

Control of Corruption in India: A Socio-Legal Challenge

Dr. Shashi Nath Mandal

Assistant Professor of Law, WBES

P.G. Dept. of Law, Hooghly Mohsin College, Govt. of West Bengal

Email: drshashinmandal@gmail.com

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Abstract

Corruption is an ancient issue and it is a global problem which poses a serious threat to the development of a country and its people. From the post-Vedic era to the post-modern era India has been one of the worst affected countries from the ill effects of corruption. Corruption prevails in India in almost all spheres and walks of life. In India, the existing anti-corruption laws are either to regulate the conduct of Public Servant or intervene into the post-corruption cases through investigations.

This article provides a tour of the national legal framework regarding corruption and seeks to address the position of anti-corruption regulations in India aimed at combating corruption. It will deal with three aspects, at the first part, the Prevention of Corruption Act, 1988, which is India's principal legislation against corruption, is basically thirsting upon the control on the public servants from accepting or soliciting illegal gratification in the discharge of their official functions. Secondly, the laws to control corruption with various established investigating agencies and Lokpal and Jan Lokpal Bill. The third part outlines the problems and challenges of Indian anti-corruption laws and agencies in preventing corruption besides forwarding certain recommendations for the better regulation of the problem in India.

Key Words: Bribery, Civil Society, Corruption, E-Governance, Jan Lokpal, Lokpal and Lokayuktas, Ombudsman, Public Procurement, Public Servant, Whistle-blowers.

Introduction

Prevention of Corruption Act, 1988 (PCA) is India's principal legislation against corruption. Its main thrust is to prohibit public servants from accepting or soliciting illegal gratification in the discharge of their official functions in addition, bribe-givers and intermediaries may be held liable under PCA for bribing public officials.

Existing Laws to Control Corruption

A number of laws and legal provisions are made and enacted in India to ensure a fruitful and successful fight against corruption. They are discussed below:

2.1. India's Principal Legislation Against Corruption

The Prevention of Corruption Act, 1988: Prevention of Corruption Act, 1988 (PCA) is India's principal legislation against corruption. Its main thrust is to prohibit public servants from accepting or soliciting illegal gratification in the discharge of their official function. In addition, bribe-givers and intermediaries may be held liable under the Prevention of Corruption Act for bribing officials. However, prosecution under PCA requires prior approval of high authorities which severely limits its usefulness, particularly where there is collusive activity within government branches.

2.2. List of Other Statutes or Enactments in India to Fight Against Corruption

a. The Indian Penal Code, 1860,

- b. The Criminal Procedure code, 1973,
- c. The Prevention of Corruption Act, 1947
- d. The Prevention of Corruption Act, 1988,
- e. Other Laws and enactments to control corruption:
 - The import and export (control) act, 1947
 - The Essential Commodities Act, 1955
 - The Companies Act, 1956
 - The Income Tax Act, 1961
 - The Customs Act, 1962
 - The Gold Control Act, 1968
 - The Foreign Exchange Regulation Act, 1973 (FERA)
 - The Securities and Exchange Board of India, 1992 (SEBI)
 - The Benami Transactions (Prohibition) Act, 1988
 - The Foreign Exchange Management Act, 1999 (FEMA)
 - The Prevention of Money Laundering Act, 2002 (PMLA)
 - The Right to Information Act, 2005 (RTI)
 - The Lokpal and Lokayuktas Act, 2013
 - The Whistle Blowers Protection Act, 2014
 - The Electricity Supply Act, 2003
 - The Food Safety Act, 1990
 - The Prevention of Food Adulteration Act, 1954
 - Information Technology Act, 2000 (Amended 2009)
 - The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organizations Bill, 2011 and
 - The Black Money (Undisclosed Foreign Income & Assets) & Imposition of Tax Act, 2015
 - Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA)
 - Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)
 - Unlawful Activities Prevention Act, 1967 (UAPA)
 - Citizen Charters
 - Other Laws

Investigating Agencies Constituted for Implementing Anti-Corruption Laws

Following are the chief Institutions and agencies in India which works to fight corruption in society and endeavor to make our country a corruption-free society:

- a. Supreme Court and High courts, (SC & HCs)
- b. Central Vigilance Commission (CVC)
- c. Central Bureau of Investigation (CBI)
- d. Comptroller and Auditor General (GAG)
- e. Chief Information Commission (CIC)
- f. Public Accounts Committee (PAC)
- g. Enforcement Directorate (ED)
- h. Anti-Corruption Bureau (ACB)
- i. Financial Intelligence Unit (FIU)
- j. Serious Fraud Investigation Office (SFIO)

2.3. The Functions of some of the Prominent Anti-Corruption Agencies in India are Discussed in Brief hereunder

a. Central Vigilance Commission (CVC)

