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CORRUPTION IN INDIA: A BRIEF

ANALYSIS

Authored By- 1. Dr. Prem Chandra

2. Dr. Raj Kumar

Abstract

The Problem of corruption needs to be addressed urgently if the efforts to improve the governance and seek development are to be successful. As a number of past efforts in this regard have not been achieved their intended results, therefore, it is a need to seek new legislative and institutional reforms for eliminating corruption. The cornerstone of these new reforms is the empowerment of the citizenry for fight against corruption. There should be multi-dimensional effort in the better form to eradicate the very dangerous cancer of corruption.

Introduction

Manu may not be relevant to the present century, but as human nature more or less remains same and states either in monarch or democracy is governed by the same human beings, he is still relevant. License to govern does not mean license to be corrupt. We may refer our ancient book, which said, that monarch, whose subjects are carried from his kingdom by ruffians, while they call aloud for protection, and he barely looks on them with his ministers, is a dead, and not a living king¹. Mahatma Gandhi believed in the need for creating a social climate against corruption, which meant creation of an atmosphere in which the corrupt could not thrive.² The need of the hour therefore, is to wipe off the tormenting system, which could be possible only after its thorough overhaul. For this our national leadership is expected to devise a political mechanism to create a social atmosphere by empowering of people.³ Corruption is an intractable problem. It is like diabetes, can only be controlled, but not totally eliminate.

¹ Manusmariti VII/143 as Quoted in, M.A. Shewan & Udai Veer: "Corruption on Money Laundering and Law" (New Delhi: Mittal Publications, 2011) Part Two, at. 161.

² Ibid, para 2

³ Ibid.

It may not be possible to root out corruption completely at all levels but it is possible to contain it within tolerable limits.⁴ Honest and dedicated persons in public life, much needed legislative reforms, could be the most important prescriptions to combat corruption. Corruption has a corrosive impact on our economy. Worsens our image in international market and leads to loss of overseas opportunities. Corruption is a global problem that all countries of the world have to confront, but solutions can only be home grown. The time has now come to root it out from its roots.⁵ Corruption is a cancer, which every Indian must strive to cure. Many new leaders when come into power declare their determination to eradicate corruption but soon, they themselves become corrupt and start amassing huge wealth. There are many myths about corruption, which have to be exploded if we really want to combat it. Some of these myths are: Corruption is a way of life and nothing can be done about it. Only people from under developed or developing countries are prone to corruption. We will have to guard against all these crude fallacies while planning measures to fight corruption.⁶ Corruption is a global phenomenon and it is omnipresent. Corruption has progressively increased and is now rampant in our society. It is a consequence of the nexus between bureaucracy, politics and criminals. India has now become a consideration state where everything can be had for a consideration. Today, the number of ministers with honest image can be counted on fingers. At one time, bribe was paid for getting wrong things done but now bribe is paid for getting right things done at right time. The level of corruption in a society ultimately depends on the values and morals of that society.⁷ In any population about 10 percent will be honest by nature and 10 percent always dishonest. The remaining 80 percent are those who get influenced by the system and would be corrupt if an opportunity arises.⁸ The question is, can we design a system that will check the corrupt tendencies of this 80 percent? Therefore, we should approach the issue of building a less corrupt or corruption free system in our country with a positive attitude.⁹ In present scenario, corruption has become synonym of livelihood in society.

⁴ Ibid at 171 para 6

⁵ Ibid at 172 para 1

⁶ Ibid at 170 para 3-4

⁷ R.K. Gupta & H.D. Bist (eds): Corruption in India, Origin, Causes, and Solutions Ist edn. (New Delhi: Anamika Publishers and Distributors Pvt. Ltd., 2007) at 116

⁸ Ibid.

⁹ Ibid.

Because people have lost moral values, they imbibed corrupt practices in day-to-day routine work. Moral values and morality have become outdated and history. Kautilya considered moral values as a means to prosperity in this world and to paving the way to heaven after death.¹⁰ He asserted, "For the world, when maintained in accordance with the Vedas, will ever prosper and not perish. Therefore, the King shall never allow the people to swerve from their dharma." he added, "For when adharma overwhelms dharma; the King himself will be destroyed."¹¹ It may be noted, that during 1950s there was both, honesty and efficiency. Other than the police and the irrigation department, most of the politicians were honest. However, during the 1960s and 1970s, many bureaucrats and politicians become corrupt but still relatively speaking were efficient. But now in 21st century the President of India may alone. A large majority of bureaucrats and politicians are both inefficient and dishonest¹². Thus, unless the investigating agencies like the CBI and the court functioned with the due autonomy, honesty, efficiency and boldness, improvement in governance would have no chance. India has become one of the most corrupt country in the world. Perhaps we are a very corrupt society not by tradition. Lord McCauley, the author of the British Education in India, submitted his report in the British Parliament on the 2nd February, 1835 and said-

