

AN ANALYSIS OF ANTI-CORRUPTION LAWS IN INDIA

Priya Jain, Ankita Gaur , Vir Vikram Bahadur Singh, Diksha Taneja, Kaneez Fatima,
Faculty of Juridical Sciences, Rama University, Mandhana, Kanpur, U.P,
Kanpur

ABSTRACT

A significant and pervasive feature of modern public life is corruption. It is among the greatest dangers to a society's well-being. Corruption destroys the standard of living for the average person and lowers the quality of services. One of the nation's most impacted by the corruption problem is India. A long shadow of corruption looms over India's progress towards prosperity. From small-scale bribery to large-scale theft, corruption penetrates every aspect of society, undermining institutional credibility, impeding economic expansion, and sustaining inequality. The Prevention of Corruption Act, 1988 ("PoCA") is the cornerstone of India's extensive network of anti-corruption laws, which it created in response to this widespread problem. The PoCA and its modifications make it illegal for public employees to engage in bribery, fraud, or taking unfair advantage of others. To strengthen the fight against corruption, other pertinent laws including the Prevention of Money Laundering Act and the Benami Transactions (Prohibition) Act have been included.

KEY WORDS: Corruption, Bribe, Laws, Society, Etc.

INTRODUCTION

“Behind every great fortune there is a crime.”¹

"Corruption" is defined in a way that is both fluid and amorphous, including a range of aspects that each has an impact on human dignity. Technology advancements and more public knowledge have led to a significant shift in the causes of corruption, with bribes becoming scams or scandals in their stead. The term "corruption" refers to a crime that is carried out in secret between parties with mutual understanding. The act of corrupting someone involves a masterful, well-planned, and sophisticated crime that takes the shape of a scam, scandal, fraud, etc. It is very hard to establish that corruption benefits givers and recipients alike since that is the only reason why people are fed up with corruption in general.

The act of a public worker engaging in criminal wrongdoing by exploiting their position to their advantage in order to get a valued item or financial benefit for themselves or for another person is known as corruption.²

THE CORRUPTION-RELATING FACTORS

The following are significant contributing elements to corruption:

¹The Godfather, Mario Puzo, Signet, 1969.

² Bishambhar Lal v/s State of Punjab, AIR 1966 Punj.17.

- a) The fundamental character of humanity is the primary cause of corruption. People often have a strong desire for comforts and pleasures, and as a result, they often immerse themselves in dishonest actions that provide material or financial gain.
- b) The Indian populace lacks enlightenment and awakening. They are afraid to voice their opposition to the antisocial aspects that are pervasive in society.
- c) The penalties meted out to the offenders are insufficient.
- d) The educational system places little emphasis on moral and spiritual principles, which has a major impact on how society is falling apart.
- e) The civilization has been entirely ruined by the political elite. They live opulent lives and show little concern for the community.
- f) Due to their extremely low pay, employees are compelled to engage in illicit activities in order to make ends meet.

HISTORICAL ASPECTS OF CORRUPTION IN INDIA

ANCIENT PERIOD

India has a long history of corruption. Some of the observations expressed by the Arthashastra's author on government employees of his day remain pertinent to this day. A government employee would be unable to avoid consuming some of the king's revenue because, as they put it, "it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue."³ Every culture has experienced corruption in one way or another at some point in history. It is a pervasive ailment with deep roots in evil.

The Kautilya School of law advocated for taking firm action against dishonest and inefficient authorities in order to avoid corruption. "Those who have misappropriated money will be forced to pay it back and will then be placed in other positions where they won't be tempted to do so again." In general, corrupt practices are very likely to occur in Arthashastra due to its methodical money management-system.

Strong action against dishonest and inept authorities is recommended by Kautilya. "Those who have accumulated money improperly will be forced to repay it; they will then be placed in other positions where they won't be tempted to steal, and they will be forced to vomit back the food they have consumed."⁴

Those who accepted bribes were chastised by Vishnu and Manu. Numerous anti-corruption policies and penalties may be found throughout ancient Indian history.

