CORRUPTOLUTION TACKLING THE EVOLUTION OF CORRUPTION IN INDIA THROUGH CRIMINAL LAW

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INTRODUCTION

"Corruption is a cancer: a cancer that eats away at a citizen's faith in democracy, diminishes the instinct for innovation and creativity; already-tight national budgets, crowding out important national investments. It wastes the talent of entire generations. It scares away investments and jobs"

-Joe Biden

According to Black's Law Dictionary[3] Corruption is defined as "an act of a fiduciary or an official person who unlawfully as well as wrongfully uses his character or status to produce some benefits for himself or for another person, contrary to duty and rights of another person. Illegality; a fraudulent and vicious intention to evade prohibition of the law."

In contrast, the Oxford Dictionary[4] provides two meanings to the term 'corruption'- Firstly, "dishonest or illegal behavior of people specially, in authority" and also "the act or effect of making someone change from moral to immoral standards of behavior".

The paper aims to address the issue that despite several efforts to curb the widespread menace of corruption in India, there is still no proper definition of corruption in India in any statute and further, its elements are also unclear.

Hence, there is the need for deeper understanding of the term in the Indian context.

HISTORY OF CORRUPTION IN INDIA

[1] Student, Bennett University
[2] Student, Benett University
[3]https://thelawdictionary.org/corruption/
[4]https://en.oxforddictionaries.com/definition/corruption

Corruption is not an entirely new concept that has developed in recent times rather it has existed in India since the ancient times. It could be traced back before the *Vedic Era* and the *Kautilya's Era*. It's an age-old phenomenon which affected every era in the history of the country. It was said back in this era that *Lord Vishnu* and even by *Manu,* a very intelligent person and the author of the *Manu Smriti*, the first ever smriti of the Indian origin, that there will be punishment for those who take bribes.

Corruption has been widely discussed in the *Vedic Era* in all the Four known Vedas either as a warning and its consequences along with punishment or as a a cure. *Rigveda* cautiously warned the corrupt officials by saying that "Corrupt people face misery and gloom via their children as they sow the seed of the evil in the family" implying that corruption is not constant, and it flows from one generation to other; *Samaveda* stated that corruption is an evil that shouldn't come into the human body thus, making it as a habit that is easy to get addicted to but hard to be cured; and *Yajurveda* on the other hand advises the king and the president who is elected to ensure that these evil minded and low character corrupt individual shouldn't be mixed with those who practice divine profession and lastly in the *Atharva Veda* it is said that " the wealth earned through pious means flourishes and those who earned through dishonest means are destroyed" implying that when a person who is corrupt he and his wealth flourishes. In the *Bhagwat-Gita*, describes corruption in a metaphysically and how it impacts on the completely end a human being.

The *Gita* explains further that when the desire is not fulfilled then the anger arises, and this anger is the root of the all kinds of criminal activities including corruption which in the ends results into infatuation and the capability of distinction between the right and the wrong disappears that finally ends a human being.

Kautilya, who was the minster in the Kingdom of the Chandragupta Maurya during 317- 293 BC and he's considered to be one of the shrewdest ministers of his time in his famous book *Arthashastra*, he has explained his views on state and he's the first political theorist who realized the importance of importance of corruption.

Kautilya, in his jurisprudence, was among the pioneers recognising the need for prevention of corruption. He has stated that "those who have amassed money wrongfully should be made to return them and should be made to transfer to other job where there is no temptation to misappropriation".

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Thereby, those engaging in the malpractice of corruption would be made to return the money back acquired wrongfully and would, further, be transferred to other job as a punishment.

During the *Medieval period* that is the period of the Mughal and Portuguese period corruption was rampant and was practiced even by the courts. Some of the ministers of the king sometimes appropriated portions of the royal treasury to their own use.. Numerous measures were taken by King to curb the problem of corruption.

Both *Buddhism* and *Jainism* consider corruption as a disease which needs to be cured. If left untreated, it was feared to be a threat to peace and the purity of humanity.

