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# Corruption as a Social Parasite Instigating Transgression of Human Right

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## ABSTRACT

*Since the initiation of the Globalization and Liberalisation era, experimentation has been a necessity for the growth of a nation. This urge for experimentation coupled with the lack of efficiency has paved a way to maladministration and corruptive practices. Bribery, adulteration, manipulation and the like has gained immense contours as financial transactions which are made from illegal gains poses a serious threat to the nation's prosperity. Developing countries often bear a demolishing impact of these malpractices because the governance is still in the process of updating. With the increased use of technology, fast growth in artificial intelligence and experimentation with the new societal norms, we need a powerful, efficient, independent and impartial authority to keep a check over the conduct of the official dignitaries to supervise their action. A true system of check and balance is the need of the hour. But, in a developing country where administration is still at its growing stage and implementation of legal procedures is still challenging, basic human rights of the citizens are at stake. Human rights are directly interconnected with the sincerity of the bureaucrats. The present article aspires to discuss some instance wherein human rights are being infringed through the medium of these malpractices. Furthermore, the paper analyses as to how the International Conventions sketched for the upliftment Human Rights have reshaped and alleviated in the promotion and protection of International Human Rights.*

**Keywords:** *Corruption, Governance, International Instruments, Human Rights, Companies.*

## I. INTRODUCTION

We call “human rights” instead of the term “Community – based rights” is evince of the fact that human rights are a gift to all, irrespective of their caste, creed, religion, class and choices. The confrontations against the violation of human rights are not a modernist approach worldwide. Following the struggles of World War I, many scholars and national leaders called for a declaration that aimed at securing the most basic fundamental rights and human freedoms.<sup>2</sup>

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<sup>2</sup> Borgward., *Elizabeth, Internationalizing New Deal Justice, A New Deal For the World*, pp. 218–248, First Harvard University Press Paperback Edition, (2007) Available at <https://doi.org/10.4159/9780674281912-008>, last visited on 15.06.2021.

The need was felt to culminate the malicious practices of slavery, genocide, racism, and discrimination against the various class-based approaches. At this juncture, government despotism over many countries gave birth to a thirst for securing, protecting and promoting individual rights. In the course of World War II surge in the degree of inhumanity made it clear that previous efforts to secure individual rights and curtail the power of governments to violate these rights were inadequate.<sup>3</sup> It was realized that providential opportunity for adoption of a globally recognized instrument would enshrine these values. In this backdrop, the Universal Declaration of Human Rights (UDHR), 1948 was adopted as part of the emergence of the United Nations (UN).<sup>4</sup> According to the United Nations, human rights “Ensure that a human being will be able to fully develop and use human qualities such as intelligence, talent, and conscience and satisfy his or her spiritual and other needs.”<sup>5</sup> However, the responsibility of securing, promoting and protecting Human Rights, at broad level vests on the governance of a state. The government provides various instruments like Statutes, Treaties and Conventions that ensure a sense of security within the minds of the individuals of the nation. But, in situations where manipulative governance practices tend to wreck the human rights policies, what more options are the individuals open to? The developing nations, especially the third-world countries face human rights violations at a high level due to the parasite of corruption. Corruption sabotages the enjoyment of human rights and models human rights as just a vacuous approach.

#### **(A) Scope and limitation of the study**

This topical analysis emerges from the fact that corruption plays a vital incentive which triggers violation of human rights. It immobilizes nation’s growth; economic development, sustainability approaches, and even threatens individual growth. Corruption is deep rooted in Indian society. Thus, the worry that individual face while putting up with governmental norms, becomes difficult. Reporting cases of discrimination like child abuse, domestic violence, murder and the like against the so called ‘powerful class’ of the society is a terror for the downtrodden. Often, the officers are also threatened and are forced to give into the hands of the abusers. Thus, during the last few decades, following independence, corruption has widely spread like a pestilence. Corruption is becoming directly proportion to the growth of the technical and industrialization span.

