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## **CORRUPTION IN INDIA: A CONCEPTUAL ANALYSIS**

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### **ABSTRACT**

The most significant factor which is responsible for the problem of corruption is the discerning erosion of moral and ethical values in public life as a consequence of growing materialism and consumerism in the wake of westernization, industrialization and urbanization. Obviously, the forces of morality, including the Gandhian principles of ethical life, have been too superficial to penetrate the psyche of an Indian so as to influence his conduct in personal and occupational life. Lust for wealth and power has been instrumental in corrupting public life. Corruption has become a phenomenon of human life.

**Keywords:** Corruption, morality, ethical values, materialism

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## INTRODUCTION

The term 'corruption' comes from the Latin word corruption which means 'moral decay, wicked behavior, putridity or rottenness'<sup>1</sup>. The nature of Corruption varies from region to region and remains largely contextual<sup>2</sup>. Therefore, it is difficult to formulate a single comprehensive definition that covers all the manifestations of corruption. It is rather easier to enumerate the acts of corruption that to define the concept of corruption. Oxford Dictionary defines, 'Corruption as the perversion or distraction of integrity or fidelity in the discharge of public duties by bribery or favour'. Leslie Palmier defines corruption as, "The acquisitions of forbidden benefits by the officials or employees, so bringing into question their loyalty to their employers", or it may be regarded, as the use of public power for private advantage in ways which transgress some formal rules or laws<sup>3</sup> Oxford advanced learners dictionary defines corruption as, "Dishonest or illegal behaviour especially of people in authority" and it includes the act or effect of making somebody change from moral to immoral standards of behaviour<sup>4</sup>.

Corruption as defined above, lays emphasis on dishonest, illegal, perverted or deviant behaviour of an employee or official for private advantage. The Private advantage could be bribe, price, reward, gift or favour, bestowed or promised or it could be gratification i.e. satisfaction of desire or appetite of body or mind<sup>5</sup>. The definitions further emphasize that such deviant behaviour ought to be illegal, forbidden by law or in transgression of law and they exclude those corrupt acts which don't transgress laws or rules. The corruption violating ethical therefore not actionable by law enforcement agencies but is seriously determines the public perception regarding corruption<sup>6</sup>. Even though agreed definition of corruption, attempts have been made to formulate a definition of corruption. In general terms the corruption has been defined as on illegal act that involves the abuse of a public trust or office for some private benefit or the misuse of public office for private gain<sup>7</sup>. Such definitions have two limitations in the current understanding of corruption. First, such definition only dealt with corruption in

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<sup>1</sup> M. Milic "Endogenous Corruption in Privatised Companies", *Collegium, Butapest*, 2001. available at [https://iwed.cerge-ei.cz/pdf/gdn/RRC1-17\\_paper\\_01.pdf](https://iwed.cerge-ei.cz/pdf/gdn/RRC1-17_paper_01.pdf).

<sup>2</sup> D.Gould, "Administrative Corruption: Incidence, Causes, and Remedial Strategies." in A. Farazmand (ed), *Hand Book of Comparative Development and Public Administration*, 1991 at 467.

<sup>3</sup> R.K. Gupta & H.D. Bist, eds. *Corruption in India, Origin, causes and Solution* 1st edn. (New Delhi : Anamika Publishers and Distributors Pvt. Ltd., 2007) c III at 47, para 2.

<sup>4</sup> Ibid. para 1.

<sup>5</sup> Websters, "Third New International Dictionary".

<sup>6</sup> Supra note 3.

<sup>7</sup> D. Fantaye, *Fighting Corruption and Embezzlement in Third World Countries*, 68 *Journal of Criminal Law*, 2004 at 171.

