not a single institution in India that can claim freedom from corruption. Starting from the office of the prime minister to the secretary of the village panchayat, cases of corruption surpass regularly, though the magnitude of such cases is not the same but differ substantially. The turn of corrupt events in the country is now forcing the people to talk, recite and write on

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² *State of M.P. v. Ram Singh*, (2000) 5 SCC 88.

what is going wrong, where and what will be the future of this country which is going through one of the most corrupt times.³

B. Concept and Definitions of Corruption

There is no universal definition of what constitutes a corrupt behaviour. The definition of corruption and corrupt practices varies from country to country. To start with its literal meaning, the term "Corrupt" has been defined as morally depraved, wicked, influenced by or using bribery or fraudulent activity, affect or harm by errors or by alterations. Corruption is defined as wide spread moral deteriorations, use of corrupt practices, such as fraud and bribery.⁴

Webster's New World Dictionary defines corruption as the act of making or becoming or being corrupt, and corrupt is defined as changed from sound condition to unsound, contaminated.⁵

According to *Black's Law Dictionary*, the word corrupt means depravity, perversion, or taint, an impairment of integrity, virtue or moral principle; esp., the impairment of a public official's duties by bribery. The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of station or office to procure some benefit either personally or for someone else, contrary to the rights of others.⁶

According to *Bouvier's Law Dictionary and Concise Encyclopedia*, corruption includes bribery but it is more comprehensive; because an act may be corruptly done though the advantage to be derived from it may not offered by another. Something against law: as a contract by which the borrower agreed to pay the lender usurious interest. It is said in such case, that it was corruptly agreed etc.⁷

According to *Wharton's Law Lexicon*, bribe means a gift to any person in office or holding a position of trust, with the object of inducing him to disregard his official duty or betray his trust for the benefit of giver. It s a misdemeanour at common law for a public officer, whether judicial or ministerial, to accept a bribe, or for such an officer to conspire with others that he shall receive such bribe⁸.

3 Dr. B.H. Hydervali, "Law and Corruption in India", *Indian Bar Review*, 24 (2002).

4 *The Concise Oxford Dictionary of Current English*, 259 (1990).

5 *Webster's New World Dictionary of Current English*, 283 (1980).

6 *Black's Law Dictionary*, 348 (2004).

7 *Bouvier's Law Dictionary and Concise Encyclopedia*, 446 (1914).

8 *Wharton's Law Lexicon*, 145 (1976).

In its widest' connotation, corruption includes all kind of improper conduct, whether in the exercise of power or influence attached to public officer, or in the exercise of special position or influence of one's authority in public life, or in the exercise or adoption of personal discretion or profession.⁹ The shorter and simple definition of corruption includes abuse of authority, bribery, favoritism, extortion and patronage, deceit, malfeasance and illegality. Corruption is most commonly defined as the misuse or the abuse of public office for private gain. It can be come in various forms and a wide array of illicit behaviour such as bribery, extortion, fraud, and nepotism, graft, speed money, pilferage, theft, embezzlement, falsification of records, kickbacks, influence peddling etc. While corruption is commonly attributed to public sector, it also exists in other aspects of governance, such as political parties, private business sector and non-governmental organizations.¹⁰

C. Characteristics of Corruption

Corruption can assume many forms, cover a wide variety of transactions, and operate at many levels. It can relate to acts of commission, omission or delay; involve the exercise of discretion; or the violation of rules, but not necessarily, since illegal gratification can be taken even whilst technically conforming to rules. Bribery can be in the form of cash, kind, services or other favors. Corruption may involve a voluntary or collusive relationship between the bribe giver and the bribe taker, or it may be extortionate for rendering an entitlement, doing an undue favor, or desisting from harmful action.¹¹ Several characteristics of corruption make it difficult to track its course, expose it and effectively punish the culprits. Corrupt transactions take place in secret. In collusive corruption, the mutual interest between the recipient and the source of bribery make it difficult to unearth the evidence. There is also a 'vertical integration' between different layers of the political and bureaucratic echelons; e.g., minister - legislative party functionary and minister - higher bureaucracy, middle and lower bureaucracy.¹² In extortionate corruption, the victims are intimidated, above all, corrupt politicians and officials who occupy high positions in government are in a position to suppress evidence or resort to threat or inducement because of their privileged access to government records. Furthermore, legal process involved in tackling corruption, as is generally the case with the Indian legal system as a whole cumbersome, expensive and time