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<sup>3</sup> M. R Ishay. *The History of Human Rights: From Ancient Times to the Globalization Era*, University of California Press Ltd., London, England, (2004)

<sup>4</sup> Human Rights Background, p. 5, Available at <https://www.theadvocatesforhumanrights.org>, last visited on 28.03.2022.

<sup>5</sup> *ibid*, supra notes at p.6

### **(B) Objectives of the study**

The main aim of the present study lies therein:

- It tries to raise the level of awareness about the parasite of corruption prevalent in India and briefly acknowledges the anti-corruption measures prevalent in recent times;
- It sketches the impact of grass-root level corruption affecting the life of the victims in a miserable way, culminating violation of basic human right- right to a dignified life;
- It analyses the strategies that the governance has adopted to combat with the malpractices of corruption;

### **(C) Research methodology**

The present study is a doctrinal and analytical study which ponders over the impact of human rights, globally, through a generation of artificial intelligence innovations, where detection of crime is furthermore difficult than commission of crimes.

## **II. CORRUPTION: CONCEPT AND SCOPE**

Corruption is neither a technical term nor a substantive offence. There is no widely accepted definition which would specify the boundaries of corruption. It is found that scholars define it from the view of his/her specialized area. However, most definitions emphasize the concept of corruption as an occupational crime which enhances financial gains. Corruption has a *close nexus* with organized crime. Corruption is not an independent crime, but is dependent upon associate crimes, the proceeds of which are the subject matter of the crime. Corruption is derived from the Latin verb ‘rumpere’, indicating ‘to break’.<sup>6</sup> According to this, corruption is where the law is clearly broken. It implies that all laws must be precisely stated, leaving no doubts about their meaning and no discretion to the public officials. A legal interpretation of corruption provides a clearly demarcated boundary between what is a corrupt activity and what is not. ‘If an official’s act is prohibited by laws established by the government, it is corrupt; if it is not prohibited, it is not corrupt even if it is abusive or unethical’.<sup>7</sup> Al. Kayed defines it as “ an act by a public or private employee or citizen that violates the laws, rules, regulations and principles governing the proper discharge of one’s official duties in the expectation of personal gains” (El.Kayed, 1996:11). In accordance with the opinion of Arnold J. Heidenheimer, the concept of

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<sup>6</sup> Achim. Monica Violeta, Borlea. Sorin Nicolae, *Economic And Financial Crime: Corruption, Shadow Economy, And Money Laundering*, p. 7, Springer Nature Publishers, Switzerland, ISSN: 1571-5493, 2020.

<sup>7</sup> Raed S. A Faqir, Muddather Abu- Karaki, Majed Ahmad K. Marashdah, *The Impact of Corruption on Human Rights & the Legal Mechanism for its Compacting: Case of Jordan*, *Mediterranean Journal of Social Sciences*, pp. 454-456. ISSN 2039-2117, Vol. 2, No. 3, September 2011

corruption indicates the “pecuniary gains on the process of social interaction”<sup>8</sup> while in the view of Lasswell, it means “violation of public interest” (Kim, 1990:177-82).<sup>9</sup> However, the most common definition, as is given by the Non-Governmental Organization, **Transparency International**, is that “Corruption is the abuse of entrusted power for private gain.”<sup>10</sup> Such abuse may happen on the level of day-to-day administration and public service, i.e. “petty corruption”, or on the high level of political office, i.e. “grand corruption”.

### III. CORRUPTION: A BRIEF TERM AND FACTS

The primary goal at the time was to eliminate the unfair competitive advantages of companies paying bribes in the new markets especially of Eastern Europe. Because of the growing power of large corporations and Non- State actors such as FIFA, the abuse of obligations arising from private law – in a “private” principal-agent relationship– is also increasingly qualified as corruption.<sup>11</sup> The relevant criminal offences are active and passive bribery, criminal breach of trust, graft, illicit enrichment, and so on. In the private sector, offences include anti-competitive practices and regulatory offences.

