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Abuse of Power Measures towards Complete Eradication of Corruption in India

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ABSTRACT

Corruption damages public right and it also affects economy at large. Corruption is a dishonest act. The principal of being righteous and fair towards the sanctioned duty is completely buried deep into the dead conscious, what remains in corrupt people sense is unduly gain at the cost of affecting economy and public interest at large. Special laws like anti-corruption act, central vigilance act and many more laws has been formulated to control corruption in India but certainly corruption is imbricating the entire nation. The global corruption barometer (GCS Asia) elaborates apprehending number of corruption cases have been committed in India. Corruption has become that tenacious part of function which cannot be denied and is capable to ingest the bread basket of a society. To curb corruption along with stringent laws, determining policies for effective and speedy trail is necessary to curtail corruption from its root.

Keyword: Corruption, Black Money, Indian Economy

I. INTRODUCTION

India is a democratic country and its Supreme Power resides in the hand of people. Democratic government is coined as “of the people, by the people and for the people”. To serve the people government has establishes various organizations under its authority, which appoints public servant to work for upliftment and betterment of people. Section 2 (c) of prevention of corruption act, 1988 define public servant as a person who works for government or in any local authority or any institution established by Central or state government is paid by government for performance of public duty. Section 2 (b) of prevention of corruption act defines public duty as a work done in the discharge of which the state, community or the public at large has an interest.

Public servant has responsibilities on their shoulder to serve people, to work for public interest but when their conduct becomes fraudulent and dishonest towards the public duty the fiend of

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corruption is materialize.²

Many scandals, games scam, society scam, bribery are some of the branches of corruption. The abuse of power to acquire illicit benefit for their own profit or gain is corruption, which is unconstitutional, malicious as well as illegal. There are stringent anti-corruption laws in India but still the cases have not diminished.³ When the wind blows heavily leaves or some branches of trees may fall but many times the heavy wind rarely harms the roots of tree. In the same manner stricter laws tremors the corruption but to mend things, to meet with challenging evil of corruption and to uproot corruption in every possible manner, we need to stretch our presentation corruption law in an incredible manner.

II. LAWS FOR PREVENTING CORRUPTION IN INDIA

Legislature of India has enacted special laws to derail corruption and it is promulgated with stringent penal provisions to penalize offender committing corruption. This special law include:

(i). Benami transaction Act, 1988.- Transaction of property without any authorized or legal entitlement is held invalid in India. Benami transaction means “a property is transferred or held by one person and the consideration for such property is paid by another person”. The funds earned through unduly gain is black money and that is not recorded to evade payment of taxes. Through benami transaction black money ultimately found its way for investment. One of the crucial elements of enacting benami transaction act was to cut the channelization of black money generation and its related investment.

Due to increased magnitude of problem posed by Black Money the central government decided to strengthen law by prohibiting benami transaction which commenced on 19 may, 1988. Under section 3 of this act, whoever does a Benami transaction is liable for punishment up to the three years. Under section 4 prohibition has been imposed on the right to recover benami property. And section 53 (1) says that whoever enters benami transaction in order to evade payment of statutory dues or taxes is guilty for doing benami transaction, having penalty up to 1 year extendable to 7 years with fine 2 (1).

Benami transaction act was further amended in 2016 which prescribes procedure for speedy trial of offences committed under this act. And penalty for offender committing Benami transaction has been increased from 3 years to an extended period of 7 years.⁴

² Prevention of corruption act, 1988, bare act. <https://indiacode.nic.in/bitstream.pdf>

³ India record highest rate of bribery in Asia : survey the Hindu net desk 26 November 2020

⁴ The Prohibition Of Benami Property Transactions Act, 1988 And Rules, 2016 (Paperback, Asia Law House)-

(ii). United Nations convention against corruption- It is an international anti-corruption multilateral treaty adopted by the assembly in October 2003, it came into force on December, 2005. Corruption can happen anywhere even across country borders due to trading influence or by abuse of power of officials in any sector. To reduce corrupt activities the treaty focuses on prevention of gain through illegal medium with a punitive measure that addresses cross border nature of corruption.⁵

(iii). United Nation convention against transnational organized crime - India joined united nation convention against transnational organized crime treaty on December 2002. Transnational organized crime include money laundering, wildlife smuggling, anti-human trafficking or offence related with corruption, which are harmful for economy and society. This treaty was adopted to deter and to combat transnationally organized crime.