"I have traveled across the length and breadth of India and I have not seen one person who is a beggar, who is thief. Such wealth I have seen in this country, such high moral values, people of such high caliber, that I do not think we would ever conquer this country, unless we break the very backbone of this nation, which is her spiritual and cultural heritage, and therefore, I propose that we replace her old and ancient education system, her culture, for if the Indian think that all that is foreign and English is good and greater than their own, they will lose their self-esteem, their self-culture and they will become what we want them, a truly dominated nation." It is the proof of India's high morality and value in the past days.¹³

Briefly, it can be said that governance had for fewer failures in the early decades, essentially because our first-generation political leaders, who had made large personal sacrifices during

¹⁰ S.K. Agarwal (ed): Towards Improving Governance (New Delhi: Academic Foundation, 2008) at. 30

¹¹ Ibid.

¹² Ibid.

¹³ R.K. Gupta & H.D. Bist; supra note 7 at 155

the freedom struggle, were persons of proven integrity, committed to higher values and national perspectives. Enjoying the trust of the people and respect of the public services, they were able to effectively direct the affairs of the state.¹⁴ In subsequent years, ever before the enforcement of emergency (1975-1977), internal feuds and power politics had overtaken commitment to the vital task of governance. This period also saw the emergence of a new breed to committed civil servants and coteries of extra constitutional elements joining the political bandwagon, causing severe damage to the rule of law and constitution.¹⁵ The failure of national level political parties and the mushrooming of regional and sub-regional groupings led to splintered electoral outcomes. The consequent emergence of coalition governments, in the states and later at the centre, generated political instability which had an adverse impact on governance.¹⁶ From around the 1990s there were a series of exposures of scandals relating to large-scale defalcations, embezzlements and cases of corruption among which were the fodder scam, the Hawala scam, Bofors scandals, and recently the Satyam scam, Commonwealth scam, and 2G scam etc.

According to the fourth part of the HT-MaRS Governance survey¹⁷, the consistent economic slowdown, coupled with governance crisis, has not only shaken the business confidence in the country, but has given industry leaders enough reasons to label the UPA-II leadership as "inefficient" and corrupt. Participant of the survey feel political class is the most inefficient vis-a- vis the judiciary, bureaucrats, civil society and the business community. According to the result of survey, 69.2% political executives are corrupt, 10.3% business society is corrupt, 33.3% bureaucracy, 5.2% Judiciary is corrupt and 7.7% civil society is corrupt.¹⁸ Political corruption is at the root of other types of corruption parties collect party funds through back doors. Most of the money is unaudited. As a result, every party makes compromises and offers favours to different groups and industrial houses while in power.¹⁹

¹⁴ S.K. Agarwal, supra note 10 at 36.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ "India Inc Unhappy with Status Quo" Hindustan Times, Lucknow, 16 February, 2014 at 5, available at www.hindustan times

¹⁸ Ibid.

¹⁹ A.K. Gupta & H.D. Bist, supra note 7 at 155.

The manner the political institutions work in the public domain in India made the former Prime Minister, A.B. Vajpayee, to remark that every MP elected to the Lok Sabha begins his parliamentary career by making a false statement about his election expenses. Given this reality, it would be impractical to expect scrupulous honesty from parliamentarians as dishonesty was built into the system.²⁰ A former minister in the NDA government and BJP M.P. from Bombay, Mr. Ram Naik, pointed out that those who successfully contest elections by making money from businessmen or spending huge sums from their own pockets, "try to recover their expenses in the first two years. What they get in the next three years is a bonus. M P-ship is reduced to a business."²¹ A study of 100 MPs of the 10th Lok Sabha of the years 1991-96 revealed that 94% of the parliamentarians conceded that the high cost of elections, combined with a farcical ceiling on election expenses has a corrupting influence on India's law-makers.²² In 2010 India was ranked 87 out of 178 countries in Transparency International's Corruption Perceptions Index.²³ The year 2011 has proved to be a watershed in the public tolerance of political corruption in India.²⁴ Corruption reduces economic growth. It reduces efficiency on which economic performance depends. Similarly, corruption also hinders investments into the economy. Corruption is a major challenge being faced by the humanity. The former Prime Minister, Rajiv Gandhi, once remarked that every rupee spent by the government for poverty alleviation only fifteen paise is reaching to the beneficiary. Another forty paise may be spent on administrative overheads and the remaining forty-five paise last in corruption.²⁵ The public distribution system is designed to provide food security for those living below poverty line. However, the program saw many loopholes and goods reached the black market at the implementation stage. It has been admitted in parliament that 31% of the food grains and 36% sugar disappeared from the public distribution system.²⁶

²⁰ Chandan Mitra: *The Corrupt Society: The Criminalization of India from Independence to the 1990s* (New Delhi : Viking, 1998) at 111.