The 172 ratifications of the UN Convention against Corruption (UNCAC)<sup>12</sup>, nine of which was adopted in 2003, shows that States around the world are – at least verbally – committed to the international fight against corruption. This appears to be a logical reaction to the fact of globalization, due to which practically all cases of grand corruption have a transnational element. In the 1990s, the United States achieved adoption of a treaty to criminalize foreign bribery, namely the OECD Anti-Bribery Convention of 1997.<sup>13</sup> Today, the international leading authority on corruption mentions the following goal of international anti-corruption policy:

- firstly, to improve the functioning of the global markets;
- secondly, to promote economic growth;
- thirdly, to reduce poverty; and

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<sup>8</sup> Heidenheimer, Arnold J., *Political Corruption: Readings in Comparative Analysis* New Trunswick: Transaction Books, (1978).

<sup>9</sup> Ibid at Supra notes 7, pp. 455-456.

<sup>10</sup> Anne Peters, *Corruption as a violation of International Human Rights*, Volume 29, Issue 4, November 2018, European Journal of International Law, , Available at <https://academica.oup.com>, last visited on 30.03.2021.

<sup>11</sup> Prof. Dr. Anne Peters, *Corruption as a violation of international human rights*, European Journal of International Law, pp. 1251-1287, last visited on 29.4 2018

<sup>12</sup> *United Nations Convention against Corruption*, Adopted by the UN General Assembly: 31 October 2003, by Resolution 58/4, 14 December 2005, Available at <https://www.unodc.org/unodc/en/corruption/uncac.html>, last visited on 25.06.2021.

<sup>13</sup> *Convention On Combating Bribery Of Foreign Public Officials In International Business Transactions*, OECD, Adopted by the Negotiating Conference on 21 November 1997, Available at <https://www.oecd.org/daf/anti-bribery/ConvCombatBribery>, last visited on 28.06.2021

- fourthly, to safeguard the legitimacy of the State.<sup>14</sup>

Anti-corruption has largely been merged with the good governance agenda and the development discourse, and good governance – as well as development – is nowadays often analysed through a human rights lens.<sup>15</sup>

#### IV. CORRUPTION AS IS SEEN IN GRASS-ROOT LEVEL OF THE INDIAN SOCIETY

Hierarchy in bureaucracy has been initiated with the motive of ensuring the systems of check and balances. But, quiet pessimistically, this has proved to be the worst misdemeanor. One or the other chair of the hierarchy of every organ is practically clenched in suborn. The police sector in India is highly susceptible to corruption. Three-quarters of surveyed household in India perceive the police to be corrupt and citizens frequently encounter bribery demands while dealing with officers. The security forces remain subject to political pressure, which in turn leads to instances of corruption. Instances of security officials being held accountable for misconduct were reported throughout 2015, notwithstanding, impunity was widespread at all levels of the institution (Country Reports on Human Rights Practices, 2015.)<sup>16</sup>. Again, the risk of corruption while dealing with Indian Judiciary, especially at the lower level court cannot be overlooked. Bribes and irregular payments are often exchanged in return for favorable court decisions.<sup>17</sup> Prosecution of the corruption can be cited as an example, whereby any appeals in the prosecution of office abuse by public servants have to be authorized by a minister prior to launching of the appeal, which has severely hindered the process by the abuse of political power. Widespread corruption coupled with resources shortages negatively impacts the efficiency of the court system.<sup>18</sup> Businesses identify public procurement in India as especially vulnerable to corruption. Various companies reported that public funds are at times diverted to companies, individuals or groups as a result of corruption and that favoritism influences these decisions of governmental officials. Bribes and irregular payments are often exchanged in return for government contracts and licenses.<sup>19</sup> The public services carry high corruption risk for businesses. Companies encounter red tape, petty corruption, bribery and facilitation payments

