

ANALYSIS OF IMPORTANCE OF THE PREVENTION OF CORRUPTION ACT, 1988

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ABSTRACT

Everyone knows what corruption is, but finds it difficult to define it or put it in exact words. Corruption is not an infection affecting one country, people worldwide are involved in the process of corruption. This is not only prevailing in administration but also extended to judiciary and legislature very much as it is probably the important and biggest challenge that needs to be eradicated from the grass root. Complete eradication of the word corruption will itself take more than a decade, considering the full flow of actions starting this very moment. But not to lose hope, as it is always better late than never and we people have great potential inherited within us to implement any action once our ideas are strong as solid. Basically, the process of monitoring as well as getting corruption evicted from our system can be done only with the help of a proper suitable instrument-“LAW”. Therefore, taking into account of already many initiatives taken by the government like The Prevention of Corruption Act, 1988, Indian Penal Code, 1860, etc, it becomes our responsibility to change ourselves and join hands together to establish a corruption free country.

INTRODUCTION

Going back in time around 100 years, we come from a land where Gandhiji used non-violence, honesty, selflessness, unity as fundamental principles of existence to establish democracy. This anyhow changed with the pass away of time as now, India is a country of a diverse population with different religions, races, caste, economic status, etc. In today's world with changing lifestyles, our position is decided only with the help of currencies as “the quantity of the currency is directly proportional to the quality of livelihood”. There is also a famous quote which goes like “money doesn't give happiness” but we find that this saying is rejected in reality by every single person as each one of us only wants to increase our money, power and consider that as happiness regardless of either rich or poor we are. So,

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as far as the 5 letter word “MONEY” is considered, it impliedly creates many emotion, crimes, competitions, etc among which “CORRUPTION” is the one which is considered as a growing problem by both developing as well as developed countries.

WHAT IS CORRUPTION

In simple words, it is the abuse of entrusted power for personal gain, power here is the social position of a person. Corruption includes all those behaviours which are dishonest in nature, undertaken either by a person or an organization in whole who are entrusted with a position of authority, such as managers or government officials. This is mainly carried out to acquire illicit benefits. Corruption is a criminal offense that includes many forms among which providing or taking bribes, double-dealings, under-the-table transactions, laundering money are some of them.

HISTORY OF CORRUPTION

Corruption prevailed in India from time immemorial in one form or another. The evolution of corruption is in such a way that its history is quite untraceable in nature. Not everybody knows the exact extension of corruption in India as most of them are just aware of the fact that democracy is in peril because of corruption. Those who are aware of the high standard of morality that prevailed before and after independence will know that their comparison is quite alarming and evident. The basic inception of corruption started when people or leaders who work on the right principles are unrecognized and are considered to be foolish in the modern world. Mainly the connection between bureaucrats, politicians, and criminals are the reasons for today's corruption. Now, in this fast changing society, corruption has become somewhat respectable in India, because respectable people are involved in it and also naming it as “donation” they make the word sound legal when the correct meaning of the word is a bribe.

It is said with a reason that “MONEY DOES NOT CHANGE PEOPLE BUT UNMASKS THEM” as today, truth to be told, if we require a government job, we need to pay lakhs to higher officials to enter irrespective of fulfilling all the eligibility criteria. We can find that officers charge money even if the house is built properly in the assessment of property tax according to the Government rules and regulations. Adulteration and duplicate weighing of products are nowadays something which is compulsorily present in all goods and services. During the time of elections, corrupt practice is something very likely and common in action.

The example goes on and on to explain today's scenario depicting that India is one of the most corrupted countries in the world.

INDIA'S POSITION IN WORLD LIST

India has the rate of 39 percent-highest bribery rate in the whole of the Asian region in the recent research conducted. According to the corruption perception index between 2012-2020, released by Transparency International, a German non-profitable company, a global civil society organization, India has scored 36th in 2012 and 40th in 2020. It is also ranked 86th out of 180 countries in 2020. The countries like New Zealand, Denmark, Finland, Norway, Switzerland, Singapore, Sweden, UK are some among the least corrupt nations, and countries like China, Kuwait, Maldives is just above India. Morocco, Turkey, Brazil are also included in the list which is below India. From all the above information, the country India continues to rank among the most corrupted countries in the world.