²¹ *Ibid.* at 112

²² A. Surya Prakash: "What Ails Indian Parliament: An Exhaustive Diagnosis, (New Delhi: Indus, 1995) at 278

²³ Dr. Prabhas Chandra Singh: "Encyclopedia of Laws against Corruption" 1st Edn. (New Delhi: Anmol Publications Pvt. Ltd., 2012) c. 1 at 1

²⁴ *Ibid.*

²⁵ Quoted in N. Vittal, "Corruption, A paper submitted at the 5th Annual National Conference of NEPASI on" Governance for Development: Issues and Strategies organized by IGNOU between 24-25 August 2011, New Delhi, at 1

²⁶ *Ibid.* at 2

This amounted to rupees 5000 crores and taken away by the corrupt shopkeepers, officials and politicians. An empirical study has shown that corruption lowered investment both domestically and internationally. It revealed that corrupt practices prevailed in economy is likely to reduce aggregate investment levels by 5% points less and per capita growth rates half a percent point less.²⁷ A per UNDP Report of 1999, the GDP of India could grow by 1.5% and the foreign direct investment could increase by 12% if the corruption level in India comes down to that of Scandinavian countries.²⁸ It is also observed that corruption acts as an additional tax on investment by lowering the potential return. The former President of India, A.P.J. Abdul Kalam while inaugurating the UNDP seminar on April 25, 2003 called for a corruption free Indian for achieving India, a developed nation by 2020.²⁹ He also desired that "it is essential that the tree pillars of democracy, legislature, executive and judiciary are strong in structure, pure in form and uncorrupted and unblemished in conduct."³⁰

Corruption humiliates the ordinary citizen and weakens the state. No country, however democratic, is free from corruption. These social ill touches government officials, politicians, business leaders and journalists alike. It destroys national economies, undermines social stability and erodes public trust. An underdeveloped civil service opens the way for corruption by organized crime. Corruption is a "horizontal" problem for good governance. It undermines all its aspects and must therefore be addressed as a priority.³¹ Former President of India Pratibha Patil flagged corruption as a major hurdle to good governance and called for a serious approach to increasing transparency in her address to the nation on eve of republic day. Her remarks come at a time when the government battles allegations of corruption that led to a complete washout of parliament's winter session. She said, "Corruption is the enemy of development and of good governance." Instead of getting lost in this mire, it is necessary to rise above it and seriously look at bringing systemic changes to deal more effectively with corruption.

²⁷ Quoted in Human Development in South Asia 199, (Karachi: Oxford University Press, 1999) at 98

²⁸ Ibid.

²⁹ A.K. Gupta & H.D. Bist, supra note 7 at 157.

³⁰ Ibid.

³¹ Priti Saxena & Sudarshana Verma : "Corruption : A human Right Concern for Development and Good Governance in 21st Century in Gurdip Singh & V.K. Ahuja : Human Rights in 21st Century Changing Dimensions" (New Delhi-Universal Law Publishing Co. Pvt. Ltd.-2012) at 802.

Financial institutions, the corporate world and civil society, all must uphold high standards of probity in their working. Only a genuine partnership between the government and its people can bring about a positive change to create a just society.”³² So for as country's governance is concerned, in numerous fronts the corrective measures are obligatory. Corruption and development are two sides of a coin. We cannot put across them on similar platform. For bringing development we have to done away with our dream of prosperous nation of the 21st century will not be materialized.³³ It we will be able to root out this evil of corruption, better governance will automatically come and everyone will enjoy his human right in India. Corruption has become one of the key stumbling blocks for India's progress today. Unless this Ebola of corruption is addressed, no amount of social policies will produce the result that we are all aspiring for. We now need to devise newer strategies to fight this Ebola. Mere institutional mechanisms like the Central Vigilance Commission, Lokpal or the Lokayuktas cannot combat to the problem of corruption without the informed and sustained participation of communities. We now need to use tools like "Social Audit" in our fight against corruption.³⁴ Communities need to be educated, empowered and capacities need to be built to use these available mechanisms. India has though out of force, has taken initiative and enacted Right to information Act, 2005 and the Whistle Blowers Protection Act, 2011 has been also enacted, which certainly be proved a good step toward good governance. Fighting corruption and its all effects needs to become a community movement. The fight against corruption has been declared a high priority by the government of India. However, corruption remains widespread in the country and there have been many instances of political and bureaucratic corruption, public funds embezzlement, fraudulent procurement practices, and judicial corruption. High ranking officials have also been involved in major corruption scandals.³⁵ The sectors most affected by corruption include public procurement, tax and customs administration, infrastructure, public utilities, and the police. The latter has been identified as one of the most corrupt institutions by various surveys. Recently, an exclusive