9 Mahesh Chandra, *Socio Economic Crimes*, 73 (1979).

10 Shelkar, "*Treatise on Anti Corruption Laws*, 2 (2013).

11 S. Guhan, Samuel Paul, *Corruption in India : Agenda for Action*, 9 (1997).

12 Zwart, *The Role of Transfers*, 11 (1994).

D. Causes of Corruption

The extensive literature on the subject of corruption draws attention to political system and practices, economic development, economic policies, sociological characteristics and the cultural milieu as the main factors which are relevant for a causal explanation of corruption.¹⁴ The following are some of the causes of corruption:-

(i) Corruption is an efficient lubricant in the economic development process :

This is a proposition that economists tend to support on the plea that in a highly regulated and slow-moving economic environment, corruption enables economic actors to cross barriers and move forward. If speed money is not paid, decisions are delayed and services are denied. Corruption is the price to be paid to cut through these problems.¹⁵

(ii) Corruption is the result of shortage in the economy:

It is true that the potential for corrupt practices increases with the severity of shortages. The temptation to jump the queue or invoke connections is high where shortages abound. What is overlooked, however, is the fact that corruption prevails even when no physical shortage is present.¹⁶

(iii) High cost of election is responsible for corruption:

Some aspects of the Indian electoral system have been given rise to corruption and other abuses necessitating urgent and comprehensive electoral reforms. Large-sized Parliamentary and Assembly constituencies in terms of area and population entails higher election costs to political parties in reaching out to the voters. Apart from this because of the federal system, repeated elections to the Parliament and State Legislatures become unavoidable adding enormously to the high costs. Furthermore, there is show of one's strength and lavish spending on election by more affluent contestants and political parties. Besides this, there is a non-nurturing of the constituencies by political parties over a longer period and resorting to rough and ready short-cut methods when elections are near, expecting quick success. These factors are responsible for corruption.¹⁷

13 *Supra* note 10.

14 Clarke, *The Causes of Corruption*, 12 (1983).

15 Manubhai Shah and Samuel Paul, "Corruption in Public Service Delivery", *Corruption in India: Agenda for Action*, 145 (1997).

16 *Ibid.*

17 K. Ganesan, "Corruption in the Political Process; A Case for Electoral Reforms", *Corruption In India: Agenda for Action*, 27 (1997).

(iv) Corruption is a rational response to low public salaries:

There is a germ of truth in this myth as in others. Low governmental salaries may encourage corruption and a tendency to sell favors. Implied here is the hypothesis that corruption would disappear once government compensation policies are reformed. This is difficult to accept for the simple reason that grand corruption is associated with those with high income and assets.¹⁸

(v) Dilatory and cumbersome working of government offices:

It is commonly commented, "Delay breeds corruption". In order to avoid delay, every individual prefers to pay easy money for speedy disposal of his requirement. This is generally done in permit system and inspector raj. It is often observed, despite getting a favorable direction from the competent officials, the directions are not communicated till the public servant concerned gets his hands greased. In the *Santhanam Committee Report*,¹⁹ the objectionable corrupt practice and custom of speed money were considered as one of the serious cause of delay and inefficiency.

(vi) Lack of stigma in corruption cases:

The offence of corruption is not considered as stigma by public at large. It has become a way of life of majority of citizens not to get troubled by public officers in getting the work done from them after payment of bribes. Thus, such offences are not disregarded by citizens nor the government takes any serious initiative to get red of this problem Unlike other traditional crimes, these offences do not carry disgrace, depravity or immorality, because corruption has become fashion of the day.²⁰

(vii) Monopoly in the supply of public goods and services:

Absence of competition tends to create opportunities for corruption either by restricting supply deliberately or through inefficiency. This can occur in both public and private sectors. When customers have no other option, they are more vulnerable to the pressures of monopolistic service providers. So, monopoly in the supply of public goods and services is also contributes to corruption in public services.²¹

(viii) Lack of accountability of the service providers:

Another factor which is responsible for corruption is the lack of accountability of the

18 *Supra* note 14 at 146.

19 *Report of the Committee on Prevention of Corruption*, 251 (1964).

20 *Supra* note 8.