Article 32 (3) (a to e) says for achieving its objective state party shall be encouraged by mobilization of voluntary convention and to combat corruption successfully exchange of information among state parties on patterns and trends is important along with cooperation by non-governmental organization, relevant International and regional organization.⁶

(iv). Indian penal code, 1860 - Indian penal code penalizes dishonest and fraudulent act committed against public interest by public servant. Section 21 of IPC defines public servant is a government employee appointed to serve countrymen. Wherein section 169 IPC says if the public servant is involved in any unlawful buying or building of property is in punishable offence extendable up to two years.⁷

(v). The Delhi Special Police Establishment Act, 1946.-This Act was enacted for investigation of certain offences committed within union territories. Section 4 says that special police establishment has superintendence and can have administration in so far as it relates to investigation of offences alleged to have committed under Prevention of Corruption Act 1988 by public servant.⁸

(vi). Central Vigilance Commission Act 2003- This act provides for constitution of Central Vigilance Commission to enquire and conduct trial of offences committed under prevention of corruption act, 1988. Section 8(1)(a) says that central vigilance commission has power to

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⁵ United nations office on drug and crime.united nations convention against corruption-Signed:9 December 2003, Effective: 14 December 2005- <https://www.unodc.org/unodc>

⁶ India signs the UN convention against transnational organized crime UNTOC mea.gov.in,23 December 2002 (accesses on 18 august 2019)

⁷The Indian penal code- <https://indiankanoon.org>

⁸ THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946 ACT No. 25 OF 19461 [19th November, 1946.]<https://legislative.gov.in>

exercise superintendent over the function of Delhi special police establishment formulated to investigate cases committed Under Prevention of Corruption Act 1988.⁹

(vii). All India service discipline and appeal rules 1969- If a public servant is alleged to have been committed an unlawful act, prevailing his duty or if he has committed corruption, such person is suspended from his duty by the competent authority under this rule. Section 8 (25) says the authority has to enquire on the concerned matter and submit its report within 6 months. Section 3 (1)(c) elaborates the period of suspension of member charged for corruption shall not exceed two years and enquiry shall be completed within the prescribed time limit and appropriate government order shall be issued within two years from the date of suspension, failing to do so such suspension order will be automatically revoked. Investigation and case of corruption can be extended beyond two years only on the recommendation of Central ministry review committee.¹⁰

(viii). Prevention of Corruption Act, 1988.- According to section 2 (b) of prevention of corruption act public duty is a discharge of function in which large interest lies with the people, state or the community. Section 3 of prevention of corruption act elaborates that the central Government or State government has the authority to appoint as many special judges necessary for speedy trial of cases committee under Prevention of Corruption Act.

Under Section 10 the person who conspires to commit or if even makes an attempt to commit corruption or about to do so is a punishable offence. According to Section 13 if the public servant habitually accepts and is dishonest, fraudulent, misappropriate, corrupt or obtain or he agrees to obtain or even if he attempts to obtain from any person any gratification other than illegal remuneration is an offence, considered as criminal misconduct. This behavior of public servant is not reprimanded and is punishable up to 4 years which may extend till 10 years.

Section 7 specifies if a public servant accepts, agrees or attempts to obtain any undue gain is a punishable offence and has imprisonment up to 3 years, extendable to 7 years. According to section 8 with a motive or with an intention of reward if a public servant takes any undue gratification, such conduct is also punishable with an imprisonment up to 3 years extendable up to 7 years. Section 9 tells if by the exercise of personal influence to do a certain act or to forbear any official act in the exercise of official function, the public servant accepts undue gratification, is an punishable offence having imprisonment up to 3 years to 7 years. Section 11 says if a public servant accept valuable thing without any consideration from person with

⁹ THE CENTRAL VIGILANCE COMMISSION ACT, 2003-<https://indiacode.nic.in/bitstream>

¹⁰ All India service (discipline and appeal rules),1969- <https://www.indiaemployees.com>

whom business transaction is done is a punishable offence and have imprisonment not less than 6 months but which may be extended to 5 years. Even though application of stricter laws and penalties prevalently did little to deter corruption.¹¹

III. NECESSARY MEASURES TO COMBAT CORRUPTION IN INDIA

Supreme Court in *Vineet Narain & others v Union of India*¹² said that public offices are entrusted with certain power to be exercised in interest of public alone and the office is held by them in trust of people. Any deviation from the path of rectitude by any of them amounts to breach of trust and must be severely punished.

Giving and taking bribe both are punishable factors still the cases of corruption are rampant in India. In India highest rate of bribery cases has been recorded according to Asian survey. Supreme Court in *Manzoor Ali Khan vs Union of India & others*¹³, said that “corruption is an offence against society”. This dishonest act must be deterred explicitly and for doing this India needs expansive provisions to combat corruption.

(1). According to prevention of corruption act, 1988 if the public servant is caught on spot doing a corrupt act the concerned authority has power to prosecute immediately. Another procedure specifies that when complaint is received or a public servant is alleged for doing corruption mere possibility of abuse of power cannot be the ground to prosecute therefore prior permission of government is necessary to be taken to start investigation. Section 19 of prevention of corruption act says to prosecute public servant in corruption case previous requirement of sanction is required from concerned authority and such procedure takes much time and effort making it inevitable to start investigation immediately which is perceived as cumbersome. Undoubtedly corruption is not tolerated but sometimes this corrupt official instead of being severely punished gets pushed under the carpet of protection.¹⁴

In case of *Vineet Narain & others v Union of India*¹⁵, the court said “if the conduct amounts to an offence it must be promptly investigated and the offender should be prosecuted expeditiously, so that the majesty of law is upheld and the rule of law vindicated”.