Central Vigilance Commission is an apex Indian governmental watchdog body created in 1964 to address governmental corruption constituted under the provision of Central Vigilance Commission Act, 2002. It has the status of an autonomous body i.e. free from executive control. The Central Vigilance Commission is set up by the Government of India to advise and guide central government agencies, as well as it also has a special power to the analysis of complaints of corruption, professional misconduct, misuse of power by administrative bodies.¹

b. Central Bureau of Investigation (CBI)

The Central Bureau of Investigation is an investigating agency set up by the Government of India to investigate crime, especially corruption cases in Union Territories, which are directly administered by the Government of India. Over a period of time, it has become the premier corruption investigation agency in the country. It enjoys high credibility amongst the people of India. As a result of even the States also refer sensitive and large-scale corruption cases to the Central Bureau of Investigation for investigation

c. Comptroller and Auditor General (CAG)

Comptroller and Auditor General is supreme constitutional audit authority of India. Comptroller and Auditor General is the 'watchdog' on each and every financial transaction of Central or State department such as railway, telecom, public sector organizations etc.

d. Chief Information Commission (CIC)

The CIC delivers decisions instructing the government, courts, universities, police, development NGO's and Ministries on how to share information.

e. Public Accounts Committee (PAC)

The Public Accounts Committee (PAC) is a committee of selected members of Parliament, constituted by the Parliament of India, for the auditing of the expenditure of India. The Public Accounts Committee is formed every year with a strength of not more than 22 members of which 15 are from Lok Sabha, the lower house of the Parliament and 7 from Rajya Sabha.

f. Enforcement Directorate (ED)

The Directorate of Enforcement was established in the year 1956 with its Headquarters at New Delhi. The Directorate General of Economic Enforcement is a law enforcement agency and economic intelligence agency responsible for enforcing economic laws and fighting economic crime in India. The prime objective of the Enforcement Directorate is the enforcement of two key Acts of the Government of India namely, the Foreign Exchange Management Act 1999 (FEMA) and the Prevention of Money Laundering Act 2002 (PMLA).

g. Anti-Corruption Bureau (ACB)

These police agencies of the States are meant mainly for investigating corruption cases within the States under the Corruption Act. They are responsible for the prevention, detection, and investigation of corruption crime only and are not engaged in conducting other police duties such as handling conventional crimes and law and order.

h. Financial Intelligence Unit

² The Role of Judiciary in Preventing Corruption in India with Special Reference to Political Corruption by Y.Gangi Reddy, Osmania University, Hyderabad

Financial Intelligence Unit was set by the Government of India on 18th November 2004. The Financial Intelligence Unit is a central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspicious financial transactions.

Lokpal and Jan Lokpal in India and its Role in Fight against Corruption

A short discussion is made hereunder regarding the Lokpal, Jan Lokpal, its history, features, and other important matters in order to understand its relevance and importance in its fight against corruption:

- **History of Lokpal Bill:** The origin of the Lokpal (Anti-Corruption Ombudsman) dates back to 1963 when Nehru was the Prime minister. But it was in 1966 that a Lokpal was proposed at the center and Lokayuktas in states. In 1968, a Lokpal Bill was presented for the first time in the fourth Lok Sabha. The house passed it in 1969, but while it was pending, LS was dissolved and the Bill lapsed. The subsequent versions were re-introduced in 1971, 1977, 1985, 1989, 1996, 1998, 2001, but never passed. The latest Lokpal Bill, introduced in the Lok Sabha on August 4, 2001, is the ninth version of the legislation before parliament. The impetus for the current demand for a Lokpal Bill came from a series of recent high profile scandals such as the 2G scam, Adarsh society scam, and the CWG scam, while the government merely watched the events unfold helplessly. Anna Hazare's recent "fast" and its extensive media coverage converted it into a mass movement. The Bill aims to give power to ordinary citizens to sue corrupt officials at all levels. The idea of an ombudsman first came up in parliament during a discussion on budget allocation for the law Ministry in 1963. The first administrative reforms committee in 1966 recommended the setting of two independent authorities at the central and state level to look into complaints against public functionaries-Lokpal and Lokayukta.
- **What is Jan Lokpal Bill²:** Jan Lokpal Bill is a draft anti-corruption bill drawn up by prominent civil society activists seeking the appointment of Jan Lokpal which would be an independent body that would investigate corruption cases. This body would have the power to prosecute the government officials, politicians, and bureaucrats involved in any wrongdoing without any government permission. This bill was initially drafted by prominent civil society activists Justice Santosh Hegde (Former Supreme Court Judge and Lokayukta of Karnataka), Prashant Bhushan (Supreme Court Lawyer), Arvind Kejriwal (RTI activist).