³² The Times of India, 26 January, 2011, Lucknow edition

³³ Priti Saxena & Sudarshana Verma, supra not 31

³⁴ "Corruption and Development", available at <http://rbalu.wordpress.com/2010/12/01/corruption-and-development>

³⁵ Priti Saxena & Sudarshan Verma, supra not 31 at 801

14-city HT-Gfk Mode survey³⁶ was conducted across 14 cities divided into 4 zones- North (New Delhi, Chandigarh, Jaipur and Lucknow), East (Kolkata and Patna), West (Mumbai, Ahmedabad, Indore and Pune), and South (Chennai, Bengaluru, Hyderabad and Kochi). A total of 2,065 respondents above the age of 18 years were surveyed. 50% of the respondents were male. Respondents were asked; what are the biggest problems that India is facing and were allowed to opt for multiple options. 81% respondents believe that corruption is among India's biggest problem. People want the removal of discretionary quotas for politicians, and increase in transparency and web based- governance.³⁷ 72% respondents believed lower taxes on petro products easier import norms and a crackdown on hoarding could help prices low.³⁸ Talking of sports, the survey saw people blaming inadequate infrastructure and funds and corrupt administrators for India's poor performance in global events such as the Olympics.³⁹ A Transparency International India survey (2005)⁴⁰, conducted by the Centre for Media Studies on petty corruption, studied the perceptions on judiciary at the lower level. The estimated amount of money as paid by people is about Rs. 2, 630 crores. The majority of persons (73%) had visited the civil courts and 80% of them admitted to corruption in judiciary. Money was paid to lawyers in 61% cases, 29% to court officials, 5% to judges, and rest to middlemen. The money was paid for seeking favourable decision (30%), speeding up cases (15%), getting case listed (11%), manipulating public prosecutor (28%), securing affidavit (8%), manipulating witness (10%), seeking bail (8%) etc.⁴¹ Corruption in judiciary has two manifestations one is the corruption in system and the other is corruption among the judicial officers. Whereas, the system is polluted, the judiciary, especially the higher judiciary, is relatively clean, though exceptions cannot be ruled out. Its operations are transparent. There is a system of correction in the form of reviews and appeals. Yet there is a lot of discretion of courts with regards to interlocutory orders on stay proceedings, vacation thereof, bail petitions, issue of warrants, adjournments etc.

³⁶ "After 'Roti, Kapda our Makkan', India Requires More" Hindustan Times, Lucknow, 21 November, 2014 at 10

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ S.K. Agrawal, supra note 10, at 65.

⁴¹ Ibid.

There are many occasions when power can be misused though evidence of it may not be available due to existence of conduits. No wonder that due to connivance of various functionaries in the system, "Criminal justice succumbs to money power."⁴² The country's justice delivery system appears to be on the verge of collapse. Instances of corruption have now begun to surface in our judicial system too.⁴³ There is a lot of hope in the judiciary to combat corruption by enforcement of law and deciding cases of bureaucratic corruption expeditiously. There are allegations that three successive Chief Justices of India made "Improper compromises" to save a corrupt judge of the Madras High Court.⁴⁴ A tainted High Court Judge was allowed to continue in order to save the UPA-I government.⁴⁵ In the words of Fali S. Nariman, "The law is not merely about case, nor about legal rights. It is also about hard work and integrity. The Judiciary of the 21st century, along with legal profession, needs to set an example in exemplary self discipline, discipline in approach, discipline in life style, and discipline in thought, word and deed."⁴⁶ AS the Bharavad Gita says, whatever important men and women say and do, other men follow.⁴⁷

Corruption is a significant impediment to the achievement of good governance in India. Political corruption needs to be curbed for developing a good governance framework.⁴⁸ The Law enforcement work of the government to ensure corruption free governance ought to perceive as a part of the right of the people of India to seek a corruption free government. It is the duty of the government to ensure that all of its affairs are conducted in a manner that promotes transparency, accountability and integrity in the public administration. The human rights approaches of corruption control mechanisms are expected to enhance the institutional approach of the proposed to fight against corruption in India.⁴⁹ Constitutional governance is an important dimension of the rule of law frame work that needs to be established in India.

⁴² Justice, V.R. Krishna Iyer, Times of India, 7 March, 2006.

⁴³ Chief Justice of India, Indian Express New Delhi, 12 March, 2006.

⁴⁴ Satya Prakash, Faultline in Judicial Appointment Exposed, Hindustan Times, Lucknow, 22 July, 2014 at 11.

⁴⁵ Ibid.

⁴⁶ S.K. Agarwal, supra note 10 to 75.

⁴⁷ Ibid.

⁴⁸ Moshe Maor, "Feeling the Heat? Anti- Corruption Mechanisms in Comparative Perspective" 17 Governance 1(2004).

⁴⁹ C. Raj Kumar; "Corruption and Human Rights in India (Comparative Perspectives on Transparency and Good Governance)" (New Delhi: Oxford University Press, 2011) at 212.