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<sup>14</sup> Prof. Dr. Anne Peters, *Corruption and Human Rights*, Basil Institute of Governance, p.7, Available at [https://www.mpil.de/files/pdf4/Peters\\_Corruption\\_and\\_Human\\_Rights20151.pdf](https://www.mpil.de/files/pdf4/Peters_Corruption_and_Human_Rights20151.pdf), last visited on 22.03.2021

<sup>15</sup> Prof. Dr. Anne Peters, *Corruption and Human Rights*, Basel Institute on Governance, p.10, Available at <https://www.mpil.de>pdf4>, last visited on 27.03.2021

<sup>16</sup> *Indian Corruption Report*, Risk and Compliances Portal, Powered by GAN, Available at <https://ganintegrity.com>, last visited on 01.04.2021

<sup>17</sup> *The Global Competiveness Report, 2016-17*, World Economic Forum, 28 September 2016, Available at <https://weforum.org>, last visited on 01.04.2021.

<sup>18</sup> *Indian Corruption Report*, Risk and Compliances Portal, Powered by GAN, Available at <https://ganintegrity.com>, last visited on 01.04.2021

<sup>19</sup> *The Global Competiveness Report, 2016-17*, World Economic Forum, 28 September 2016, Available at <https://weforum.org>, last visited on 01.04.2021

when dealing with Indian Public Administration.<sup>20</sup> Thus, we clearly see that almost every system of governance introduced with the purpose of securing public shielding is grappled with corruption. The judiciary, the administration and even the police forces are expected to save the rights of the citizen. But, it turns out like we, the masses have to pay before demanding our rights. Thereby, human rights are practically “paid rights” and not “acquired or inherited rights”. In this pessimistic situation of the nation, the least hope we deduce are the wail of the activist. Activist from different parts and different fields have make some differences.

## V. ANTI-CORRUPTION LAWS

Even in the midst of various discomfort, we as a nation which stands together have got our back supported by the constant effort of preventing corruption and securing human rights in the best possible manner.

- **Corruption as a Violation of Fundamental Obligation Set Out in Article 2(1) Of the ICESCR.**<sup>21</sup> It sets out the fundamental obligations of the state parties containing four components that are subjected to monitoring by the treaty body, “The Committee on Economic, Social and Cultural Rights”.<sup>22</sup> It says:
  - to take deliberate, concrete and targeted steps;
  - with a view to achieving progressively the full realisation of the recognized rights;
  - To maximum of its available resources
  - In all appropriate means.
- **United Nations Convention against Corruption (UNCAC):**

UNCAC is the most extensive and most widely ratified international convention addressing corruption. In addition to prohibiting bribery and other forms of corruption, the drafters of UNCAC recognized that effective anti-money laundering strategies are an important factor in preventing and detecting large-scale corruption.<sup>23</sup> Like other forms of corruption, the

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<sup>20</sup> Indian Corruption Report, Risk and Compliances Portal, Powered by GAN, Available at <https://ganintegrity.com>, last visited on 01.04.2021

<sup>21</sup> International Covenant on Economic, Social and Cultural Rights, United Nations Human Rights, Office of the High Commissioner, General Assembly resolution 2200A (XXI), Adopted on 16 December 1996, Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>, last visited on 22.06.2021

<sup>22</sup> Dr. Anne Peters, *Corruption as a violation of International Human Rights*, Volume 29, Issue 4, European Journal of International Law, November 2018, Available at <https://academica.oup.com>

<sup>23</sup> *United Nations Convention against Corruption*, Adopted by the UN General Assembly: 31 October 2003, by Resolution 58/4, 14 December 2005, Available at <https://www.unodc.org/unodc/en/corruption/uncac.html>, last visited on 25.06.2021.

transnational nature of money laundering necessitates international cooperation and consistent standards in anti-money laundering efforts. UNCAC therefore addresses money laundering in both Chapter II (Preventative Measures) and in Chapter III (Criminalization and Law Enforcement). Article 14 sets out standards for State Parties to follow in developing anti-money laundering measures, while Article 23 of UNCAC criminalizes the laundering of the proceeds of corruption.<sup>24</sup>

