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Corruption and Good Governance : Commonwealth Games Scam & Corruption present in the Public Sectors

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ABSTRACT

The paper explains the concept of corruption and presence of corruption in the public sectors in India. It gives a detailed overview of the Suresh Kalmadi v. CBI case, commonly known as the Commonwealth Games Scam (CWG Scam) to highlight the presence of corruption in the public sectors.

The issue of the CWG Scam case was “Whether a public servant who has been involved in corruption activities should be entitled to the grant of bail by the courts”. Through this case, the author attempts to interconnect corruption with the country’s governance and to show how the corruption in public sectors should be controlled.

The research objective to showcase that, in order to control corruption, the system is supposed to impose strict penalties and restrictions on the public servants who are involved in the illegal activities. Through this paper the author highlights on how the judicial authority failed in imposing rigorous restrains on the petitioners by granting them bail in the CWG Scam case. The paper recommends a few methods to curb the corruption happening in the public sectors.

The paper also explains the meaning of Governance and the parameters to identify whether a country is under Good governance in order to curb corruption. The author discusses the eight principles, introduced by the United Nations, whose presence are identified for the good governance of the nation. Therefore, the author attempts to search for the presence of the principles of good governance in the present government of India and gives specific suggestions to control corruption.

Keywords: *Corruption, Governance, Public Sectors, Commonwealth Games Scam, Principles of Good Governance.*

I. INTRODUCTION

The International Monetary Fund defines **Corruption** as, “*Corruption is a form of dishonest and unethical conduct by a person entrusted with a position of authority, often to acquire*

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personal benefit.”

Bribery is a branch of corruption activities, wherein an individual provides a public servant with illegal gratification in addition to the legal remuneration the public is required to receive, to influence and reward the public servant to.

- Perform or refrain a particular performance of an official act,
- Show favour or disfavour towards any persons,
- Render or attempting to render any specific service or disservice to a public servant.

The **Transparency International India (TII)**, is an anti-corruption organisation which is independent of any government of political party having a deep understanding and expertise regarding corruption issues has found that the Indian bureaucracy is the worst in Asia.²

In 2005 the **Transparency International** had recorded that 62% Indians had paid bribes to a public servant to get the services performed. People had to pay bribes in the Mahatma Gandhi National Rural Employment Guarantee Act & the National Rural Health Mission to get their respective jobs done.

India was ranked 85th on the Corruption Perceptions Index in 2021 out of 180 countries, on a scale where the countries with the lowest rankings are seemed to have honest public sectors. Individuals working in the public sectors use the corrupt and unfair means to complete a variety of tasks whether large or menial as they have greedy desire to make lots of money without a lot of efforts. The concept of bribery is pervasive in the country from minor bribes demanded by the policemen, traffic-policemen, government clerks, officers, etc. to multi-crore scandals and scams taking place at the highest political level like the 2G Spectrum Scam, the Commonwealth Games Scam, etc.

According to **Indian Corruption Survey 2019**³,

- 51% of the respondents said that they paid a bribe at least once in 2019 down 5% points from 56% in 2018.
- 64% of the respondents said they were forced to pay a bribe to ensure their work was completed without any delays or added effort.

² Prabhakar Kulkarni, *Bureaucratic corruption goes unchecked as politicians are directly or indirectly involved in grabbing wealth*, COUNTERVIEW, (June 05, 2024, 9:03 PM), <https://www.counterview.net/2017/02/bureaucratic-corruption-goes-unchecked.html>

³ *1 in 2 Indians paid a bribe in 2019*, THE TIMES OF INDIA, (June 05, 2024, 9:11 PM), <https://timesofindia.indiatimes.com/india/1-in-2-indians-paid-a-bribe-in-2019/articleshow/72257889.cms>

- 82% said either no steps have been taken to curb corruption or that the measures have been ineffective.
- 61% of the respondents said their state or city did not have a helpline to report corruption.