If this framework needs to work in the context of various social, economic and political transitions that occur in India, the anti-corruption initiatives should be integrated with the human rights approach and ensure collaborations within countries that have successfully managed to curb the menace of corruption to a large extent⁵⁰. Accountability is infused by building legal and institutional mechanisms so that official corruption is not tolerated at my level of the decision-making process.⁵¹ The change of political corruption in India is possible only if the right to corruption-free governance is guaranteed through the empowerment of the Indian citizenry. The role of the media other members of civil society is very important to fight against corruption.⁵² The media can expose the corrupt actions of politicians and bureaucrats. Strengthening of the judiciary should be accompanied by the passage of laws, rules, and regulations that are intended to punish acts of corruption.⁵³ The problem of corruption has the potential to affect democratic decision making and has threatened the rule of law in India. The foundations of democratic values are deeply rooted in India but the corruption has undoubtedly affected its cultural values. The lack of political and bureaucratic transparency and accountability culminate in a sense of callous indifference among the people.⁵⁴ These discouraging trends must be thwarted by the rights-based approach to fighting corruption. There is need to establish an accountability mechanism for the promotion of good governance. Community education and participation of the people in generating an attitudinal change is deemed one of the initial goals to fight against corruption.⁵⁵ There is a need for the empowerment of the people of India to fight against corruption on the basis of developing certain rights against corruption. In the case State of M.V. Shambhu Dayal Nagar,⁵⁶ the Supreme Court observed that, "The corruption by public servants has become a gigantic problem. It has spread everywhere. No fact of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country.

⁵⁰ Ibid. at 213

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ (2006) 8SCC693:(2007)1 SCC (Cri.) 1

Large-scale corruption retards the nation building activities and everyone has to suffer on that court. As has been aptly observed in **Swatantar Singh v. State of Haryana**⁵⁷ corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servants devote his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corruption would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke." "The Public Distribution system (PDS) is the largest food distribution network of its kind in the world. Yet it has acquired notoriety of being the most corrupt system in the country. There is undoubtedly nexus between the fair price shop (FPS) owners, transporters, bureaucrats and politicians. Diversion of PDS food grain occurs, both in the supply chain as well as at FPS. Information technology can be used to curb this menace of food grain diversion. Modern technology will help in ensuring that the beneficiary regularly receives his/her entitlement of food grains of some quality as has been issued by FCI.⁵⁸

The recognition of corruption as a major problem of governance needs to be followed by the formulation of legal and institutional mechanisms to combat it.⁵⁹ The Challenge of enforcing the rule of law continues to be the single most important impediment to the effectiveness of anti-corruption laws, and thus the larger issue of establishing a rule of law society in India needs to be addressed immediately.⁶⁰ This would require progressive efforts toward revamping the enforcement machinery and empowering the citizenry. The criminal justice system has not sufficiently responded to ensure that the corrupt actually get punished. When the government enacted the prevention of corruption Act, 1988 it failed to accept two important recommendations of the Santhanam Committee.⁶¹

1. To establish a Directorate of Central Complaints and Redress under the Central Vigilance Commission (CVC) to look into the grievances of citizens against the administration.

⁵⁷ (1997) 4 SCC 14: 1997 SCC (L & S) 909

⁵⁸ People's Union for Civil Liberties V. Union of India and Others (2013)2 SCC (Cri) 832

⁵⁹ C. Raj Kumar, supra note, 49 at 108

⁶⁰ Ibid.

⁶¹ S.S. Gill, Pathology of Corruption (New Delhi, Harpur Collins Publishers India Ltd.-1998) at 238.

2. To centralize all powers and responsibilities regarding disciplinary in the Commission. Further, the work of the Central Bureau of Investigation (CBI), the central modal agency to control administrative corruption has not been effective. In 1972 it registered 1349 cases of corruption as against 231 in 1992.⁶² Of these, 300 cases ended in conviction in 1972 and only 164 in 1992.⁶³

Experience has demonstrated that despite the fact that the PCA is equipped with legal provisions intended to ensure that corrupt acts are detected and corruption is punished, the inherent weaknesses in the law enforcement machinery in India coupled with the lackadaisical approach of the criminal justice system, has created a weak enforcement system with respect to corruption.⁶⁴ H.L. Mansukhani has observed that the Prevention of Corruption Act has turned out to be a puerile piece of legislation.⁶⁵ It merely recognized several forms of bribes and corruption, but does not prevent their occurrence.⁶⁶ He has argued that it only created a new branch of evidentiary law whose objectives were neither moderate nor practical.⁶⁷ The law enforcement machinery of the state is generally weak and the accused in corruption cases abuse legal loopholes. This has resulted in situation where the institutions that are vested with the task of investigating charges relating to corruption are weakly positioned. From the enforcement stand point there may be valid justification for evolving a criminal law approach to address the problem of corruption, as it is essentially an economic offence.⁶⁸ However, the systematic looting of the state's resources and massive corruption in the form of abuse of power by government officers bureaucrats, police officers, and corruption, as is the case in India, demands a more, serious and affirmative response from Indian society.⁶⁹ The constitutional approach to dealing with the problem of corruption presupposes the fact that the corruption threatens the very foundation of Indian democracy and acknowledges that the Indian state is beginning to lose the faith of its people.⁷⁰

⁶² Ibid.