- In India, various Institutional measures have been adopted by legal and administrative regulations to certify that corrupt individuals are prosecuted under the law. Before India's independence, the British established the Delhi Special Police Establishment ("DSPE") to control corruption, which was rampant during the Second World War. It was in 1947, the Prevention of Corruption Act was passed and an Administrative Vigilance Division ("AVD") was formed in the Ministry of Home Affairs in 1955. This led to the appointment of vigilance officers in each ministry to inquire into charges of corruption against employees in various organizations. Interestingly, the First Five Year Plan in 1952 dealt with the issue of integrity in public life, and observed that corruption "not only inflicts wrongs which are difficult to redress, but it undermines the structure of administration as well as in public life." The fact that corruption potentially affects development was perceived by the early planners of India, but the legal and institutional measures that were attempted to address the issue were half-hearted, ineffective, and lacked enforcement mechanisms. In one of the earliest methodical approaches to tackle corruption in India, the Santhanam Committee Report recommended the establishment of the Central Vigilance Commission ("CVC"), which would be independent of ministerial control. The CVC was formed in 1964. Amendments to the Prevention of Corruption Act were initiated to broaden the definition of criminal misconduct to include those in possession of assets beyond known means of income for which no satisfactory information was available. The creation of the Central Bureau of Investigation ("CBI") in 1963, which incorporated the DSPE as its investigation and anti-corruption division, was also one of the outcomes of the Santhanam Committee Report.<sup>25</sup>

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<sup>24</sup> *The United Nations Anti-Corruption Convention and Money Laundering*, Indira Carr, Miriam Goldby, Working Paper, 2009, Available at <http://ssrn.com/abstract=1409628>, last visited on 28.03.2021.

<sup>25</sup> C. Rajkumar, *Corruption in India: A violation of Human Rights, Promoting Transparency and the Right to Good Governance*, University of California, Davis, Vol. 49:741, pp. 747-748.

## **VI. ESTABLISHING RELATIONSHIP BETWEEN CORRUPTION AND HUMAN RIGHTS: THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY**

The International Council recognizes that, to combat corruption effectively, policies must deal with corrupt practices in the private sector.<sup>26</sup> Corporate social responsibility (CSR) programs take this view. The Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises has included corruption among the abuses of human rights committed by transnational corporations.<sup>27</sup> The CSR initiative of the UN, the Global Compact, also contains an Anti-Corruption Principle: “Business should work against corruption in all its forms, including extortion and bribery.” The Council also acknowledges the importance of dealing with corruption in development assistance: both donor and recipient countries need to tackle corruption in aid programs because it seriously undermines their usefulness and no doubt harms the human rights of beneficiaries.<sup>28</sup>

Corruption has widely violated human rights which in turn influence public attitudes. When people become aware of the damage corruption does to public and individual interests, and the harm that even minor corruption can cause, they are likely to support campaigns and programs to prevent it. This is important because, despite strong rhetoric, the political impact of most anti-corruption programs has been low. Identifying the specific links between corruption and human rights may persuade key actors – public officials, parliamentarians, judges, prosecutors, lawyers, business people, bankers, accountants, the media and the public in general – to take a stronger stand against corruption. This may be so even in countries where reference to human rights is sensitive.<sup>29</sup>

## **VII. WHISTLE BLOWING MECHANISM AS A NEW AGE WEAPON TO FIGHT CORRUPTION**

To fight with the growing malpractices and maladministration, a very innovative method was adopted by the corporate world, the *whistle blowing procedure*. The concept was taken from the British administration, wherein the British Policemen blew their whistle whenever they observed commission of a crime. The gathering of information by appointing a spy is not a new phenomenon in Indian Culture. Tradition and culture enriched India has inherited it. The informations so received by Lord Rama by Vivishana possibly justify the age old tradition of

