

Law Regulating Corruption of Public Servants

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Abstract

Corruption has been a topic of sporadic interest among social scientist for over three decades. The use of the word "Corruption" has been highly contextual. Corruption is one of a constellation of international development problems endogenous to societies and the changes they experience. Corruption is seen as a symptom of deeper difficulties. The larger numbers of studies on corruption have paid substantial attention to the problem of combating corruption. In 2012 India has ranked 94 out of 176 countries in Transparency International Corruption Perception Index. The causes of corruption in India include excessive regulation, complicated taxes and licensing system, According to the study conducted in the year 2008. Transparency international reports about 40% of Indians had experience of paying bribes or using a contact to get a job done in public office. In Indian Penal code section 21 has given a broad definition of public servant which is studied in detail with several dimensions.

Public servants in India can be penalized for corruption under the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988.

KEYWORDS: Corruption, Transparency, Regulation, Powers.

Introduction:

Corruption is defined as the illegal use of public office for private gains. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. In other words, it refers to a transaction between two individuals or parties, in which a person with accumulated political and / or bureaucratic power demands and accepts cash or some favor in return for rendering a service or showing a favor to another. The payment made for such favor or discrimination is called bribe, speed money, spoils, rent, kickbacks, grease payment, side payment, and graft payment and so on. If money is not directly involved in the abuse of public office for private gain, that may be called discrimination, patronage, favoritism, nepotism, etc. Corruption could be collusive or non collusive. In the collusive corruption, neither the briber nor the bribe has an incentive to report or protest. Corruption is also classified into two types, namely, primary and secondary. Primary corruption is the class misappropriation of the surplus value created by the laboring majority, while the secondary corruption, which is discussed in this paper, refers to the everyday abuse of public office for substantial personal gain.¹

Corruption is expected to worsen under the three circumstances. First, changes in life style are demanding command over more of goods and services leading to scarcity rise in prices and crisis, decline in values, low level of morality and ethics in professions.² Two, the war time controls, regulations and red-Tapism in public administration. Three, wages perceived to be low for public servants, lower expected punishment for

corrupt persons, middlemen's vested interest in spreading disinformation that nothing gets done without bribing the officials, and rapid commercial and entrepreneurial expansion. These are observed to be the order of the day. Hence, corrupt practices are more likely to expand.³

Corruption is like cancer, retarding economic development. There are several channels through which corruption hinders economic development, including reduced domestic investment, reduced foreign direct investment, overblown government expenditure and distorted expenditure on education, health and infrastructure.

Political and economic corruption is also defined as 'the violation of established rules for personal gain and profit.'⁴ or 'use of public office for private gain'.⁵ or 'abuse of public power for private gain'.⁶ The cleanest country may expect a high Foreign Direct Investment inflow or a corrupt country may not attract high Foreign Direct Investment inflow. Political leaders with criminal records, bureaucrats, judges, police, and other high-profiles of the society are involved in nourishing and nurturing corruption in India.

Material & Methods:

The Researcher has used the doctrinal method of research. The researcher has analyzed critically various laws in this research paper. They are as follows:

1. Indian Penal Code, 1860.
2. The Prevention of Corruption Act, 1988.
3. The Benami Transactions (Prohibition) Act, 1988.
4. The Prevention of Money Laundering Act, 2002.
5. Criminal Procedure code, 1973.
6. The Prevention of corruption Act, 1947.
7. The Prevention of corruption Act, 1988.

Definition of public servant under Indian penal code 1860

Section 21: The words "public servant" denotes a person falling under any of the descriptions hereinafter following, namely:

- i) Repealed by the adaptation of Laws order, 1950.
- ii) Every Commissioned Officer in the Military, Naval or Air Forces of India.
- iii) Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions.
- iv) Every officer of a Court of Justice (including a liquidator, receiver or Commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every persons specially authorized by a Court of Justice to perform any of such duties.
- v) Every Juryman, assessor, or member of a Panchyat assisting Court of Justice or public servant.
- vi) Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority.
- vii) Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement.

- viii) Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health safety or convenience.
- ix) Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government.
- x) Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district.
- xi) Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election.
- xii) Every person-
 - (a) In the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government.
 - (b) in the service or pay of a local authority, a corporation established by or under a Central, provincial or State Act or a Government company as defined in section 617 of the companies Act, 1956.

Results:

K. Veer swami v. Union of India (1991) 3 SCC 655; 1991 SCC (Cr) 734:⁷

The Supreme Court held that public servant will include judges of the high Courts and Supreme Court. The Court noted that section 21 IPC does not define the expression “public servant” as a concept. It enumerates only the categories of public servants.

M. Karunanidhi v. Union of India, 1979 Cr. LJ 773 (SC): AIR 1979 SC 598;⁸

The Supreme Court held that with reference to article 164 and 167 the constitution too shows that a Minister or a Chief Minister is appointed by the Governor, he gets as salary for discharging a public duty and the said salary is paid to him from Government funds. These facts, therefore, point to one conclusion that he is a public servant within the meaning of clause 12 of section 21 IPC.

Kurian v. State of Kerala, 1982 Cr LJ 780:⁹

The Kerala High Court held that An IAS officer posted as the managing director of a State Financial Corporation has been regarded as a public servant. However, an employee of a nationalized bank has been held to be a public servant as it is a Government Company under section 617 of the companies Act and it is also a body corporate established under a Central Act.