public sector and excludes corruption in private sector. Secondly, such definitions only cover the recipients of proceeds of corruption and leaves out the act of giving<sup>8</sup>. Transparency International defines corruption as abuse of entrusted power for private gain<sup>9</sup>. The definition is similar to the usual definition except that it includes private sector corruption within its scope. The World Bank defines corruption as an abuse of public authority for the purpose of acquiring personal gain<sup>10</sup>. McMullan holds that a public official is corrupt "if he accepts money or money's worth for doing something that he is under a duty to anyway, the he is under a duty not to do, or to exercise a legitimate discretion for improper reasons."<sup>11</sup> In the legal field, the term corruption is usually used to group certain criminal acts which correspond to the general notion of an abuse of entrusted power. International conventions against corruption reflect this, since they do not define and criminalize corruption but instead innumerate criminal acts that amount to corruption. Thus, which referred to a legal context, corruption is the generic heading for a cluster of different and specific criminal acts. Therefore, the appropriate legal definition of corruption would be that corruption is the list of acts criminalized by law under the heading of corruption. It becomes essential to identify the different acts that fall under the general heading of corruption. The United Nations Convention against Corruption (UNCAC)<sup>12</sup> provides the most recent and comprehensive list of such acts. It is important to note that this is not an exhaustive list. Progressive development could enlarge this list to include other acts in the future.<sup>13</sup> The following is the list of core corrupt acts.

## **BRIBERY**

The most representative act of corruption is bribery. Bribery may be defined as the promise, offering or giving, to a public official, or the solicitation or acceptance by a public official, directly or indirectly of an undue advantage for the official himself or another person or entity in order that the official act or refrain from acting in the exercise of his official duties. There are however several forms of bribery. The act of offering a bribe is commonly referred to as active bribery and the act of accepting the bribe as passive bribery. The definition of bribery

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<sup>8</sup> International and Regional anti-Corruption Conventions.

<sup>9</sup> [http://www.transparency.de/fileadmin/pdfs/themen/wirtschaft/Ti-plain\\_Language-guide-280709.pdf](http://www.transparency.de/fileadmin/pdfs/themen/wirtschaft/Ti-plain_Language-guide-280709.pdf).

<sup>10</sup> D. Kaufmann, Corruption, Governance and Security: Challenges for Rich Countries and the World, World Bank Global Competitiveness Report, 2004/5, 32.

<sup>11</sup> M. Mc Mullan, A Theory of Corruption: Based on a Consideration of Corruption in the Public Services and Governments of British Colonies and Ex Colonies in West Africa, 9(2) Sociological Rev., 1961, 181-201.

<sup>12</sup> The UN Convention against Corruption was Adopted by the General Assembly by Resolution 58/4 of 31 October 2003.

<sup>13</sup> Transparency International, Corruption and Human Rights: Making the Connection, 2009.

has been changed when the act involves a foreign public official or when it takes place exclusively within the private sector. The bribery of foreign public officials and officials of public international organizations that under advantage gives to the official in the context of international business called transnational bribery. If the act of bribery is committed in the course of economic, financial or commercial activities and only involves to the person of private sector, it is referred to as bribery in the private sector.

### **EMBEZZLEMENT**

The embezzlement of public property by public authorities is a very common corrupt practice in government. Embezzlement may be defined as the misappropriation or other diversion by a public official for the purposes unrelated to those for which the assets were intended, for his benefit or for the benefit of another person or entity of any property public or private funds or securities or any other things of value entrusted to the public official by virtue of his position. The embezzlement of property can also occur in the private sector in the course of economic financial or commercial activities.<sup>14</sup>

### **TRADING IN INFLUENCE**

The Promise, offering or giving to a public official or any other person, or the solicitation or acceptance by a public official or any other person directly or indirectly or an undue advantage in order that the public official or the person abuse his real or supposed influence with a view to obtaining from an administration or public authority an undue advantage for the original instigator of the act or for any other person is called trading in influence. It is not always relevant whether or not the influence is ultimately exerted and whether or not it leads to intended result.<sup>15</sup> Trading in influence is commonly divided into its active form and its passive form.

### **ABUSE OF FUNCTIONS**

The abuse of function or position is referred as to perform or failure to perform on act is violation of laws by a public official in discharge of his duties for the purpose of obtaining on

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<sup>14</sup> Dr. J.J. Mozika, Corruption and Human Rights: The Right Based Approach towards Corruption (2013) 4:2 Indian Human Rights Law Review 182 at 187, para 2.