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<sup>26</sup> *UN Convention Against Corruption*, 2003, United Nations Office on Drugs and Crime Vienna, New York

<sup>27</sup> U. N. Doc. E/CN.4/2006/97, para. 25-27

<sup>28</sup> *Corruption and Human Rights: Making the connection*, International Council on Human Rights Policy, p. 2

<sup>29</sup> *Ibid*, p.5

being alerted. Even police and crime officers appoint informants to get information about criminals. Possible regard to evolution can also be hailed from the concept of night watchmen, who actually blows the whistle. It's an age old and philanthropic tradition worldwide that the watchman blows whistle while guarding villages and towns at the night so that he could make the masters aware of the probable crime. In the same way, a whistle blower is expected to make the company and its investors aware about the possible malfunctions and maladministration. To blow the whistle on someone is alert the third party that the person has done or is doing something wrong. Literally, the term means that one can make a noise to alert others to the possible and probable misconduct.<sup>30</sup> The subject of whistle blowing has received considerable scholarly interest from as early as 1980s.<sup>31</sup> The increasing relevance and meaning of whistle blowers have been established in the last decade after "Time Magazine" proclaimed whistle blowers as the person of the year 2002. Some claims whistle blowers are noble characters who make professional and personal sacrifices to expose organizational wrongdoing. Others suggest that they are just disgruntled employees, who maliciously and recklessly accuse individuals or organisations they believe have harmed them.<sup>32</sup> It has now gain legal force as well, as evident from Section 177(9) of the companies act, 2013. Under this section, certain companies have to establish vigil mechanism or whistle blowing procedure to report any unethical behavior or other concerns of the management.

#### **(A) Prior to the arrival of the whistle blowing protection act**

The issue relating to the protection of whistle blowers in India caught attention of the entire public in November 2003 when **Satyendra Dubey**, the project director of the National Highway Authority of India (NHAI) was killed. His tragic death came after what he had written to the office of the then Prime Minister, Mr. Atal Bihari Bajpayee detailing corruption in the Golden Quadrilateral Highway Construction Project.<sup>33</sup> The letter contained the corruption intimation and a request to maintain secrecy as well. However, the letter was forwarded to various concerned departments without making Dubey's identity. But, ultimately the secrecy wasn't be able to be maintained and thus it led to a huge commotion resulting in Dubey's Murder, leading to a public outcry at the failure to protect him. Consequently, in April 2004, the Supreme Court

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<sup>30</sup> R.K. Singh, *Amalgamation and Merger of Companies and the WTO*, Eastern Law House, 2013, p. 179.

<sup>31</sup> W. Vandekerckhove, D. Lewis, *The Content of Whistle Blowing Procedures: A Critical Review of Recent Official Guidelines*, Journal of Business Ethics, 2012, p. 253.

<sup>32</sup> Barbara Culiberg, Katarina Katja Milhelic, *The Evolution of Whistle Blowing: A Critical Review and Research Agenda*, Journal of Business Ethics, 2017, Available at <https://www.researchgate.net/publication/304186177>.

<sup>33</sup> *Three get Life Imprisonment in Satyendra Dubey Murder Case*, March 27, 2010, Available at <https://www.google.com/amp/s/www.thehindu.com/news/national/three-get-life-in-satyendra-dubey-case/article16625349.ece/amp>, last visited on 21.4.2022

of India pressed the Government to issue an official order, “*The Public Interest Disclosure and Protection of Informers Resolution, 2004*”. The Resolution designated the *Central Vigilance Commission*” (CVC) as the nodal agency for handling complaints on Corruption.<sup>34</sup>

**(B) Initiatives after consecutive attacks:**

The continuous mistreatments of the whistle blower and consecutive attacks and murders of the RTI activists by the anti social elements with vested interest have prompted the government to draft a bill on whistle blowers protection, known as public Interest Disclosure (Protection of Informers Bill), 2010. Ultimately, the Whistle Blowers Protection Bill, 2011 was approved by the Cabinet as part of a drive to eliminate corruption in the Country’s Bureaucracy, passed by the Lok Sabha on 27 December 2011, by the Rajya Sabha on 2 February 2014 and received the President’s assent on 9 May 2014. The law was further amended in 2015.<sup>35</sup>