One persistent and pervasive social issue is corruption. Corruption in the past was a major problem. The issue of corruption is widely denounced and presents a significant

³ Kautilya Arthashastra "chapter VII, book no.2, Tr. And Ed, shamsatry Rmysore 1929, p.29

⁴ Book II, Chapter IX, Section 35 of Sanskrit Text. Quoted in; Mathur B.P., op cit., at p.792

challenge to social scientists and policy makers. From ancient times to the present, we have sincerely and methodically taken legislative majors to combat this disease, but we have never been able to completely eradicate or even stop corruption in society. The government's stance has altered as a result of political meddling, the corrupt mindset of bureaucrats, and modifications to the legislation pertaining to the valve system. The government is incapable of solving the issue of corruption and has no desire in doing away with it.

VEDIC PERIOD

The conceptual and strategic study of corruption would fail miserably in the lack of Vedic information about corruption. The public employees that provide their services in an open and accountable manner and totally believe in their own superiority and divinity.

Their moral behaviour and inner divine mindset have given public duty an honourable character. Indians have made a significant contribution to the Vedic metaphysical ideas, which have been adopted by several national and international organisations to address the issue of corruption by giving their anti-corruption initiatives an ethical component. According to the Vedic philosophy, anyone who claims to be knowledgeable and who defends or glorifies any form of wrongdoing or immorality is inherently corrupt and bad. According to the scripture, it is immorality to both do corrupt acts and shield corrupt people from punishment. With reference to a person's varied conduct, the Vedas have attempted to identify the root causes of corruption.

"The corrupt people face gloom and misery through their children as they sow the seed of evil in the family," Rig-Veda cautioned the corrupt authorities.

The Sama-Veda alludes to the points of entrance where this corrupting evil enters the human-body.

Yajur-Veda counsels the King and the President-elect to make sure that corrupt persons with such a poor moral code and bad intent are not permitted to associate with other people who uphold the divine calling.

In the Bhagavat-Gita, corruption and its systemic effects on the end of humanity are described metaphysically. The Gita also demonstrates how anger is the root of all criminal activity, including corruption, and that anger occurs when wishes are not realised. When all is said and done, the boundary between good and bad vanishes and illegal activity or corrupt practices lead to infatuation.

MEDIEVAL PERIOD

Corrupt practices, such as central authorities extorting money and distorting the course of justice, were common during the Middle Ages. Even the administration of justice was not immune to corrupt acts throughout this mediaeval era. When

corruption took hold of common law courts, they began to operate as intended. Additional evidence of Mughal-era corruption was also discovered.

BRITISH PERIOD

There was relatively little opportunity for corruption throughout the British (1765–1947) era. During the 17th century, when India was a colony, corruption had grown to be a significant problem. Bribery and corruption, especially at the East India Company, was the subject of countless discussions in the British parliament. British colonial power in the eighteenth and nineteenth centuries, especially under Lord Cornwallis and Lord Warren Hastings, led to the implementation of policies that increased East India Company servant pay and forbade staff from receiving presents solely for the sake of reducing corruption.

India saw the need to establish an agency to look into bribery-related offences and had one in place by the time chapter IX of the IPC was written. The Government of India adopted the Delhi Special Police Act, 1946, since it was evident that the previous rules were unable to handle the new circumstances. The drafters of English law had a significant impact on and formed the current Indian legal framework. The Delhi Special Police Establishment Act of 1946 and the Indian Penal Code of 1860 are particularly significant in relation to corruption. To promote accountability and openness in the government, the British Indians also passed the Indian Police Act of 1861, the Indian Evidence Act of 1872, and the Indian Telegraph Act of 1855.