⁶³ Ibid.

⁶⁴ C. Raj Kumar, *Corruption, Development and Good Governance: Challenges for Promoting Access to Justices in Asia*. 16 Mich. St. J. Int'l L 475, 519(2008)

⁶⁵ H.L. Mansukhani, *Corruption and Public Servants* 78 (Noida, Vikas Publishing House, 1979)

⁶⁶ Krishna K. Tummala, *Corruption in India*:

⁶⁷ H.L. Mansukhani, *supra* note 65

⁶⁸ C. Raj Kumar, *Supra* note 49, at 111.

⁶⁹ Ibid.

⁷⁰ Ibid.

Moreover, having taken root in every department of the government, corruption creates a vicious environment that undermines the rule of law and social fabric of Indian society.⁷¹ The problem has become so alarming that Indian democracy stands to lose its defining qualities if this problem is not approached from the perspective of its impact on constitutional governance in India.⁷² The constitution has indeed shown great concern for the underprivileged and laid obligation on the state to take measures for improving the conditions of their life. The various organs of the state have abused power, become corrupt and acted in self interest rather than on the basis of public interest. The corruption has shattered the very basic objectives of the constitution. The governance machinery tainted with scams and allegations of corruption regularly coming to the forefront.⁷³ Corruption in the implementation of development policies has culminated in the creation of poverty, lack of education, health care etc. The majority of the Indian populace, the rights and benefits conferred by the constitution and enforcement by the judiciary mean nothing. A Transparency International study has revealed that the greatest sufferers of this petty corruption are not the middle classes, who often have the ability to grease greedy palms, but the poor-hawkers, rickshaw pullers and small teashop owners, small-time mechanics, poor migrants, laborers and slum-dwellers.⁷⁴ The government spends US \$ 8.5 billion annually on the rural poor but most of it disappears on the way.⁷⁵ There is need to adopt the recommendations of the Lord Nolan Committee⁷⁶ on standards in Public life in the United Kingdom. The seven principles of the public life stated in the report are; selflessness, integrity, objectivity, accountability, openness, honesty and leadership. In the case of Vineet Narain V. Union of India⁷⁷ the Supreme Court observed, that these principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinizing the conduct of every holder of a public office.

⁷¹ Ibid at 112

⁷² Ibid.

⁷³ In the past, the Government has been left reeling by many corruption scandals making the headlines, most notably the 2G scam, and Commonwealth Games scam; Gulzar Natarajan, The Mirage of Corruption Quick Fixes, Live Mint.

⁷⁴ Rakesh Kalshain, Corruption Notebook, in Ctr. for Public Integrity (ed.), Global Integrity: An Investigative Report Tracking Corruption, Openness and Accountability in 25 Countries: India 7 (200)

⁷⁵ Ibid.

⁷⁶ The summary of Lord Committee's first Report on standards in public Life (1995)

⁷⁷ AIR (1998) SC 889

Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prime facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated.⁷⁸ Further, in *Common Cause V. Union of India*⁷⁹ the Supreme Court observed that, it is high time that the public servants should be held personally responsible for their malafide acts in the discharge of their functions as public servants. We take it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commissions, and the consequences of that is injury to an individual or loss of public property, and action may be maintained against such public servant. No public servant can arrogate to himself the power to act in a manner which is arbitrary.⁸⁰

While corruption at the higher level of the judiciary may not be rampant, lower levels of the judiciary in India are notorious for their own acts of corruption.⁸¹ Recently, however, even the higher judiciary, High Court Judges in particular has come under the corruption scanner with the exposure of the Uncle Judge syndrome, provident fund scams in the High Court's and other allegations of corruption.⁸² It is a very dangerous trend and poses a serious threat to the rule of law, social stability and democracy in India. The judiciary has very a very difficult task, to not only ensure that other wings of the government are not corrupt, but also develop mechanisms of accountability for itself so that corruption within the judiciary does not get institutionalized.⁸³ The cases involving corruption charges against public officials inevitably take a much longer time to reach finality than other cases and therefore it is need to give priority of hearing to corruption cases and conclude such cases within a reasonable time.⁸⁴ The question of delays in the trial process is a larger issue that has affected the ability of the criminal justice system to effectively respond to corruption. It undermines the public confidence in the judicial process.