(A) Literature Review

The draft by the International Monetary Fund talks about corruption attracting majority of the attention on an international platform. The paper had conducted a survey and discusses about the issues regarding the causes, consequences and the scope of corruption and lay down possible corrective actions. The paper also focuses on the costs of corruption with respect to the economic growth which implies that the revolt against corruption may be expensive and cannot be made independent from the state's reforms. Finally, the author concludes by stating that there is a possibility for corruption to continue to be a major issue regardless of any directed actions aimed at curbing it, if certain necessary reforms are not made.⁴

The paper has focused on the requirement to maintain the issues of corruption from a lens of the development objective. The paper discusses about the reasons and the repercussions of corruption with a specific focus on the least developed country with central direction and considerable regulations. There is a lack of accountability, transparency, and consistency along with institutional weaknesses in the Legislature and the Judiciary of the country which provides an abundant ground for the growth of corrupt activities. The adverse effects of corruption on consumption patterns, income distribution, investment, the national budget, and economic reforms have been highlighted in the paper.⁵

(B) Research Question

Whether the principles of Good governance facilitate in reducing the amount of corruption happening in the public sectors of the country.

(C) Research Objective

To control corruption, the system is supposed to impose strict penalties and restrictions on the public servants who are involved in the illegal activities. Through this paper the author highlights on how the judicial authority failed in imposing rigorous restrains on the petitioners by granting them bail in the CWG Scam case. The paper recommends a few methods to curb

⁴ Vito Tanzi, *Corruption Around the World: Causes, Consequences, Scope and Cures*, A WORKING PAPER OF THE INTERNATIONAL MONETARY FUND. (1998)

⁵ U Myint, *Corruption: Causes, Consequences and Cures*. Vol. 7(2), ASIA-PACIFIC DEVELOPMENT JOURNAL. (2000)

the corruption happening in the public sectors. The paper also showcases the meaning of *Governance* and what are the parameters to identify a country is under *Good governance* in order to curb corruption.

II. COMMONWEALTH GAMES SCAM⁶

(A) Facts

The prosecution's case is that the petitioner, Suresh Kalmadi who is the chairman, Lalit Kumar Bhanot who is the General Secretary and Vishwa Kumar Verma who is the Director General of the Organizing committee of the Commonwealth Games 2010, Swiss Timing Ltd. (STL) and other accused entered into a conspiracy to eliminate every form of competition against STL and to ensure that STL was awarded the contract for TSR system.

The allegation of forgery regarding the insertion of an advertisement wherein instead of words "Timing, Scoring and Result", the words Timing, Scoring or Results" were used which had cost Rs. 69,603/- for the advertisement which the petitioner did not clear.

The allegations made against the petitioner are regarding the procurement of the Time Scoring Results and it was alleged that certain conditions were created which would result the tender being awarded only to the Swiss Timing Omega. The allegations are that the petitioner and the co-accused had conspired to change the eligibility criteria to benefit the Swiss Omega Timing.

(B) Issue

Whether a public servant who has been involved in corruption activities should be entitled to the grant of bail by the courts.

(C) Rules

1. **Punishment of criminal conspiracy** - Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, be punished in the same manner as if he had abetted such offence.⁷
2. **Forgery of valuable security** - Whoever forges a document which purports to be a valuable security, or to receive the principal, interest shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.⁸

⁶ Suresh Kalmadi v. CBI [ILR (2012) 2 Del 630]

⁷ Indian Penal Code, 1860, § 120B (1), No. 45, Acts of Parliament, 1860 (India).

⁸ Indian Penal Code, 1860, § 467, No. 45, Acts of Parliament, 1860 (India).

3. **Criminal misconduct by a public servant** - A public servant is said to commit the offence of criminal misconduct, by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage, or by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.⁹

III. SUBMISSIONS OF LEARNED COUNSELS

1. *Arguments for Petitioners*

The learned counsel for the petitioners stated that the tender was not finalised by the organizing committee. Due to receiving various complaints, the matter was referred to the Union Government which held that there was no irregularity or illegality present in the process of procurement and it was appropriate to award the tender to Swiss Timing Omega.

The learned counsel had further stated about the medical condition of the petitioner as he has had strokes while he was in custody and received severe injuries once. Therefore, the learned counsel requested the court to grant the petitioner bail.

