

# LEGAL REGIME FOR COMBATING CORRUPTION: A COMPARATIVE STUDY OF U.K., U.S.A. & INDIA

Abstract of  
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SUPERVISOR  
*Prof. (Dr.) Sudarshan Verma*      SUBMITTED BY  
*Brijandar Singh Panwar*  
Head  
Department of Law  
School for Legal Studies  
Enrollment No. 366/10

DEPARTMENT OF LAW  
SCHOOL FOR LEGAL STUDIES  
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY  
(A CENTRAL UNIVERSITY)  
VIDYA VIHAR, RAEBARELI ROAD  
LUCKNOW-226 025

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## ABSTRACT

Corruption is a disease, a cancer that eats into the cultural, political and economic fabric of society, and destroys the functioning of vital organs. In the words of Transparency International, “*Corruption is one of the greatest challenges of the contemporary world. It undermines good government, fundamentally distorts public policy, leads to the misallocation of resources, harms the private sector and private sector development and particularly hurts the poor*”.<sup>1</sup>

Corruption is presently one of the major challenges facing the human race. The world over, corruption is increasingly being seen as a threat to human existence to the extent that some commentators have called for it to be recognised as a ‘crime against humanity.’ Indeed, corruption has been identified as the main obstacle to the realisation of good governance, sustainable development and Millennium Development Goals. It has monumental effects on the political, economic, social and cultural well-being of societies.<sup>2</sup>

Corruption in a civilised society is a disease like a cancer, which if not detected in time is sure to malignise the polity of country leading to disastrous consequences. It is termed as plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as Royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti people, but aimed and targeted against them. It affects the

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<sup>1</sup> Transparency International, available at <http://www.transparency.de/mission.html> last visited on 2 June 2013.

<sup>2</sup> Elizabeth Nduku & John Tenamwenye “Corruption in Africa A Threat to Justice and Sustainable Peace” <http://www.globethics.net/publications> last visited on 24 November 2015.

economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.<sup>3</sup>

The problem of corruption is not peculiar to our country alone. It is a world wide phenomenon and it existed in one form or the other in all forms of administration and in all periods of political development. History is replete with examples of wide spread corruption in the developing countries as well as the advanced countries like U.K., and USA have adopted many special laws to tackle this problem. The Council of Europe has adopted the Criminal law Convention on Corruption in 1998 and the Civil law Convention on Corruption in 1999. The European Union adopted a number of legal instruments from 1995 to the present, aiming to protect the European Communities financial interests by criminalizing fraudulent conduct. The Inter-American Convention against Corruption of the organization for American states entered into force in 1997. The organization for Economic Cooperation and Development adopted the Convention on Combating Bribery of foreign officials in International Business Transactions in 1997, and it went into force in 1999. The African union approved a regional anti-corruption convention in September 2002. United Nations also adopted Convention against corruption 2003. Properly implemented this legal instrument will greatly enhance the rule of law in fighting corruption in both the public and private sector.

British anti-bribery law was based on the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906, the Prevention of Corruption Act 1916, and Bribery Act, 2010<sup>4</sup>. In India the lawmakers have always been conscious of this problem. The Indian

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<sup>3</sup> State of M.P. v. Ram Singh, AIR 2000 SC 870 at p. 873.

<sup>4</sup> Available at: <http://www.legislation.gov.uk/ukpga/Vict/52-53/69/introduction> last visited on 13 July 2012

colonial government enacted the first codified law, The Indian Penal Code, 1860 which covers the crime of corruption. Later on after independence the Indian Parliament has enacted the Prevention of Corruption Act, 1988 is specifically deals with the problem of corruption in public life amendments were made from time to time to keep pace with the changing times. Prevention of Money Laundering Act 2002 (amended in 2005) was also enacted. At the local level, state government have state laws that address specific aspects of corruption. The Right to Information Act, 2005 aims at ensuring efficiency, transparency and accountability in public life.

There are various bodies in place for implementing anti-corruption agencies are raising awareness on corruption issues. In UK, serious Fraud Office (SFO), in USA, The United States Office of Government Ethics (OGE), In India, the central Vigilance Commission (CVC), the Central Bureau of Investigation (CBI), the office of the Controller and Auditor General (CAG), and the chief Information Commission (CIC). Many Indian states have set up the office of Ombudsman known as Lokayuktas manly to prop complaints against ministers and public servants pertaining to corruption.

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. The sectors most affected by corruption include public procurement tax and customs administration, infrastructure public utilities and the police

The Prevention of Corruption Act 1988 is the existing law in India dealing with offences relating to corruption. This law, however, was essentially enacted to take care of corruption cases in the public sector and by public servants, whereas in fact, there is widespread

corruption in the private sector also which seriously hampers the overall growth and development of the country. The second problem is that the system is painfully slow and punishment is not swift. The corruption Act provides for trial of corruption cases exclusively by the special judges. The number of special judges is highly insufficient compared to the number of corruption cases filed in their courts. There is no witness protection scheme nor there provisions for quick and effective action against witnesses who become hostile. Because prosecution has to depend heavily on the testimony of witnesses to prove its case beyond doubt regarding corruption other problem is that there are legal provisions for confiscation and recovery of property acquired as proceeds of crime, such recovery is not easy.

Corrupt public servants often acquire properties with the proceeds of crime in the names of their friends, relatives, family members and other acquaintances. Therefore it is not easy to prove in court that such properties are the proceeds of crime. Such properties are quite often held offshore under strict privacy laws and it is not easy to trace and recover them, especially in the absence of desired international co-operation. A whistleblower is a person who tells the public or someone in authority about alleged dishonest but in India there is no protection.

The introduction deals with, what is the exact meaning of the term Corruption. The researcher discussed the forms of corruption and what is the impact on society of corruption.