PROVISIONS IN VARIOUS LAWS TO COMBAT CORRUPTION

The corruption encompasses not only financial offences but also other types of offences including adulterating food, misappropriating funds, evading taxes, and money laundering. The following is a summary of Indian laws that address the issues of corruption. The primary laws and legal regulations, such as those included in the Indian Penal Code, 1860 and the India Constitution. Even though India has laws such as the Prevention of Corruption Act, 1988, etc., they are ineffective in stopping corruption. Principal Legislations governing corruption in India are:

PREVENTION OF CORRUPTION ACT, 1988:

The primary goal of the Act was to bring all of the nation's legislation against civil servant corruption under one roof. This includes penalties for bribery and the acquisition of unlawful property by public employees. However, there were a number of inadequacies and shortcomings with the primary legislation, such as the fact that it did not consider giving bribes to be illegal, did not allow for the attachment of property, and only applied to public sector transactions—not to private ones, such as

those involving banks and insurance companies. These shortcomings had a detrimental effect on the nation's economy because there was no effective way to stop these corrupt practices.

However, following the 2013 Amendment, the Act was upgraded and introduced with new changes to enable the agencies to curtail the corrupt civil servants in the nation. For example, the Act now covers private sector units and commercial organisations, and offering or giving bribes is now illegal. Section 8 of the Act also makes giving bribes and receiving them both punishable by seven years in prison. The trial period is set at two years, but can be extended to four years with special circumstances that must be documented in writing. Additionally, the statute allows for the attachment of government workers' contaminated property that was gained illegally, which the previous act did not provide.

FOREIGN CONTRIBUTION REGULATION ACT (FCRA), 2010:

The primary objectives of the Act are to forbid foreign transactions and to regulate foreign contributions made within the nation by a number of designated individuals, including judges, government employees, government servants, members of state legislatures, members of parliament, and political organisations. All of India, including all Indian citizens living abroad who accept foreign contributions on behalf of the aforementioned individuals, is included in the Act's territorial jurisdiction. Section 6 of the Act prohibits any of the aforementioned individuals from accepting foreign hospitality without first obtaining permission from the Central Government.

The aforementioned clauses of the act, which govern and serve as the cornerstone of India's anti-corruption law system, include stringent penalties for noncompliance with regard to foreign dealings and money.

LOKPAL AND LOKAYUKTAS ACT, 2013:

Following social activist Shri Anna Hazare's well-known Aandolan, which at last gained the assent of the President and was eventually published in the Gazette on January 1, 2014, this act was passed by our Honourable Parliament in 2013. While some states have already passed legislation before the act and appointed Lokayuktas in their respective states to deal with corruption cases, the act provides for the establishment of various officers to combat corruption, known as Lokpal at the Central Level and Lokayukta at the State level.

The most endearing aspect of the complaints against public functionaries is that the Lokpal and Lokayuktas have the authority to investigate into them. This includes the Prime Minister of India, with a few notable exceptions such as International Relations, Atomic and Space, Public Order, etc. In addition, all civil servants in Groups A, B, C, and D are brought under their purview.

In addition, any public body that receives a foreign donation of more than Rs. 10 Lacks is under the Lokpal's jurisdiction and is subject to an investigation. In addition, the Lokpal has the authority to direct the Central Bureau of Investigation (CBI) without first obtaining approval from the Central Government.

The Lokpal has been given the authority of a civil court, which includes the ability to call witnesses and anybody connected to the case, enforce their presence, and demand their appearance. The Lokpal, which upholds the idea that all people are equal before the law, has the authority to order the seizure of any assets, profits, or capital that have been obtained by any Minister, Public Servants, or anybody else, even the Prime Minister of the Nation.

PREVENTION OF MONEY LAUNDERING ACT, 2002

Anybody found guilty of money laundering is required under this statute to serve a harsh sentence of three to seven years in prison. He can also be subject to a fine of up to \$500,000. The maximum amount of fines has been eliminated, nonetheless, as a result of the PMLA, 2002 modification in 2012. The principal aims of this legislation are to deter money laundering and to establish procedures for seizing assets that are either obtained via or connected to money-laundering.

CENTRAL VIGILANCE COMMISSION ACT, 2003

In accordance with the Act, the Central Government established the CVC to maintain oversight over the CBI and all other anti-corruption agencies in the nation. The CVC functions more as a think tank for the Central Government and is mainly responsible for planning, advising, and carrying out national anti-corruption agency policies as well as looking into complaints filed against public workers in accordance with the Prevention of Corruption Act, 1988. With overall supervision over the CBI and the ability to send cases to it, the CVC is endowed under the act with the powers of a civil court, enabling it to investigate corruption matters impartially and without hindrance.