**(C) The Whistle Blowers Protection Act, 2014 (Act No. 17 Of 2014):**

The Act was envisaged to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or willful misuse of power or willful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimization of the person making such complaint and for matters connected therewith and incidental thereto.<sup>36</sup> The Central Vigilance Commission is the competent authority to deal with Corporate Corruption. The Act mainly focuses on four points<sup>37</sup>:

- **The Disclosure Mechanism<sup>38</sup>:** The Act provides that any public servant or any other person, including a non- governmental organisation may make a public disclosure to a competent authority, i.e., the Central Vigilance Commission or the State Vigilance Commission.
- **The Procedure of Inquiry<sup>39</sup>:** The Vigilance Commission first ascertains the identity of the complainant and has to protect the identity, unless the complainant has in his case revealed the identity to any authority. If the commissioner is convinced about the matter so reported, an inquiry is initiated and facts are collected to prosecute the guilty. The

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<sup>34</sup> A. C. Fernando, K. P. Murulidharan, et al, *Corporate Governance: principles, policies and practices*, 3<sup>rd</sup> ed. 2018, Pearson.

<sup>35</sup> Ibid.

<sup>36</sup> Preamble, The Whistle Blowers Protection Act, 2014, Subs. by Act 17 of 2015, w. e. f. 13-5-2015.

<sup>37</sup> A. C. Fernando, K. P. Murulidharan, et al, *Corporate Governance: principles, policies and practices*, 3<sup>rd</sup> ed. 2018, Pearson.

<sup>38</sup> Chapter II, The Whistle Blowers Protection Act, 2014,

<sup>39</sup> Chapter III & IV, The Whistle Blowers Protection Act, 2014,

appropriate Court can take criminal proceeding against the guilty person. But, if prior to this, an inquiry is already initiated by any Court or tribunal, based on any PIL, the Vigilance Commission is exempted from further proceedings.

Section 11 of the Act further provides exemption to disclosure of proceedings of the Cabinet if it is likely to affect the sovereignty of India, the security of the country, matters affecting the friendly relations with foreign states, public order, decency or morality which has to be certified by the Secretary of the State or the Central Government.

- **The Protection of the Whistle Blowers<sup>40</sup>:** The Act protects the Whistle blowers, who brings for the wrong doing of a person or a community at the larger interests of the public, from harassment, the loss of employment, victimization, etc. The Commission shall protect the identity of the Complainant and related documents, unless it decides against doing so, or is required by a court to do so.
- **The Penalty, in case of false complaints<sup>41</sup>:** The act aims to balance the need to protect the honest officials from undue harassment and protecting persons making a public interest disclosure. It punishes any person making false complaints. In case for not furnishing reports to the Vigilance commission, the penalty provides for a fine of up to ₹250 which shall be imposed for each day till the report is submitted. However, the total penalty shall not exceed ₹50,000. When a person knowingly makes false or misleading information and disclosures with a mala fide intention, then the penalty is minimum 2 years of imprisonment and a fine which may extend up to ₹30,000.

### **VIII. HOW CAN HUMAN RIGHTS AWARENESS PREVENT CORRUPTION?**

On a positive note, raising awareness on the outpouring issue of human rights has helped a lot in curbing out the malpractices of corruption. There is an uprising urge to fight against discrimination, the human right to seek and receive information about governmental proceedings, the effective utilization of political rights' counterbalances, growing disclosure and transparency norms in the private as well as public sector.<sup>42</sup> It overall ensures a sense of true Democracy within the masses have spread the impulse to confront challenges against these malpractices. It stands at the forefront to fight for individual rights. In this regard, some scholars and practitioners have put forward a theory of "Human – Rights Based approach" to fight