21 R. Klitgaard, *Controlling Corruption*, 148 (1988).

service providers except in the nominal sense of presenting annual audited accounts to Parliament or other superior authorities. When those who are expected to supervise the agents are themselves party to collusion with the latter, the enforcement of accountability becomes extremely difficult. The lack of proper reporting system and supervisory control add to the severity of the problem.²²

(ix) Change in the value system and ethical qualities:

Corruption is caused as well as increased because of the change of value system and ethical qualities of men who administer. The old ideals of morality, service and honesty are regarded as anachronistic. Tolerance of people towards corruption, complete lack of intense public outcry against corruption and the absence of strong public forum to oppose corruption are the main factors which contributes to corruption.²³

(x) Rampant corruption is unique to some societies and cultures:

It is true that corruption in public services which concern the average citizen is minimal in most developed countries. It is also pointed out that corruption was rampant in the same countries in an earlier era. There is a tendency, therefore, to conclude that corruption is a manifestation of the socio- economic backwardness of a country. Here again, the socio-economic transformation of a society will no doubt have a bearing on the behaviour of its public officials and citizens. But to assume that no perceptible change can be expected in the medium term is perhaps too pessimistic. In our own life time, Singapore, which was known for its corruption, has substantially eradicated the problem. Chile, though surrounded by several countries known for wide spread corruption, is known for its relatively non-corrupt services and institutions.²⁴

(xi) Lack of adequate state protection to whistle blowers:

Another factor which contributes to corruption is lack of adequate protection to the complainants reporting the corruption or willful misuse of power. Whistle blowers play a very important role in providing information about corruption. People working in the same department best know who is corrupt but they are not bold enough to convey this information to their higher authorities as there is fear of reprisals.²⁵

²² *Ibid.*

²³ M.R. Reddy, *Anti Corruption Laws and Departmental Enquiries*, 11 (2015).

²⁴ *Supra* note 14.

²⁵ Robert G. Vaughan, "State Whistle Blower's Statutes and Future of Whistle Blower Protection", *Administrative Law Review*, 581(1999)

E. Effects of Corruption

There is considerable agreement about the adverse effects of corruption on society, polity and the economy. Corruption corrodes the moral fiber of the society. It undermines the legitimacy of governments because of the widespread cynicism, based on a mixture of facts and perceptions concerning the level of corruption. It has been pointed out that general impressions about corruption, circulated in public discussion and gossip, might be unfair and exaggerated but the very fact that such impressions are there causes damage to the social fabric.²⁶ The adverse effects of corruption are countless but an attempt has been made to enlist few:

(i) On Society

When society is corrupted its members become cynical and contemptuous of social and moral values. In such a society sane voices of wise men and social reforms will remain unheard and unattended. The effect of corruption on the social fabric of society is the most damaging of all. It undermines people's trust in the political system, in its institutions and its leadership. Frustration and general apathy among disillusioned public results in a weak civil society.²⁷ Where corruption prevails, the poor receives less social services such as health, education, social security and welfare benefits. By reducing the total revenue available for social spending it distorts the allocation of public expenditure away from social programs and denies the equal access to public property. Corruption increases income inequalities and poverty. In corrupt countries poor treated discriminately in terms of access to basic services.²⁸

(ii) On Economy

Corruption leads to the depletion of national wealth. It is often responsible for the funneling of scarce public resources to uneconomic high profile projects, such as dams, pipelines and refineries, at the expense of less spectacular but fundamental infrastructure projects, such as schools, hospitals and roads, or the supply of power and water to rural areas. Furthermore, it hinders the development of fair market structures and distorts competition theory deterring investments. Corruption has various evil consequences on various facets of economy. Some of the ways through which corruption weakens economic growth and investment are followings:

²⁶ Baxi, *The Flokore of Corruption*, 12(1989)

²⁷ Abidulla. Hadimani, "Corruption: A Curse and its Cure", *Cri.LJ.*, 11 (2013).

²⁸ Daniel Kaufanam, "Transparency incentives for corruption control and good governance" available at <http://www.worldbank.org/wbi/governance> (visited on June 28,2015).