During the *British Era*, the problem of corruption was very serious, and the British parliament had witnessed numerous debates on bribery and corruption particularly in the East India Company so, in order to cure this problem numerous steps were taken. The salaries of the officers were increased, and rewards were given to them so that the practice can be stopped. The laws made in the Penal Code by the Britishers were not enough thus, the provisions of the Penal Code were omitted, and the Prevention of Corruption Act bill was made and to ensure and monitor the offences of bribery, the Delhi Special Police Establishment Act was passed in 1946.

EVOLUTION OF CORRUPTION AND ITS LAWS

Corruption is seen as an unethical and immoral act. While the Bible talked about condemning corruption, Chanakya believed it to be a means of positive ambition.

Initially in 1980, Indian Penal Code was the major Statute to address the problem of Corruption and punish its defaulters. It criminalized various acts including influencing public servants through illegal and corrupt means, public servants accepting valuables in form of gifts and taking bribery. All the sections devoted to Corruption (Section 161 to 165 of the Indian Penal Code) were repealed and another Act specially dealing with corruption was enacted titled as Prevention of Corruption Act, 1947 (hereinafter ‘POCA’) just after independence.

In 1988, the scope of POCA was expanded to all the offences by public servant. POCA in India is different from other countries as it only extends to prosecuting and punishing public servants in corruption cases. Though the scope of the Act is limited to public servants only, the Court has expanded the interpretation of public servants and included the directors and the Chairman of

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private banks as public servants for the purpose of Prevention of Corruption Act in the case of *Central Bureau of Investigation, Bank Securities and Fraud Cell v. Ramesh Gelli & Ors.*[5]

Though the Act dealt specifically with corruption, it suffered from some loopholes. One of the major shortcomings was that it prosecuted and punished only the bribe-taker and ignored the bribe-givers. Another major drawback in the POCA, 1947 was that it extended only to public servants and corrupt practices taking place in private sector were not subject to prosecution and punishment. Another contention against its efficacy was that it did not stipulate a deadline for the completion of a trial. Another hurdle to judicious enforcement of the law was that it required a prior sanction of the competent authority. It was observed in *Dr. Subramanian Swamy v. Dr. Manmohan Singh*[6] that only 126 out of 319 cases were sanctioned. Another disadvantage was that it does not cater to extra-territorial operations unlike other countries. And last but not the least, in fact, one of the most crucial drawbacks was that the key terms like corruption, bribe, etc. were not defined in the Act which made its interpretation expansive. The Standing Committee on Personnel, Public Grievances, Law and Justice in August 2013 strongly recommended that the definition of these keywords must be included in the Amendment for smooth and just functioning.

After India ratified UNCAC (United Nations Convention Against Corruption), Prevention of Corruption (Amendment) Bill, 2013 was introduced in the Parliament in order to match with the standards globally. A few of the points were punishment for bribe-giver as well, extending the scope of POCA to private bodies as well, stipulating a time period for completion of a trial, etc. Then the Bill was presented to the Standing Committee and complying with their recommendations, was sent to Law Commission in 2015. Law Commission released its report on the same in February 2015, recommending substantial changes.

The Bill finally got approved in 2018 namely, Prevention of Corruption (Amendment) Act, 2018. The key changes in POCA after the Amendment are: Definition of the term ‘prescribed’ was introduced and the definitions of the terms ‘undue advantage’, ‘gratified’ and ‘legal remuneration’ were clarified; time extensions, exemption for compulsions, commercial organizations, punishment, corruption by public servants and permission to prosecute by an investigative authority were added to the Amendment.

[5]Central Bureau of Investigation, Bank Securities & Fraud Cell v. Ramesh Gelli&Ors., Crl. App. 1077-1081 of 2013
[6]Dr. Subramanian Swamy v. Dr. Manmohan Singh3 SCC 64 (2012)

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It is the opinion of the authors that the primary purpose of the amendment was to hold the private organizations more accountable and to invoke a sense of responsibility in them to carry on their operations judiciously by instilling some sense of fear in them.

Other than the Indian Penal Code and Prevention of Corruption Act, there have been many other Statutes enacted to help curb the vice of corruption. They are as follows:

The Right to Information Act, 2005: Right to Information Act indirectly affects the corruption rate as it allows the citizens to pose questions to the public officials which in itself would instill some sort of fear in their minds as they could be held accountable for their actions at any point of time.