⁷⁸ Ibid, at 917

⁷⁹ AIR (1996) SC 3539

⁸⁰ Ibid, at 3561

⁸¹ Civil Society to Assist Probe against Justice Dinakaram, Rediff.Com (18 May 2011); Corruption Charges Slapped on Justice Dinakaram, Times of India, 19 March, 2011.

⁸² V. Eshwar Anand, op-ed. Law, Corruption in Judiciary: The Time for Action, The Tribune 3 December, 2010.

⁸³ C. Raj Kumar, supra not 49 at 119

⁸⁴ V.S. Achuthanandan V.R. Balakrishna Pillai, (2011) (2) SCALE 346.

The problem of corruption needs to be addressed urgently if the efforts to improve governance and seek development are to be successful. In this regard, a number of past efforts, till have not achieved their intended results. There is a need to seek new legislative and institutional reforms for eliminating corruption.⁸⁵ The cornerstone of these new reforms will be the empowerment of the citizenry for the fight against corruption.⁸⁶ The past legislative efforts have dealt with corruption as a crime.⁸⁷ But not necessarily as a problem that undermines the enforcement of human rights.⁸⁸ Human Rights approach to fight against corruption requires redial reform of state apparatus and galvanized civil society activism that are different from those required in regard to criminal violations. Undoubtedly, certain reforms in the Criminal Procedure Code (Cr. P.C.), 1973 are required. For instance, under Section 197 of the Cr. P.C., no court can take cognizance of any offence alleged to have been committed by a public servant without a prior sanction of the government in whose affairs he is employed.⁸⁹ In this regard professor Baxi lamented the fact that the protection given by the colonial law makers to the public servants in the code of 1898, still continues.⁹⁰ This recognition will pave way for the developing strategies to fight corruption that was still not considered. Transparency is governance requires that the functions of the state should be exercised in appropriate manner and corruption of any can be nipped in the bud.⁹¹ The objective of transparency in governance is to ensure the accountability and to avail the information relating to decision-making process in governance.⁹² However, over the years, the democratic institutions of India have lost their credibility due to corruption.⁹³ The National Commission to Review the working of the constitution observed in its consultation paper "Probity in Governance" that, to the Utter insensitivity, lack of shame and the absence of any sense of public morality among the bribe taker. Indeed, they wear their badge of corruption and shamelessness with equal and a danger not only to the quality of governance

⁸⁵ Alam Doig and Stephanie McIvor, Corruption and its control in the Development Context, An Analysis and Selective Review of the Literature, 20 Third World Q. 657 (1999).

⁸⁶ Ibid.

⁸⁷ Upendra Baxi Liberty and Corruption, (Lucknow, Eastern Book Company, 1989)

⁸⁸ Ibid.

⁸⁹ Prevention of Corruption Act, 1988 Section 19.

⁹⁰ Upendra Baxi, Liberty and Corruption, supra note 87 at 53.

⁹¹ C.Raj Kumar, supra note 49 at 84.

⁹² Ibid.

⁹³ Ibid.

but are threatening the very foundations of our society and the state.⁹⁴ Corruption has affected every institution of governance in India. Politicians and bureaucrats have figured prominently in various allegations of corruption. It is correctly observed that most government offices present a picture of client public bewildered and harassed by opaque rules and procedures and inordinate delays. Constantly vulnerable to exploitation by employees and touts.⁹⁵ Corruption by itself poses a variety of problems relating to abuse of power and arbitrary decision making it resulted in determined denial of transparency, accessibility and accountability, cumbersome and confusing procedures, proliferation of mindless controls, and very poor commitment all levels for the we fare of public.⁹⁶ Corruption is a ubiquitous scourge in Indian society that undermines fairness in governance.⁹⁷ Power holders abuse their powers in such a manner that they can earn money by illegal means. They make decisions on the basis of self suited socio-economic objectives. They maximize their corrupt interest rather than public interest. Transparency International (TI) conducted a study in which sixteen states were scanned and around 5,000 rural and urban families were sampled. It estimated that every year ordinary Indians pay as much as a total of US \$ 6 billion (2.5% of India's GDP) in bribes. Nothing this, Rakesh Kalshain has observed that, be it birth to schools and universities, bank loans, passports, rations cards, driving licenses, electric, water or telephone connections, legal or illegal you name it, and the corruption "Yellow Pages" have them all.⁹⁸ In the Global Integrity Report, 2004 prepared by the US- based Centre for Public Integrity after a yearlong study of twenty five nations around the world; India has been rated as a weak democracy on account of corruption and lack of accountability in its public institutions.⁹⁹ The report has put India in the weak category on a public integrity index, which measures the existence and effectiveness of laws and institutions that promote accountability and limit corruption. The report explains that the lacks of transparency in the Indian democratic and legal framework empowered the bureaucracy and have the way for abuse of power.¹⁰⁰ The report recognizes that, in India, there are powerful anti-corruption laws in place but their implementation is very weak.