Problems and Challenges of Indian Anti-Corruption Laws and Agencies in Preventing and Controlling Corruption:

After the liberalization of the Indian economy in the early 1990s, the private sector has expanded greatly. The problem of corruption in the private sector is increasing with the expansion of the private sector. Today it has assumed proportions. It has become the single biggest menace to Indian Society. There is a huge gap between the anti-corruption policies and practice in India. The biggest substantial gap is identified in the area of whistleblower protection. The law enforcement in matters of corruption in India is significantly weakened and there is a huge lack of political will to effectively address corruption challenges in the Country. Prosecution under PCA requires prior approval of higher authorities which severely limits its usefulness, particularly where there is collusive activity within the government branches. India being a signatory to many international conventions including the United Nations Convention Against Corruption (UNCAC) is duty bound to bring its legislative framework closer to the international norms and also to provide teeth and freedom to the implementing agencies but at present, our national legislation and efforts are far from being satisfactory. The Anti-Corruption investigation agencies are like "toothless tigers" and their powers are very limited. They basically act as a puppet in the hands of ruling party unless they are forced and compelled by the judiciary to take strong actions in matters relating to corruption. They are only 'barking-dogs' but they are supposed to be 'blood-hound'. CVC needs prior sanctions to prosecute, CBI cannot probe or frame charges on its

2 Jan Lokpal Bill: Combating Against Corruption, Rahul Sharma, Anshul Shrivastava, Asst. Professors, Dept. of Commerce & Management, Dr. C.V. Raman University, Kargi Road, Kota, Bilaspur (C.G), International Journal of Social Sciences & Interdisciplinary Research Vol.1 No. 6, June 2012, Issn 2277 3630

own. It has been stated to be like 'caged parrot' of the government by the Supreme Court of India. C&AG cannot probe corruption matters and they can only recommend. The Right to Information (RTI) is yet to reach the common masses in its fullest capacity and there is a lack of among common masses as to how to get information through RTI.

The pending Anti-Corruption Legislations shows the very mindset of the political rulers towards fighting corruption. Our fight against corruption is in 'Pending Status'. Despite the emerging trends, however, the institutional anti-corruption framework generally suffers from a lack of coordination and overlapping and conflicting mandates between institutions addressing corruption. Key institutions often lack the staff and resources to fulfill their mandate adequately and struggle to protect themselves from political interference. Often, they primarily focus on investigating alleged cases of corruption at the expense of preventive activities. Influential politicians and senior officials are rarely convicted of corruption, eroding public confidence in the political will to effectively tackle corruption. Some of the weaknesses of the present anti-corruption enactments are weak e-governance, weak procurement laws in the public sector, ineffective asset recovery, political patronage to offenders of grand corruption.

Accountability and transparency are two great antidotes to corruption. If the Legal system is quick fair and uncomplicated, it makes the task of fighting corruption easier. The free and strong press is the third facilitating factor. Therefore, laws fixing accountability and encouraging transparency combined with the efficient judiciary and free press provide the ideal atmosphere to tackle the menace of corruption. Swami Vivekananda once quoted "take up one idea. Make that one idea your life-think of it, the dream of it, and live on the idea." Fight against corruption is an idea whose time has come. The need of the hour is to nurture it, mainstream it and take it to the logical end. "Corruption is worse than prostitution. The latter might endanger the morals of an individual the former invariably endangers the morals of the entire country."³ Corruption is found to be one of the most damaging consequences of poor governance and poverty, classified by a lack of efficiency, transparency, and accountability.

2.4. Recommendations

The prescribed punishments under different statutes provided for corrupt persons should be enhanced so as to work as a deterrent in society. The provisions should be clearly made for the private sector corruption, foreign public officials and cases of grand corruption. There is an immediate need for Fast Track courts intended especially to try corruption cases with specialized trained investigation officers. Consolidation of all anti-corruption laws into one single legislation should be made and effective implementation of Jan Lokpal Bill should be ensured. Investigation agencies should be made free from the control of political whims and protection should be ensured to whistleblowers. Different corruption investigating agencies should work in close coordination with each other. Special emphasis should be given on audit in different spheres of administration and public fund. Right to Information should be effectively used to fight corruption. Strict procurement law should be ensured and e-governance through proper use of Information and Communication Technology should be enforced. Anti-corruption ethics should be developed among the students from elementary level to University level and NGOs, civil societies, etc. should be invited to participate in the anti-corruption drive to ensure a corruption-free society. Speedy disposal of corruption cases should be ensured. Public exposure of corrupt persons of grand corruption should be made by way of 'naming and shaming' which would act as a deterrent in the society. Finally, we must say in our fight against corruption "Yes we can and we will win the battle" because of truth alone triumphs i.e. Satyameva Jayate.

³ Kari Kraus, Austrian Satirist



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