In chapter second researcher discussed the historical context of corruption. It was present in ancient time as well as in Mugal and Maratha empires under the British Raj, also present there.

In chapter third researcher dealt with general introduction of international legal instruments on corruption. I discussed the provisions

of UNCAC as well as Inter American and European Convention on corruption is discussed.

In chapter fourth researcher discussed the National legal instruments on corruption. Firstly the provisions of Prevention of corruption Act, 1988 discussed. Secondly the provisions of Penal code, Criminal law (Amendments) Act, 1944 discussed. The Central Vigilance Act, 2003, the commission of Inquiry Act, 1952, Extracts from constitution of India, 1950, the departmental Inquiry act, 1972.

Chapter fifth deals with Institutional framework on corruption. There are various bodies in place for implementing anti-corruption policies and rising awareness on corruption issue. At the federal level, key institutions include the Central Vigilance Commission (CVC), the Central Bureau of Investigation (CBI), the office of the Controller and Auditor General (C&G), the chief Information Commission (CIC) and state Lokayukt. At the state level, local anti-corruption bureau have been set up, such as the Anti-Corruption bureau of Maharashtra.

In chapter sixth judicial contributions for combating corruption are discussed by the researcher. Judiciary, the guardian of the rights of the people, adopted a cautious approach. The Supreme Court has taken a stronger stance against corruption in recent years, as confined by the Bertelsmann Foundation Report 2008, In December 2006, in a landmark ruling; the Supreme Court ruled that prosecutors do not need prior permission to being proceeding against politicians facing corruption charges. It has also started addressing corruption in the police by mandating the establishment of a police commission to take into their matter and has ruled that corrupt officers can be prosecuted without government consent.

The last chapter deals with lays down conclusion and suggestions.

1. The Prevention of Corruption Act 1988 deals with only public servants but not a single article is there to check the private sector, so there should be include the private sector within the Act.
2. Trial of corruption cases should be proclaimed by Special Judges day by day with priority.
3. Punishment should be increased under the Prevention of Corruption Act 1988 like a Bribery Act 2010 and Foreign Corrupt Practice Act 1977.
4. Fine should be increased under the Prevention of Corruption Act 1988 like a Bribery Act 2010 and Foreign Corrupt Practice Act 1977.
5. India ratified to UNCAC, so all the provisions of UNCAC should be implement in India.
6. There is no witness protection. If the witness becomes hostile there is no any provision for them. So there should be protected under the Corruption Act.
7. International Co-operation is very must because corrupt public servants are easily transferring their money (Black Money) to other countries.
8. The Central Bureau of Investigation or Central Vigilance Commission can not tackle the corruption cases with successive manner. The country needs more effective and creative mechanism.
9. There should be independent commission to tackle the corruption cases with no interference.
10. Record keeping must be implemented within the all departments in India like UK and USA.
11. Commercial bribery is not illegal under the Prevention of Corruption Act 1988. So there should be including like UK.
12. Introduce state-funding as part of election reforms: The high cost of elections and candidates' dependence on money, often of questionable provenance, compromises them from the very outset. Once beholden to moneybags, they are under obligation to return the favour if they win. Of course, not all candidates can be funded by the state. So, we suggest

that only candidates belonging to national parties receive election money from the state.

13. Liberal and contemporary laws that citizens can understand and respect
14. Reduce the role of the state in people's lives to the absolutely essential.
15. Introduce sweeping police reforms and stronger judicial accountability
16. Blacklist corrupt businessmen: Private businesses caught indulging in corrupt practices or bribing officials should be blacklisted.
17. The first tool is 'education'. With the help of education we can reduce corruption. Corrupt public servants try to make fool of them and often demands for bribe. It is due to unawareness in the field of law, public rights and procedures thereof that a common and an uneducated suffer out of the corrupt society. This suggests that if we are educated, we can understand our rights well.
18. We can reduce corruption by increasing direct contact between government and the governed. E-governance could help a lot towards this direction.
19. Lack of effective corruption treatment is another reason. That means, instruments which are in use, are not running properly. For example Prevention of Corruption Act 1988 came into force on 9<sup>th</sup> September, 1988. But corruption is still flourishing. People don't have any fear of this act and the court. The act may thus be revised for its better implementation.
20. Lack of transparency and professional accountability is yet another big reason. We should be honest to ourselves. Until and unless we will not be honest, we can't control corruption. We need to pay attention towards professional accountability i.e., how much we are faithful and truthful towards our profession. Corruption may be controlled by handling five major professions: A *lekhpal*, medical, revenue, police and judicial.
21. Targeting selected departments and agencies. Based on perception survey, the following initial list of target agencies demand intervention: Bureau of Internal Revenue, Bureau of Customs, Department of Public

Works and Highways, Department of Environment and Natural Resources, Department of Education, Culture and Sports.

22. Law-enforcement and the judiciary should conduct mandatory corruption-awareness training programmes that are based on real cases and institutional experience.
23. Decentralisation may be particularly successful where there is local capacity and high levels of participation.
24. Effective and timely international co-operation is essential for the detection, freezing and seizing, and confiscation of assets related to corruption.
25. It is commonly assumed civil society has a role to play in the fight against corruption, by holding public institutions accountable and advocating for anti-corruption reforms.
26. Transparency has a positive impact on corruption control. So there should be transparent work within the departments of all the government bodies.

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- Dainik Bhaskar, Hindi Daily News Paper
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- The Hindu, English Daily News Paper
- The Hindustan Times, English Daily News Paper
- The Times of India, English Daily News Paper

## **2. D. Dictionary and Encyclopedia**

- Oxford Advance Learners Dictionary
- Encyclopedia Britannica
- Merriam Webster's Collegiate Dictionary

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Date-

Brijandar Singh Panwar

Place-