Anti-corruption laws are strictly formed but to have its greater impact India needs swift procedures to support strict laws that will help to execute speedy functioning of such cases.

¹¹PREVENTION OF CORRUPTION ACT HARDCOVER – 1 JANUARY 2009 BY ASHOK DHAMIJA (AUTHOR)

¹²*Vineet Narain & or, vs. union of India* & Anr. (1996) 2 SCC 199.

¹³*Manzoo Ali Khan vs Union of India* & Ors on 6 august, 2014

¹⁴Commentary on Prevention of Corruption Act—A Treatise on Anti-Corruption Laws- by as ramchandra rao-3rd edition 2016.

¹⁵*Vineet Narain & or, vs. union of India* & Anr. (1996) 2 SCC 199.

Therefore to combat corruption along with stringent laws main emphasis must be given on the procedure for executing cases of corruption.

(2). According to all India service discipline and appeal rule section 4 subsistence allowance is paid to public servant during his suspension. When a public servant is under suspension he is entitled to receive from the government a subsistence allowance at an amount equal to the leave salary and if the suspension period exceeds 3 months the subsistence allowance can vary the amount for any period subsequent to the period of the first three months, and subsistence allowance may be increased by a suitable amount.¹⁶ Consequently there is only a little loss of reputation to corrupt officials as during enquiry or period of suspension he still gets the benefit of subsistence allowance. The real loss is of Indian economy and society. The interest of public is severely damaged.

The main principle of natural justice is fair and unbiased hearing that will not negatively affect the trial. Fair hearing with no bias and adequate notice of facts are general criteria for commencement of trial but definitely it cannot be stretched to such an unreasonable extent where fraudulent and dishonest people affecting economic condition of country can get benefit from the economy to whom they are trying to damage.

(3). Vigilance clearance says that Complaints received against employee gets registered or received and stays in vigilance profile of employee for very long time. Central vigilance commission said to government official that investigation has to be completed within three months from the date of the complaint received against employer¹⁷. Even though time limit has been set forth to proceed with such crime it takes time and in return causes lengthy procedure and delay in trial sometimes relinquishes the whole purpose of law. Many times witness turns hostile making the whole purpose of law fragile. Hence there must be quick-witted procedure of law for its appropriate execution.

Public interest is of utmost importance and these cases of corruption must be dealt strictly to ensure that these agencies made for serving people discharge their function with responsibility and are obliged in accordance with the law.

(4). Corruption causes loss of productivity and this causes stoppage towards development of economy and is an important matter of concern. The official Influence other with their power which aggravates crime. Law is stringent but what it needs to be vigilantly used and

¹⁶Revised All India Services Rules (Vol. - I) department of personnel and training-<https://dopt.gov.in>

¹⁷Decide corruption complaints against employees within 3 months: CVC to govt depts-<https://www.thehindu.com/News/National-20Apr-2021>

implemented with transparency to curb corruption from India.¹⁸

(5). Government has formulated many beneficial policies for public welfare but in their way to reach the public welfare scheme gets stuck in the hand of corrupt people making it a public loom. The World Bank study found that public distribution programs and social welfare scheme have proved to be failed due to corruption. Therefore the discretionary power between the center and the state to curb the corruption makes the implementation of rules more complicated with opaque bureaucracy; therefore the distribution of power must contain lucidity and clarity.¹⁹

(6). unpredictable event in the social life especially in the risk of economy are fragment sometime it causes economic insecurity and income related with it gets effected increasing the risk of downward mobility into poverty. Size and structure of government is also an important factor to curb corruption. Political system enumerated and the quality of Institution is also an essential element source to deter corruption.²⁰

The exercise of laws has to be regulated explicitly to effectuate the purpose of law made to deter such crime from society. This is imperative to retain public confidence in the impartial working of government agencies.

IV. CONCLUSION

Corruption is like digging holes in which our own people may fall and that isn't going to help our nation to grow towards advancement, instead stay honest towards your assigned work and uplift the moral of society. It is a matter of honesty and sincerity sweating for a cause. Doing corruption is a choice when you choose to do so you particular action affect the whole society as well as affect the economy. To stop corruption legal Vigilance, transparency in laws is very important along with procedures free from ambiguity. Hence entire implementation of special laws made to deter corruption is possible with speedy procedure accompanied with transparent laws.

Wisdom and vision are two important factors to make India proud. Young generation needs great teachers in life who can educate them through their well-founded experience by serving public. It can happen when better examples are set forth by collecting piece of wisdom and not

¹⁸Corruption and Productivity- Tigerprints- Clemson University –<https://tigerprints.clemson.edu/cgi/viewcontent>

¹⁹How corruption in government affects public welfare: A review of theory-by Lambsdorff · 2001 & hunger grows as corruption etas into welfare schemes- <https://www.livemint.com>- 20 april, 2010.

²⁰We are all affected - Corruption Watch-<https://www.corruptionwatch.org.za> › what-is-corruption & the political economy of corruption: causes and effect-[https:// openknowledge.worldbank.org](https://openknowledge.worldbank.org)- by S Rose- Ackerman,1996

of corruption.