The learned counsel for the petitioner further submitted that a person released on bail has a better chance to defend himself during the trial stages and thus the counsel had requested the court that the petitioner should be granted bail as he had been under custody for more than 10 months.

2. *Arguments for CBI*

Regarding the allegations made against the petitioners under section 467 of the Indian Penal Code 1860, the CBI's learned counsel contends that the Petitioner along with other accused had a common objective to enter into a conspiracy, thus leading to the co-accused (Surjit Lal) in forging the documents.

The CBI's learned counsel submits petitioner's health is stable and he has been provided with the best medical treatment. The counsel also points out to the fact that the petitioner had approached the court to seek permission in order to attend the Parliament which evidently proves his medical condition being stable. Thus, the learned counsel requests the court not to grant bail to the petitioners.

It has been persistently contended by the CBI's learned counsel that the petitioners had threatened and harassed the witnesses and every course of action was permitted by the

⁹ Prevention of Corruption Act, 1988, § 13 (1) (d), No. 49, Acts of Parliament, 1988 (India).

petitioners according to their whims and fancies. Regarding these actions of the petitioners, the statements of the petitioner witnesses have been relied upon by the court. A petitioner witness had alleged that he was tortured by the petitioners and was totally shelved in all the matters.

The court has referred to the students of the witnesses who have shown that the petitioners have exerted influence and have terrorized and harassed the witnesses. The learned counsel argues that the petitioners must be disentitled to the grant of bail because the mere presence of the petitioners would intimidate the witnesses and tangible evidence are present on record to show that people have been intimidated by the petitioner and the co-accused has been found influencing a prosecutor witness.

IV. JUDICIAL PRONOUNCEMENTS

In *R. Vasudevan v. CBI*, it had been contended that, “coming from an influential place in the society works as a double-edged sword. If it can be alleged that the accused can tamper the evidence and threaten or influence the witnesses, this statement can be refuted by that fact that the accused has roots in the influential society and there is no prospect of him absconding.”¹⁰

In *Anil Mahajan v. Commissioner of Customs*, it was also contended that, “the fundamental purpose of keeping a prisoner in custody is not pre-trial detention. The ground on which bail has been denied is that there is an apprehension present that the accused may threaten or influence the witnesses due to being well connected and influential persons.”¹¹ The Hon’ble Supreme Court referring to the *Sanjay Chandra case*¹², restated that, “if the accused is of such a character that his mere presence at large would intimidate the witness, it is a good ground to deny bail.”¹³

(A) Ratio decidendi

The court observed the seriousness of the allegations made against the petitioners, which raised questions that, whether there is a possibility of the witnesses being influenced by the petitioner if they are granted bail during the trial and whether there is a possibility for the accused to abscond from justice if they are released on bail.

The prima facie of the case is the offence under section 467 of the Indian Penal Code which has the punishment up to life imprisonment prescribed in the code. therefore, the allegations are of a serious nature. Nevertheless, the evidence to prove the accusations is mainly documentary

¹⁰ R. Vasudevan v. CBI (2010) 166 DLT 583.

¹¹ Anil Mahajan v. Commissioner of Customs, 2000 III AD (Delhi) 369.

¹² Sanjay Chandra v. CBI, AIR 2012 SC 830

¹³ Gurcharan Singh v. State, (1978)1 SCC 118; Babu Singh v. State of U.P., (1978) 1 SCC 579 & State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21.

except a few material witnesses.

The court observed that the petitioners have been under custody for more than 10 months and there has been no allegation regarding the chance of the petitioners absconding from justice and not being present before the court for the trial. The present accusations against the petitioners are of having committed economic offences which have ultimately resulted in loss as they adopted the policy of a single vendor and ensured that the contract is awarded to STL alone. It has been observed that the accusations of money trail against the petitioners is not present and there is no evidence of the petitioners influencing or threatening the witnesses or interfering with the evidence during criminal investigation or trial.