⁹⁴ Nat'l Comm'n to Review the Working of the Constitution, 'Probity in Governance, 2.1 (2001)

⁹⁵ Harsh Mander and Abha Joshi, *The Movement for Right to Information in India: People's power for the Control of Corruption*.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.* Hussain, Nat'l Comm'n to Review the Working of the Constitution, "Some Ideas on Governance".

⁹⁸ Rakesh Kalshian, *supra* note 74.

⁹⁹ *India's Weak Democracy: Study*, Times of India, 23 March, 2004.

¹⁰⁰ *Ibid.*

It adds that the system as a whole does not seem to have effective checks in place to prevent or tackle corruption. There is no comprehensive effort to eliminate corruption from the government machinery. As of now, the war against corruption is largely waged by a few isolated individuals, select citizen groups, a sprinkling of committed officers and the judiciary.¹⁰¹ It is clear that the corruption of any form will not be allowed to prevail good governance, in India. Therefore, it is needed to move toward reforming the system of governance with the view to eliminate corruption. The very result of ignoring this problem would mean that all effort in social and economic development would be affected very adversely. Development of any kind would be possible in a free society. A society cannot be said to be free when the governance institutions and the individuals who operate it are corrupt and decisions are made not on the basis of merit, but on the basis of vested interests, where bribery is the rule and integrity is the exception. The PIL movement in India has by and large, been successful particularly in promoting a certain degree of governmental accountability as well as in ensuring that the constitutional rights of the Indian citizenry are duly protected regardless of their social, economic and political status.¹⁰² PILs can be used to ensure that the judiciary effectively checks the corruption and bribery levels of public officials. The constitutionalizing of the right to corruption-free service in India marked the beginning of the Supreme Court and the High Courts' a far more constructive role in ensuring greater governmental transparency and accountability,¹⁰³ the Supreme Court has once again brought the issue of corruption into the central focus of judicial intervention. The Court has observed, the tentacles of corruption are spreading fast in the society corroding the moral fibre and consequentially in most cases the economic structure of the country. It has assumed the alarming proportions in recent times. The court further observed¹⁰⁴ that, corruption is one of the most talked about subjects today in the country since it is believed to have penetrated into every sphere or activity. It is described as wholly widespread and spectacular. Corruption as such has reached dangerous heights and dangerous potentialities. The word corruption has wide connotation and embraces almost all the spheres of our day to day life.

¹⁰¹ Ibid.

¹⁰² Ashok H. Desai and S. Muralidhar, Public Interest Litigation: Potential and Problems, in B.N. Kripal (ed.) *Supreme but not Infallible: Essays in Honour of the Supreme Court of India* 159-92 (2000) (New Delhi: Oxford University Press)

¹⁰³ C.K. Raj Kumar, *Supra* note 49 at 101

¹⁰⁴ Ibid.

Conclusion

A number of institutions entrusted with the responsibility of fighting corruption and ensuring probity in governance have not been successful.¹⁰⁵ Given the complexities of the multi-layered police and other law enforcement agencies that are working in India, it is important to develop a more focused approach to combating corruption.¹⁰⁶ There has to be a multi-pronged strategy to fight corruption, which will involve the legal framework, the institutional mechanism, the investigation and prosecution machinery, the public awareness and education strategies, and civil society empowerment approaches.¹⁰⁷ There is needed to make efforts with genuine desire and firm determination on the part of each and every above strategy. Apart from this if, it cannot be eradicated totally, definitely it can be controlled and brought down to permissible limits. It can be cured if we have strong will power and unity of purpose. The success can be achieved with the following measures. Younger generation are to be motivated for certain values like integrity, patriotism, commitment to work, commitment to excellence and soon.¹⁰⁸ The transmission of values happens through a process of emotional or psychological osmosis.¹⁰⁹ The educational institutions can play a very significant role in individual's life. Fighting corruption should also be one of the subjects included in the secondary schools and colleges. The educational institutions should not only focus on imparting the skills but also on values.¹¹⁰ Deterrence does not mean only the legislation with deterrent punishment prescribed for certain offences. It is not the length of prison sentence or enormity of fine that deters a man but it is certainty of detection, followed by conviction and proper execution of punishment that deter a man.¹¹¹ We must streamline our detecting and prosecuting machinery so that the culprit knows that there is every likelihood that his crime will be detected and convictions are sure to follow.

¹⁰⁵ Moshe Maor, 'Feeling the Heat? Anti Corruption Mechanisms in Comparative Perspective, 12 Governance 1 (2004)

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ R.K. Gupta & H.D. Bist, (eds.) Corruption in India, Origin, Causes and Solutions Ist edn. (New Delhi

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.