MAIN CAUSES RESPONSIBLE FOR CORRUPTION

Corruption is considered a major social problem, as the growth of development activities will be slowed down, skilled and honest citizen's confidence will be discouraged, it also affects the fair distribution of resources and opportunities. The main factors responsible for corruption can be classified into three:

- POWER
- BLACK MONEY
- CHECK ON AUTHORITIES

POWER

The power of a person plays a significant role be it a civil servant or an independent businessman when it comes to corruption. In India, the government controls the main power as well as the absolute power. When we have a look from the government's side, the possibilities of corruption are, in the times of election the system- "cash to vote". This question leads us to the subject of black money and benamidars. The next is "Social Spending". For this when we have a look at Prime Minister National Fund Relief Funds (PMNRF), till now there is no answer on funds, and how much funds were recorded from

each person who funded. Another possibility is from the judicial side, as millions of cases are still pending in corruption type. A recent example is in the year 2017, where a sitting High Court Judge Honourable Justice C S Karnan was sentenced to six months in prison for contempt of court by the Supreme Court of India. Therefore power should be used in the correct manner to abolish corruption.

BLACK MONEY

The money which disappears on the record of income and outflow is known as black money. Every member in our country regardless of poor or rich is not wishing to show on record due to the high taxation system. Basically, in a day at least 5, IT raids are being conducted where more than 100crores are accounted as black money. Citizens of India also started to stash their black money in Swiss Banks, as the total amount of deposits in all Swiss banks, at the end of 2010, is around Rs. 92.95 billion.

CHECK ON AUTHORITIES

This method is not been implemented in India as it is a highly populated nation. There should always be a check on every authority by a third party dealing with money, to not leave a way to money laundering. One of the best examples is New Zealand as a great system is being followed there to check upon every authority dealing with money. Examples are agencies like the “Serious Fraud Office” for investigating and prosecuting serious financial crimes, including bribery and corruption. This is a law enforcement agency. The agency is known as the “Independent Police Conduct Authority” considers complaints against the New Zealand Police and oversees their conduct. This is an independent body. The agency is known as “Ombudsman”, whose role is to ensure citizens receive fair play in their dealings with the government entities. Therefore, this becomes an effective method that needs to be taken into consideration for implementation.

MEASURES TAKEN TOWARDS ERADICATION OF CORRUPTION

It is said that steps taken to bring a beginning will lead to a change in the environment and will pathway towards revolution. Continuous efforts should be taken as any event will later be regarded as the spark that illuminated the path to significant change. Keeping this in mind, there are many measures taken which are as follows:

One, The Central Vigilance Commission which was created in the year 1964. This investigates cases of corruption that arise out of complaints and recommends and also provides punishment wherever required. It planned to develop a sound preventive vigilance framework that would enable organizations to assess the risk of corruption and take steps accordingly.

Two, CVC where internationally recognized preventive strategies are deployed to leverage technology to combat corruption by persuading organizations to adopt IT and automate the activities and processes vulnerable to corruption.

Three, The Government of India also formulated some anti-corruption laws and aiding laws which are as follows:

- RIGHT TO INFORMATION ACT, 2005- Act which required the government officials to provide information on request of the citizens or face punitive action.
- RIGHT TO PUBLIC SERVICES LAWS- which guarantee time-bound delivery of services for various public services rendered by the government to citizens.

Directorate General of Income Tax Investigation, Central Bureau of Investigation, Central Vigilance Commission, and many more law-enforced bodies are formed to control corruption. Laws like the Indian Penal Code 1860, The Prevention of Corruption Act, 1988, Prevention of Money Laundering Act, 2002, The Benami Transactions (Prohibition) Act, 1988 and Prosecution section of Income Tax Act, 1961 plays a role in evicting corruption out of the country through the judicial side.

The Prevention of Corruption Act, 1988 among the Acts is being recognized by all states of India which helps in preventing corruption from entering the country. This said Act is being discussed in detail in the following.