(B) Judgement

The court was in favour to grant bail to the petitioners. The court directed the petitioners to be released on bail they furnish a personal bond of the amount of Rs. 5 lakhs along with two sureties, each of the same amount which is subject to the satisfaction of the learned Trial Court. The court disposed the petitions and ordered the petitioners not to leave the country without the prior permission of the Trial court.

V. CRITICAL ANALYSIS

1. Since the petitioners entered a conspiracy of eliminating all the competitors and ensuring Swiss Time Ltd. to get the contract of the Timing Scoring and Result system, they have committed a fraudulent activity which is punishable under § 120B (**Punishment of Criminal Conspiracy**) wherein the penalty is rigorous imprisonment for more than two years to the accused and the abettors.¹⁴
2. In this case, certain conditions were created by the petitioner and his conspirators which would result the tender being awarded only to the Swiss Timing Omega. Thus, they had forged valued documents to show that the tender was awarded in a fair manner.

According to § 467 (**Forgery of valuable security**) of the Indian Penal Code, 1860, if an individual forges documents in order to receive a valuable security or to make transfers of the valuable security, the person shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.¹⁵

¹⁴ Indian Penal Code, 1860, § 120B (1), No. 45, Acts of Parliament, 1860 (India).

¹⁵ Indian Penal Code, 1860, § 467, No. 45, Acts of Parliament, 1860 (India).

3. The petitioners of the Organizing committee of the Commonwealth Games 2010 hold positions as public servants and they have used corrupt methods in order to receive pecuniary benefit.

Pertaining to §13(1)(d) of the Prevention of Corruption Act, 1988 a public servant is said to commit a criminal misconduct if he by means of corrupt or illegal means, obtains for himself or for any other person any pecuniary advantage.¹⁶

The court was in favour to grant bail to the petitioners as they were under custody for more than 10 months and could not possibly abscond from justice, so the court directed the petitioners to be released on bail after they furnish a personal bond of the amount of Rs. 5 lakhs along with two sureties, each of the same amount. The court disposed the petitions and ordered the petitioners not to leave the country without the prior permission of the Trial court.

VI. COMPARATIVE ANALYSIS

British Citizen's Charters

In Britain, there are Charters which are establishing standards of service at a level which has an impact direct on the quality life of an individual. These charters have established new targets to evaluate the measured performance. More information regarding the performance tables have been given by the charters for schools, local authorities, hospitals, police force facilities, fire services, etc. to help the public authorities make informative decisions and raise questions about the usual process. The establishment of measurable targets helps the government in delivering improvements which are concrete in the quality and are efficient in the services.

The objective with which the Charter was introduced is to improve the quality of services for the public by ensuring the presence of transparency, accountability, and the service quality which the numerous government organisations provide. The charter enables the citizens to avail the rendered services with minimum cost and hassle, within a reasonable time.

The major focal point is the *Charter Mark Award's Scheme* which was introduced to recognize the achievements of different organisations and authorities present in the public sector which have made a special contribution in serving the public. The scheme demonstrates a strong commitment from the public to raise the standards of services which will result in the control of corruption in the public sectors.

¹⁶ Prevention of Corruption Act, 1988, § 13 (1) (d), No. 49, Acts of Parliament, 1988 (India).

GOOD GOVERNANCE

The World Bank defines **Governance** as, “*Governance is the manner in which public officials and institutions acquire and exercise the authority to shape public policy and provide public goods and service .*”

The United Nations defines **Governance** as, “*The exercise of economic, political and administrative authority to manage a country’s affairs at all levels.*”

According to the United Nations Development Programme, “*Good governance ensures that political, social, and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision making over the allocation of development resources.*”

The document on **Corruption & Good Governance in Kenya**¹⁷ prepared by the **United Nations Office on Drugs and Crimes** identifies good governance with the political system of the country which is participatory in nature, is consistent with the rule of law of the land, maintains transparency of its activities, is responsive to its citizens, is consensus oriented towards the people of the country, equitable and inclusive in decision making policies, is effective and efficient and is accountable for all the activities.