- (a) Misallocating talent and under-utilization of key segments of society.
- (b) Lower domestic and foreign investment.
- (c) Distorted enterprise development and growth of unofficial economy.
- (d) Distorted public expenditure and public investments.
- (e) Lower public revenue and less provision of rule of law.²⁹

(iii) On Government

Corruption undermines the stability of the government. We have many examples in which number of corrupt officials, ministers, M.P.'s were unseated. And the chief ministers of States were obliged to resign their posts on corruption charges. Some ministers of States were sent behind bars and their bail pleas are also rejected on account of corruption charges. This pose a threat to government, because now politics has become number game and these corrupt politicians had some representatives and ordent followers in their support. In this way corruption leads to instability of government, and also hampers the smooth functioning of the government by making the ministers busy in protecting their seat and interest than the interest of people who elected them to represent.

(iv) On Democracy

Corruption also decomposes democracy, undermining democratic governance. Corrupt practices remove government decisions from the public realm to the private diminishing openness and accountability. Corruption is a major obstacle to democracy and rule of law. In a democratic system, offices and institutions lose their legitimacy when they are misused for private advantage. Though this is harmful in the established democracies, it is more so in newly emerging ones. Accountable political leadership can not develop in a corrupt climate. Corruption is inherently contradictory and irreconcilable with democracy.³⁰

(v) On Environment

Environment degradation is yet another consequence of corrupt systems. The lack of or non-enforcement of environmental regulations and legislations has historically allowed the north to export its polluting industry to the south. At the same time, careless exploitation of natural resources from timber and minerals to elephants, by both domestic and international agents has led to ravaged natural environment. Environmentally divesting projects are given preference in finding, because they are easy targets for siphoning of public money into

29 Mohammad Mohabat Khan, "Political and Administrative corruption" available at <http://www.cdr.org/journal/2005/pdf> visited on 29.06.2015.

30 *Supra* note 26.

(vi) On Development

Higher corruption is associated with (a) higher and more costly investment; (b) lower government revenues; (c) lower quality of public infrastructure. Corruption increases public investment by making it more expensive, while reducing its productivity. If corruption levels in India were reduced to that in the Scandinavian countries, investment rate could increase annually by some 12 percent and gross domestic product (GDP) growth rate by almost 1.5 percent each year. Corruption also acts as an additional tax on investment by lowering the potential return to an investor on both the initial investment and on subsequent returns. Corruption also reduces the government's resources and hence its capacity for investment, since tax revenues are depleted by tax evasion.

(vii) On Administration of Justice

Corruption increases injustice and disregard for rule of law. Basic human rights and freedoms comes under threat, as key judicial decisions are based on the extent of bribe given to court officials rather than on the innocence or guilt of the parties concerned. Police investigations and arrests may be based on political victimization or personal vendettas rather than on solid legal grounds.³²

F. Role of whistle blowers in combating corruption:

Whistle blowers play a very crucial role in providing information about corruption. Whistle blowing in good faith represent the highest ideals of public service and challenging the abuse of public power.³³ The term whistle blower comes from the whistle a referee uses to indicate an illegal or foul play.³⁴ US civic activist Ralph Nadar coined the phrase in the early 1970s to avoid the negative connotations found in other words such as “informers” and “snitches”.³⁵ A whistle blower is a person who tells the public or someone in authority about alleged dishonest or illegal activities occurring in government departments, a public or private organization, or company.³⁶ Whistle blowers may make their allegations internally for example, to other people within the accused organization or externally to regulators, law

31 Available at <http://www.transparency.org/news-room/faq/corruption-Faq>(visited on 03.06.2015).

32 *Supra* note 23.

33 *Supra* note 24

34 Dr. Archana Gadekar, "Whistle Blower Bill: A Critique" , *AIR* 177(2012).

35 Nader, Petkas and Blackwell, *Whistleblowing*, 112 (1972).

36 <http://en.wikipedia.org/whistleblower> (Visited on April 20, 2016).

enforcement agencies, to media or to groups concerned with the issue.³⁷

Whistle blowers play a very important role in providing information about corruption and mal-administration. People working in the same department best know who is corrupt but they are not bold enough to convey this information to their higher authorities as there is fear of reprisals. There have been multiple instances of threatening; harassment and even murder of various whistle blowers. There are so many murder cases of whistle blowers reported in the media which become a matter of concern for the government to come up with the law on the protection of whistle blowers. The gruesome murder of two whistle blowers Satyendra Dubey³⁸ and Manjunath Shanmugham³⁹ in 2007 brought the issue of vulnerabilities of the whistle blowers to public focus. Apart from this a Karnataka official SP Mahantesh, a whistle blower in controversial land allotments by societies, was murdered in May 2012.⁴⁰ Similarly a senior police officer alleged that Mayawati's government is corrupt and embezzled large amount of money. Shortly, thereafter, he was sent to a psychiatric hospital.⁴¹