Right to Public Services Legislation: This right is already in force in 19 states of the country and it aims at bringing more transparency between the government and the citizens and it also guarantees time bound delivery of the various public services to the citizens as well as provide punishment mechanism for those who fails or deny to provide the service which otherwise is guaranteed to them by the government.

Lokpal and Lokayukta Act, 2013: This Act came into force in order to set up the institution of Lokpal for inquiring into certain corruption allegations against certain Indian public functionaries.

Whistle Blowers Protection Act, 2011: This Act provides for and facilitates a mechanism for investigating alleged corrupt practices and the misuse of power by public officials. This Act also provides for the protection of anyone who exposes such wrongdoing.

CONCLUDING ANALYSIS

Kautilya has famously averred that "it is impossible not to taste the poison or the honey that finds itself at the tip of the tongue", implying thereby that it is impossible for the public servant to totally resist the allure of the resources that lie within his control.

Corruption is one of the biggest and probably the oldest evils prevailing in India and which if not cut through roots will soon become a way of life for the people and indeed its now became a way of life for those who are habitual offenders (government officers, politicians, businessmen, and basically everyone) because it is still not that difficult to engage in corrupt practices without any liability.

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In order to effectively implement any law dealing with corruption, firstly, a definition is needed. This could find place either in the Indian Penal Code, 1860 or in the special act or in both as also proposed in the Prevention of Corruption (Amendment) Bill, 2013. Currently, the definition relied on is the one provided by the World Bank and other institutions as the suggestion to include the definition in Indian enactments has been rejected. Like many other legal concepts, the meaning and scope of what constitutes corruption keeps changing as the courts interpret corruption on a case to case to basis. It is further submitted that corruption in Indian context differs from other countries. For instance, what might be the definition of offence or rape under section 40 and 375 of the Indian Penal Code, 1860 respectively may not be same in the context of the other countries. The definition differs from country to country because the social and economic elements differ in each country. Thus, there is a need for a proper definition of the term corruption in the Indian Context which is comprehensive and contains all the elements necessary in the Indian scenario of corruption. Thus, the current research begs the conclusion that the definition of corruption may be drafted to include the following elements: an act which eases in the completion of a work in a manner which is not prescribed by law, by offering monetary and non-monetary rewards to the authority or the officer or any member or helper to the authority so in charged to do the work without a specified criterion. Act may also include omission to appropriately discharge the functions as a public authority, on account of ulterior gains from the same which are not lawful.

Corruption in India is of such magnitude that it even requires the prior sanction of the competent authority and as per the Dr. Manmohan Singh case as discussed above only 126 of 319 got sanctioned for investigation indicating that even the judicial process for investigating corrupt acts in this country may not be infallible. Thus, there is the need to amend the laws and instead of the court interpreting and expanding the scope of the Prevention of Corruption Act, we need to define the term proposed in the 2013 bill as these terms are the basic elements or synonym to the word corruption. Bribery given or taken should be considered as corruption, and this should include the donation that is taken for wrong purposes like getting admission in the college etc. There is also a need to remove the sanction system which breeds in subjectivity in investigation and hearing of the cases. It must be stressed that the anti-corruption laws are a work in progress because they are still incomplete, and these existing laws are not implemented and monitored

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with rigor. The punishment also needs to be altered keeping in mind the nature and extent of corruption.

For instance, to better understand the situation two situations may be considered. In situation 1, the guy was poor, helpless fellow and to get the work done he had no choice but to give the donation amount asked, in this case the one who asked for the donation should be booked as well as punished for corruption and the helpless guy may be declared innocent, with warnings and the government should return back the amount which was given as donation. Now, in situation 2 a man who is not helpless and gave money with wrong intention, to get any work done which is wrong or illegal should be punished along with the person who took the money and not only they should pay fine but should go for rigorous imprisonment for the maximum time prescribed under the *Prevention of Corruption Act, 1947*.

Thus, it is concluded that apart from bringing corruption as an issue during election and gaining votes, the government should implement and monitor this systemic evil throughout and instead of amending the act and law, there is a need to define it concretely as soon as possible to make the concept clear. Further, the youth of nation should take action and spread awareness by refraining themselves from such practices and insisting on strict action against those who are corrupt in the government to make the government more transparent and accountable.

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