The Eight Principles of Good Governance by the United Nations¹⁸

1. **Participation**:- one of the fundamental aspects of a country being under good governance is proved when everyone participates in the daily affairs of the government. The participation of the citizens could be done either through direct mediums or through intermediary agents or institutions which are legitimate in nature. The Participation must be informed and organised which means that there must be a freedom of association and expression present in an organised civil society.

In 2024, India’s ranking in the **World Press Freedom Index** has been increased to 159th from 161st in 2023. However, in 2023 the rank had reduced to 161st from 150th amongst 180 countries. This ranking indicates how the country has prevented the media from voicing their opinions on the national governance and polity.

If the media being the most important aspect the society, as it is the fundamental source of mass communication, has been restrained from its rights to speak and express, it is

¹⁷ *Corruption and Good Governance*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, (Jun 07, 2024, 8:05 PM), https://businessintegrity.unodc.org/bip/uploads/documents/resources/Corruption_and_Good_Governance.pdf

¹⁸ *What is Good Governance?*, UNITED NATIONS ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC, (Jun 07, 2024, 7:58 PM), <https://www.unescap.org/sites/default/files/good-governance.pdf>

very easy to suppress the opinions of the normal citizens of the country. Thus, the participation is being restricted by the political parties and the government.

However, the present government has introduced a platform namely **Republic India**, where the citizens of the nation irrespective of their age, caste or religion can send their creative ideas or suggestions to the government of India for the development, good governance and better policies.

2. **Rule of Law**:- A fair legislative framework is required to be enforced impartially in order to achieve good governance in a nation. Full protection of human rights, particularly the right of minorities is required. The good governance in public administration must further be based on the impartial enforcement of the laws by an independent judiciary an impartial and incorruptible police force.

In India the reward of a sincere officer is punishment, since a vast majority of the police force, administrative department and the judicial system is corrupt. There is an impartial enforcement of law present for these officials which does not charge the wrongdoers for their offences instead ignores the fundamental fact of the offence occurring.¹⁹

3. **Transparency**:- Transparency means that the decisions made and their implementation are made in accordance with the current rules and regulations of the country. Transparency also means that the information is freely available and directly accessible to those affected by such decisions and their enforcement. Transparency also means that adequate information has been provided in specific formats and platforms which are easily understood and accessible by the public at large.

Anonymous Electoral Bonds leading to Anonymity in Political Funding resulting in Corruption.

- There is no information on which political party receives the funding from which company through the electoral bonds.
- There is no limit on the Net profit as well as no tracking on the sale of bonds, both which are siphon to black money.
- The Company or the bank will sell the bonds to several buyers who are being intimidated by the ruling party in order to buy the bonds.

¹⁹ *Vigilance sees no corrupt cop in Chandigarh, CBI catches 18*, THE TIMES OF INDIA, (June 07, 2024, 4:20 PM), <https://timesofindia.indiatimes.com/city/chandigarh/vigilance-sees-no-corrupt-cop-in-chandigarh-cbi-catches-18/articleshow/68278798.cms>

- There has been an amendment in the Representation of People Act, mentioning that, ‘No single donation level data has to be shared by the party’.
- Another amendment has been made in the Income Tax Act, mentioning that, ‘Party does not need to file this for Income Tax Returns’.

4. **Responsiveness**:- Good governance also requires that the government institutions attempt to respond to all stakeholders within a reasonable time frame.

There are portals available online in order to retrieve information from the **RTI Online** website or to file complaints on the grievance portal names **Centralized Public Grievances Redress and Monitoring System** introduced by **Department of Administrative Reforms & Public Grievances**. The deadlines in order to respond to the complaint or to answer the particular question or query have been set by the portal themselves, however they are not met, since the Information Commission, courts tribunals, etc. have backlogs in applications, cases, complaints, etc.

5. **Consensus Oriented**:- Good governance requires mediating diverse interests in the society in order to achieve a broad societal consensus on what is in the best interest of the whole community and how this can be achieved. Good governance also requires a broad and long-term perspective on what is required for the sustainable human development and how the goals of such development can be achieved. This can only result from an understanding of the historical cultural and social aspects of a particular society or community.