In order to provide protection to the whistle blowers in India the Whistle Blower's Protection Act, 2011⁴² was passed by the Parliament. Whistle Blower's Protection Act, 2011 provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrong doing in government bodies, projects and offices. The wrong doing might take the form of fraud, corruption or mismanagement. The Act will also ensure punishment for false or frivolous complaints.⁴³ According to the provisions of this Act any public servant or any person including a non-governmental organization may make such a disclosure to competent authority.⁴⁴ Every complaint has to include the identity of the complainant. The competent authority shall not disclose the identity of the complainant. Those who reveal the identity of the whistle blower will be held liable and penalized.⁴⁵ Though the law relating to protection of whistle blowers is enacted but still there are threats to the life and liberty of whistle blowers. So, strict implementation of the Whistle Blowers Protection Act, 2011, is the need of the hour .

³⁷ *Supra* note 33.

³⁸ Truth Silenced, S.K. Dubey Murder, Available at <http://www.rediff.com/news/> (Visited on 15 February 2016).

³⁹ Manjunath Shanmugam Trust, Available at <http://syg.com/web/> (Visited on 15 February, 2016).

⁴⁰ *Supra* note 3.

⁴¹ *Ibid.*

⁴² *Supra* note 4.

⁴³ Section 17 of the Whistle Blowers Protection Act, 2011.

⁴⁴ Section 4(1) of the Whistle Blowers Protection Act, 2011.

⁴⁵ Section 16 of the Whistle Blowers Protection Act, 2011.

G. Conclusion

Corruption means and includes spiritual or moral impurity or deviation from an ideal. Corruption can straddle both the public and private sectors. However, given our focus on corruption in the public services, it might be useful to start with the narrow definition that corruption is the 'misuse of public power for private gain'. Other definitions have been offered citing the misuse of public office, violation of public interest, disapproval of public opinion and illegal use of public office for private gain. These and similar definitions have been critiqued on the ground that they tend to be too broad and indeterminate since there could be much debate on what constitute 'misuse' or "public power" or "public interest". On the other hand definitions which link corruption narrowly to bribery have been criticized on the ground that they leave out forms of misconduct which can lead to or result from corruption, such as nepotism, patronage and a variety of white collar offences which may or may not involve direct or immediate financial considerations.

So far as the causes of corruption are concerned, it is reasonable to conclude that while the above causes highlight a few plausible factors underlying corruption, they do not offer satisfactory explanation of why corruption persists in poor countries, especially in the area of public services. Admittedly, it is unrealistic to expect that corruption can be explained in terms of a mix of factors that apply across the countries. This is not to deny that broader underlying factors such as low public compensation levels or socio-cultural traditions have no bearing on corruption. But monopoly, wide discretion in decision making and poor accountability systems are more proximate causes and may offer valuable insights into the kind of reforms and could make a difference.

It is established fact that corruption or corrupt practices have detrimental or corrosive effects especially in developing countries. One result of such deterioration is political instability when one democratic regime after another is outvoted from office on the issue of corruption. More serious is the replacement of democratic government with authoritarian or military rule. Moreover, corruption may lead to the divergence of funds from intended targets and the financing of unproductive public expenditure. It may result in loss of tax revenue in the form of tax evasion. Besides economic consequences, the rampant corruption tends to undermine the legitimacy of state institutions and governments. Thus, it destroys the ability of institutions and bureaucracies to deliver services that society may expect, thereby posing a serious threat to the democratic institutions and the very existence of social order. Thus,

corruption in a civilized society is a disease like cancer. If not detected in time it is sure to turn the polity malignant leading to disastrous consequences. One of the impediments felt in eliminating corruption in the government and public sector is lack of adequate protection to the whistle blowers reporting the corruption and willful misuse of power. If adequate State protection is granted there can be no doubt that the government will be able to get more information regarding wrong-doings.