<sup>15</sup> Ibid.

undue advantage for himself or for another person or entity.<sup>16</sup>

## ILLICIT ENRICHMENT

The corrupt act of illicit enrichment may be defined as a significant increase in the assets of public official that he cannot reasonably in relation to his lawful income. Illicit enrichment is a particularly controversial act of corruption because according to some opinions the criminalization of such an act goes against the principle of presumption of innocence and reverses the burden of proof.

## CORRUPTION: A CONCEPTUAL ANALYSIS

Corruption has different meanings in different societies. It is due to difficulties in establishing a clear border between legal and illegal, between merit and bribe in different societies.<sup>17</sup> Various approaches to define corruption can be placed into five groups. These are public interest centered, market centered and legalistic. Proponents of the public-interest centered approach believe that corruption is in some way injurious to or destructive of public interest<sup>18</sup>. Market centered enthusiasts suggest that norms governing public office have shifted from a mandatory pricing model to free market model, thereby considerably changing the nature of corruption<sup>19</sup>. Public office centered protagonists stress the fact that misuse by incumbents of public office for private gain in corruption.<sup>20</sup> Those who believe in public opinion-centered definition of corruption emphasize the perspective of public opinion about the conduct of politicians, government and probity of public servants. Other have suggested looking at corruption purely in terms of legal criteria in view of the problems inherent in determining rules and norms which govern public interest behavior and authority.<sup>21</sup> Among various definition, the general definition of corruption can be traced with the definition of African Association for public Administration and Management (AAPAM) According to this definition the border definition of corruption refers to use of one's official position for personal and group gain and that includes unethical actions like bribery, nepotism patronage, conflict of interest,

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<sup>16</sup> Ibid.

<sup>17</sup> Rose-Ackerman S, *Corruption and Government Causes, Consequences and Reform*, Cambridge University Press, 2005 at 5.

<sup>18</sup> Rogow, A.A. and H D Laswell, *The Definition of Corruption* in A.J. Heidenheimer (ed.), *Political Corruption: Readings in Comparative Analysis*, New York: Holt Rinehart and Winston, 1970 at 54.

<sup>19</sup> Tilman, R.O., *Black Market Bureaucracy* in A.J. Heidenheimer (ed.), *Political Corruption: Reading in Comparative Analysis*, New York: Holt, Rinehart and Winston, 1970 at 64.

<sup>20</sup> Theobald R., *Corruption Development and Underdevelopment*, London: Macmillan, 1990 at 2.

<sup>21</sup> Scott, J.C., *Comparative Political Corruption*, Englewood Cliffs, N.J. Princeton Hall, Inca. 1972.

divided loyalty, influence peddling, moonlighting, misuse or stealing of government property selling of favours, receiving kickbacks, embezzlement, fraud, extortion, misappropriation, under-or-over invoicing. Court tempering, phony travel and administrative documents and use of regulation as bureaucratic capital.<sup>22</sup> Corruption is general understood as a form of anti-social, illegal, dishonest behaviour by an individual or social group who are in authority, which confers unjust or fraudulent benefits on its perpetrators is inconsistent with the established legal norms and prescribed moral ethos of the land and is likely to subvert or diminish the capacity of the legitimate authorities to provide fully for the material and spiritual well-being of all members of society in a just and equitable manner.<sup>23</sup>

## CONCLUSION

In India people were aware of public official's susceptibility to corruption as early as Mauryan period of our history. Kautilya in his famous classical treatise on statecraft the Arthashastra has mentioned that it is as difficult to resist the temptation of utilizing state funds for personal use as honey or poison kept on one's tongue. He further elaborates how difficult it is to detect corruption of public officials. He not only mentions administrative and punitive measures to deal with such officials but also discusses in detail the procedure of their recruitment and made of character verification. Not only Kautilya but other Acharyas while elaborating duties of King also clearly mention that king has to protect public from enemies, thieves or criminals and also the greed of the King himself.

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<sup>22</sup> AAPAM, Ethics and Accountability in African Public Services, Report of the 8<sup>th</sup> Round table of African Public Services, Report of the 8<sup>th</sup> Round Table of African Association for Public Administration and Management held at Mbabane, Swaziland, 2-06 Dec, 1991.

<sup>23</sup> Rangaswamy D. S. Dr. Ramesh, Problem of Corruption: Human Rights Perspective (2011) 3 Indian Law Review 71 at 73