THE ACT IN DETAIL

According to the Indian Penal Code, 1860, corruption is a criminal offence and will lead to criminal conspiracy, Section 120A and B of the code read along with Section 120(A) of The Prevention of Corruption Act, 1988 which says that there must be an agreement for criminal conspiracy, the proof may be direct or circumstantial as direct evidence is rare and

circumstantial evidence during or after the occurrence says the act of the accused, as both have some degree of weight as evidence.

The Prevention of Corruption Act, 1988, consists of V chapters involving - Preliminary, Appointment of special judges, Offences and penalties, Investigation into cases under the Act, Sanction for prosecution, and other provisions.

Chapter I - consists of Sections 1 and 2 which describe the title, territorial extent, basic definitions, etc.

Chapter II - from Section 3-6 which talks about the appointment of special judges.

- Section 3 talks about the appointment of special Judges who may be appointed by central or state government and should possess certain qualifications like under the Code of Criminal Procedure 1973, can either be a Session Judge or an Additional Session Judge or Assistant Session Judge.
- Section 4 explains cases triable by special Judges for the area within which it was committed.
- Section 5 briefly explains about procedure and powers of special judges.

Chapter III – This explains offences and penalties relating to corruption from Section 7 to 16.

- Section 7 to 12 deals about public servants taking gratification other than legal remuneration, by corrupt or illegal means, to influence public servants, for the exercise of personal influence with public servant, for obtaining valuable thing, without consideration and about abetment of offence by a public servant, who shall be punished with imprisonment for a term minimum of six months and maximum to five years and shall also be liable to fine.
- Section 13 explains about any public servant who commits criminal misconduct and also about its punishment which is imprisonment for a term not less than one year but a maximum till 7 years.

- Section 14 talks about habitual committing of offence under sections 8, 9, and 12 with punishment, which is imprisonment for not less than two years but which may extend to 7 years and also be liable to fine.
- Section 16 of the Act describes how the fine amount will be decided by the court, which will either be the value of the property or the pecuniary resources or property referred to in that clause.

Chapter IV - This chapter talks about investigation.

- Section 17 talks about a person authorized to investigate which goes like an Inspector of Police in the case of Delhi, an Assistant Commissioner of Police in metropolitan areas, and a Deputy Superintendent of Police or an officer of equivalent rank for elsewhere.
- Section 18 gives the power to inspect banker's books.

Chapter V - From Section 19 to 30 explaining sanctions for prosecution and other miscellaneous provisions.

AMENDMENTS NEEDED

Some of the Sections mentioned in the Bribery Act 2010, but not in the India System are the ones that can be added via an amendment and those are as follows:

Section 1 talks about a bribe giver in which Petitioner offers, promises or gives financial or other advantages to another person. [in PC Act 1988, the offence on primary and third party bribe giver is interpreted by the judges of the court and not explicitly invoked by law]

- Section 2: Respondent's "requests" themselves constitute the crime.
- Section 7 for the failure of a commercial organization in preventing bribery. [the main Section is to be added in Indian System]
- Section 11- Penalties [difference in penalties from Indian System, more explanation needed about summary, conviction, and indictment]
- Section 13- Defence[should be clearly mentioned in Indian System]

Therefore these effective changes can be made to The Prevention of Corruption Act, 1988.

CONCLUSION

Corruption is a great evil of society and a big problem to worry about for our Indian government. Nevertheless, it is not a never ending problem but a problem that needed to be handled with care. Therefore hopefully with all the above-said methods, information, and changes, we can positively get rid of corruption.

SUGGESTION

Earlier the idea of corruption is considered for getting the wrong things done but now, it is for getting the right things done at the right time. Therefore, if we the people of India want to cut down on corruption, we need to start working on reducing the big chasm between the rich and poor. Some effective methods are, improvements can made be to the Acts governing corruption as those Acts have not brought drastic changes, even though they were technically drafted beautifully, they are not an effective aid to curb corruption. So, punishments prescribed in Acts shall be made stricter to take control along with adding a few of the above-mentioned amendments. Some of the simpler ways are like increasing the salary for all government employees, increasing the workforce, applying cameras in all workplaces, keeping inflation low, etc. which will act as a stepping and helping stone towards our goal.

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