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<sup>40</sup> Chapter V, The Whistle Blowers Protection Act, 2014,

<sup>41</sup> Chapter VI, The Whistle Blowers Protection Act, 2014,

<sup>42</sup> *Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities*, International Council on Human Rights Policy (ICHRP), 9 November, 2010, Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1705396](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1705396), last visited on 06.05.2021.

corruption. It seeks to emphasize that centrality of individuals as “right-holders” and the State as “duty-bearers”.<sup>43</sup> The Advantages of the theory can be laid as:

- Victim-centric: This approach pushes the victims to fight for their right. This approach focuses not only on the economic and criminal consequences, but also on the victims, especially belonging to the vulnerable groups, which in turn, empower the individuals affected by corruption and transform them into actors in the fight against corruption.<sup>44</sup>
- Increasing Transparency and Participation: A thirst for scrutiny and monitoring the governmental decision making process, increases the probability that corruption may be detected and thereby Human Rights can be addressed, promoted and protected, during the process. Transparency and participation are principles of Anti-Corruption Laws as are set out in the “United Nations Convention against Corruption”.<sup>45</sup>
- Remedies to victims: As a measure to provide the remedies to fight against corruption by the victims, can draw the attention of the international and domestic adjudicators in monitoring mechanisms, which can in turn help to address the malpractice and provide modernist approach of fighting corruption.<sup>46</sup>

## IX. CONCLUSION AND SUGGESTION

Political hindrances on issues associated with the mechanism of tackling corruption have resulted in a sweeping inadequacy in controlling corruption. A human rights approach in the Present Indian setting is inadequate due to the lack of literacy rate, awareness and analogous limitations.<sup>47</sup> Thus, to combat and confront the challenges of corruption and thereby fight for our own inherited and acquired rights, we as a citizen of India need a walk a long way ahead. Through this analysis, some brief suggestions can be deduced:

- A better implementation mechanism is the need of the hour. People need to be aware about their rights. When a person is victimized by a corrupted chair, he should be aware of the measures which can probably lead him in the path of seeking justice and put him in the urge of fighting for his rights;

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<sup>43</sup> *Corruption and Human Rights*, E4J University Module Series: Anti Corruption, The Doha Declaration: Promoting a Culture of Lawfulness, Available at <https://undoc.org>, last visited on 02.04.2021.

<sup>44</sup> Langseth. Petter, *Empowering the Victims of Corruption through Social Control Mechanisms*, Global Program against Corruption, Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, United Nations Office at Vienna, Presented at IACC’s Meeting, 7-11 October 2001, Prague.

<sup>45</sup> *OHCHR and Good Governance*, United Nations Human Rights, Office of the High commissioner, Available at <https://www.ohchr.org/en/good-governance/about-good-governance>, last visited on 25.06.2021

<sup>46</sup> Kidd. John, Richter Frank-J rgen, *Fighting Corruption in Asia: Causes, Effects, and Remedies*, World Scientific Publisher Co. Pte. Ltd., Singapore, 2003, , pp. 22-24

<sup>47</sup> Ibid at supra notes, pp. 32-35

- There is a high necessity of the enforcement of some external agency, like Non-Governmental Associations and Organizations of Human Rights Activists, which would help the needy. Financial benefit shall be put aside. Working with the sole motive of fighting for Human Rights against Corruption, as an impartial and sovereign body is a must necessity;
- Exigency to implement media and social media as an instrument to fight for corruption can prove to be the best affective pavement;
- Stringent laws and Quasi- judicial body, impartial and independent to check on the public servant can reduce the rate of corruption;
- Implementation of technological systems and a check of the bank details of the public servant by the ombudsman can prove to be the best way to check the rate of Corruption.

We have come along a long way, fighting against a lot of discrimination and established Human Rights in a wide sphere, but to achieve more liberty, we have to press on to even the least possible opportunity, because every citizen of a nation deserves to live a dignified life as is rightly put forth in the Constitution of India.

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