The legislature enacted three Farm laws without understanding the perspective of the farmer community. There was no consensus made by the public regarding the enactment of the farm laws. Ultimately, the Central government had repealed the three farm laws due to the farmers’ protests.

6. **Equity and inclusiveness**:- A society’s well-being depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of the society this requires all groups but particularly the most vulnerable have opportunities to improve or at least maintain their well-being. Public administration must develop policies that ensure that everyone has the same opportunity to maintain and improve their welfare.

PRAGATI (Scholarship for Girl Students) has been launched by the Ministry of Education in 2014 to provide encouragement and support to Girl Child to pursue

technical education. It is implemented by All India Council for Technical Education (AICTE).

Pre-Matric Scholarship Scheme for Scheduled Castes & Others is a Centrally Sponsored Scheme and implemented through State Governments and UT administrations, to support, parents of children belonging to Schedules Caste and other disadvantaged categories for education of their wards.

7. **Effectiveness and efficiency**:- Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The term efficiency also covers the sustainable use of natural resources and the protection of the environment. Sustainability refers to both ensuring that the social investments carry through and natural resources are maintained for future generations.

The advancement of technology in India through **Digitisation** of several processes has proved the effective development of the country.

Government portal to train government officers and officials by launching schemes for bureaucrats which will improve the efficiency of the country. The Vision of the **Ministry of Personnel & Training** is *“To create an enabling environment for the development and management of Human Resources of the Government for efficient, effective, accountable, responsive and transparent and ethical governance..”*

8. **Accountability**:- It is a crucial characteristic of good governance as the public administrators must be accountable to the general public and the established constitutional institutions. In terms of who is accountable to whom will depend on the decision or action taken and whether such decision or action was taken internally within a public institution or externally. In general, public-sector organizations and institutions as well as public administrators are accountable mainly to those who are affected by its decisions or actions. It is important to note that the accountability cannot be enforced without transparency and the rule of law.

VII. CONCLUSION

In the CWG Scam case, since the petitioners were presented before the court with serious allegations which included penalties of rigorous imprisonment, the author opines that receiving personal bond of mere 5 lakhs from individuals who hold a position of authority is not appropriate. They are capable of absconding from the countries along with the sureties too and

there is a high possibility of them influencing the witnesses and tampering the evidence. Thus, the judgement of the Hon'ble court was not appropriate.

Institutional weaknesses are not only present in the justice system but also in weak legislature, bureaucratic red tape and political instability which provides upon corruption. The issue of corruption can be effectively tackled if there is continuous checks and balances present in the system.

One of the significant tools to maintain International Transparency is the Integrity Pact whose adoption was consciously supported by the Department of Personnel Training, Central Vigilance Commission, the Ministry of Company Affairs, the Second Administrative Reforms Commission Report and the Ministry of Defense has included the stipulations in the procurement manual.

Though there have been technological advancements through digitisation, several portals have been made for the public to access and participate, all eight factors have not been fulfilled by the Indian government. Though the Central Bureau of Investigation and Enforcement Directorate have become proactive and are on a constant lookout for a powerful person committing financial crimes, there are still no records of the people who evade taxes. Therefore, the country needs stronger enforcement in order to fulfil the factors of good governance.

(A) Suggestions

1. The courts should not grant bail to the people who come from a place of power and authority, as they can influence the witness or the complainant in giving false witness or no witness at all. They can tamper the evidence and all the important documents relevant to the matter.
2. An amendment must be brought in the Prevention of Corruption Act which mentions that bail must not be granted to influential people or individuals who hold a position of authority.
3. The accused charged for corrupt activities must be kept as prisoners under trial.
4. A Civil Service Board must be established to restrain extreme political regulation over administration.
5. Preventive vigilance mechanism must be strengthened within the departments.
6. The Press Information Bureau, Government of India released that the Ministry of Law & Justice have established Fast Track Courts for Corruption through States Governments in consultation with the respective High Courts.

7. Drafting ***Transparency of the Rules Act (TORA)*** to increase transparency of rules, as recommended by the Economic Survey.

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