FUGITIVE ECONOMIC OFFENDERS ACT, 2018

The main goal of the legislation is to address situations involving fugitive offenders, or criminals who have been charged with economic offences but have left India in order to avoid punishment. All fugitive economic offenders against whom a case has been filed involving economic offences totalling at least Rs. 100 crores are covered by the Act. These individuals have either permanently left India or are refusing to return in order to avoid facing criminal prosecution and other legal repercussions. Benami transactions, corporate fraud, income tax evasion, PCA and PMLA cases, and other instances are included in the Act's list of economic offences.

The Act imposes severe penalties on the perpetrator, such as the instant seizure of all of his belongings, which discourages him from selling or otherwise disposing of them and deters him from committing any further crimes.

LANDMARK JUDICIAL PRONOUNCEMENTS

In *Vijay Madanlal Choudhary v. Union of India*⁵ When interpreting Section 3 of the Prevention of Money Laundering Act, 2002, the Hon'ble Supreme Court of India ruled that proof of property untaintedness is not required for an offence under PMLA; instead, mere possession or involvement in the derivation of proceeds from crime is sufficient. Consequently, the word "and" for demonstrating proceeds of crime as untainted property is interpreted as "or" because it cannot contradict the Act's primary goal.

The court further argued that, in order for a crime to be classified as covered by the PMLA, merely engaging in or aiding in the activity of obtaining the proceeds of crime constitutes sufficient and reliable evidence, and that the property need not be shown to be untainted. Otherwise, the individuals involved in criminal syndicates would be able to keep the proceeds of crime for years to come and enjoy their fruits without any action from law enforcement.

As a result, the provision must be read in conjunction with the explanation added by the 2019 Amendment, which clearly defines the offence under PMLA, 2002 as engaging in activities to obtain the proceeds of crime.

In the case of *K. Shanthamma v. State of Telengana*⁶, The Honourable Supreme Court of India ruled in the case that the mere recovery of money from the accused will not result in his conviction under the Prevention of Corruption Act, 1988, and that "Demand for Bribe" and "Its Acceptance by the Public Servant" are prerequisites for establishing a case against him.

The order of the Hon'ble Telengana High Court was set aside, and the accused was cleared of all charges of corruption and bribery. The court noted that the Prosecution Witness (PW)-I in the case had not stated the demand at the time of the trap, and that he had since improved in his statements during examination-in-chief. This means that it is not proven beyond a reasonable doubt that the accused made the demand of the bribe.

In *Central Bureau of Investigation (CBI) v. Ramesh Gelli*⁷, the Hon'ble Supreme Court of India ruled that, according to Section 2(c) of the PCA, 1988, directors and bank managers of private banks are considered public servants for the purposes of prosecution under the statutory provisions of the PCA. This means that, if they commit a crime involving fraud or bribery that causes financial losses to the general public or to any individual, the private individuals or bank employees will also be considered public servants for the purposes of prosecution under the PCA, and a legal action can be taken against them.

⁵2022 SC 633

⁶(2022) 4 SCC 574

⁷ 2016 3 SCC 788

CONCLUSION

It is challenging to completely remove corruption, yet it is not impossible to lessen its threat. The inadequate pay offered by the government is the main source of corruption among officials. Until the government drastically alters the wage scale for its employees, the desire for more and more will not go away. The general public believes that paying an officer a particular sum in order to get some work done is a routine duty.

From the analysis above, it is evident that corruption poses a threat not only to the economy of the nation or the world at large, but also to all of humanity. In India, thousands of people and families live in extreme poverty and lack access to basic necessities, forcing them to bear the harsh consequences of corruption. Examples of these consequences include being refused access to free treatment at government hospitals and PDS ration shops, as well as being denied the quality of prescribed food. These and other incidents highlight the toxic realities of corruption in the nation and call for governments and citizens alike to take it seriously.

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