Discussion:

I) The Prevention of Corruption Act, 1947:

Section 161 to 165.A (both inclusive) of the Indian Penal Code shall be omitted, and section 6 of the General Clauses Act, 1897, shall apply to such omission as if the said sections had been repealed by a Central Act. Therefore the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952 are hereby repealed.

II) The Prevention of Corruption Act, 1988:

In addition to the categories included in the IPC, 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.

Section – 7: Public servant taking gratification other than legal remuneration in respect of an official act

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favor or disfavor to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Section 8: Taking gratification, in order, by corrupt or illegal means, to influence public servant

Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Section 9: Taking gratification, for exercise of personal influence with public servant

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend. To five years and shall also be liable to fine.

Section 10: Punishment for abetment by public servant of offences defined in section 8 or 9

Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Section 11: Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant

Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Section 12: Punishment for abetment of offences defined in section 7 or 11

Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine,

Section 13: Criminal misconduct by a public servant

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be

transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) If he,-

(i) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.-For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

Section 14: Habitual committing of offence under sections 8, 9 and 12

Whoever habitually commits-

(a) An offence punishable under section 8 or section 9; or

(b) An offence punishable under section 12,

Shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

Section 15: Punishment for attempt

Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

Section 16: Matters to be taken into consideration for fixing fine

Where a sentence of fine is imposed. under sub-section (2) of section 13 or section 14, the court in fixing the amount of the fine shall taken into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

Section 17: Persons authorized to investigate

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank.-

- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
- (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmadabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973, of an Assistant Commissioner of Police;
- (c) Elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant.

Provided that if a police officer not below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

The Benami Transactions (Prohibition) Act, 1988

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 up to 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.

(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 up to Rs 5 Lakhs. If a person is convicted of an offence under **the Narcotics Drugs and Psychotropic Substances Act, 1985** the term of imprisonment can extend up to 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.

Effects of Corruption:

There are two types of effects regarding corruption. Positive and negative effects of corruption have been identified. Therefore moralists maintain that corruption is definitely detrimental, the reformists argue that corruption provides some benefits to developing nations, which in some cases may exceed the costs.

Process followed to investigate and prosecute corrupt public servants:

- a. 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, Government of India.
- b. The CBI and state ACBs investigate cases related to corruption under the Prevention of Corruption Act, 1988 and the Indian Penal Code, 1860. 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.
- c. 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.
- d. 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.
- e. All cases under the Prevention of Corruption Act, 1988 are tried by Special Judges who are appointed by the central or state government.

Causes and consequences of corruption:

There are four causes of corruption such as Kleptocracy, Bilateral Monopoly State, and Mafia-dominated State & Competitive-bribery State.

- (i) Kleptocracy: In a pure Kleptocracy the head of the government organizes the political system to maximize the possibilities for extracting rents and reallocates these rents for personal use. He might act like a private monopolist as he faces a large number of potential bribers.
- (ii) Bilateral Monopoly State: In this case the corrupt ruler faces a single major briber.
- (iii) Mafia dominated State: In this case the state is very weak and disorganized, with many officials engaged in freelance bribery. These officials face a monopolist briber in the private sector, a domestic mafia or a large corporation.
- (iv) Competitive-bribery State: In this case many corrupt officials deal with large numbers of ordinary citizens and firms. The corruption of some officials encourages others to accept bribes, thus creating the potential for an upward spiral of corruption.

Suggestion:

These are the following suggestions which may be considered to combat the corruption.

- 1) Moral character of the individuals.

- 2) Strengthening the functional aspects of institutions like Lokayukta and establishing multi-membered Vigilance Commissions with uncorrupt officials.
- 3) Announcing anti-corruption campaigns.
- 4) Ensuring greater transparency and accountability by decentralizing the decision-making process.
- 5) Strengthening the people's voice by giving them the right to information.
- 6) Attractive rewards for honest and severe punishment for indulging in corrupt practices.
- 7) Attacking the monopoly of the rent-seekers by introducing competition in the system; preventing the nexus between politics and corruption.
- 8) Periodic job rotation, without giving scope to maximize the looting.
- 9) The enhanced supervision, improved personnel quality, limited discretionary authority, more functional specialization, computerized information systems, established appropriate staffing policies, motivated high-level officers and improved appeal mechanism.
- 10) There must be decontrol, deregulation, Debureaucratization and privatization to root out corruption.
- 11) Outdated and ambiguous laws are to be streamlined and scrapped so that discretionary power enjoyed by civil servants can be reduced. Legal process dealing with corruption must not be a long-drawn affair. Above all, laws, regulations and procedures are to be made more transparent.

Conclusion:

The corruption is generally harmful to the society and it is extraordinarily difficult to do away with the misuse of power for personal gains so long as government offices exist. The present kind of development pattern ever raising the demand for exhaustible and competitive resources leading to deficit supply, conflicts, crises and crimes would enhance opportunities for the public officials to be more corruptive in one form or another. The higher level of corruption, lower the levels of both domestic and foreign investments and poorer the benefits to the really disadvantaged groups and worsen the income distribution. Corruption has the debilitating and destabilizing impacts on the society.

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