

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

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Evaluating the Concept of Corruption through Kautilya's Arthashastra: A Comparative Study in view of Modern Application

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ABSTRACT

The concept of corruption has been largely criticised by eminent multidisciplinary personalities across the planet. Many of the developed and developing nations across the world do take extensive efforts to wipe out this evil to develop and progress the state on a pure basis. It must be understood that the term corruption isn't related only to pecuniary malpractices it covers within itself enormous amplitude of issues which may affect any systems effective working. However this paper is restricting only to the legal aspects of corruption in reference to hindrance to welfare. This paper tried to evaluate the concept of Corruption with the help of Kautilya's Arthashastra. And thus, it is providing the modern application for the same.

Keywords: Kautilya, Arthashastra, Corruption, ancient literature, modern application.

I. INTRODUCTION

The Prevention of Corruption Act 1988 did not provide a transparent definition of this term 'Corruption'. Political corruption results in a degree of wealth among a minority of elite officialdom, leading to extensive deficiency of welfare. Additionally, political corruption has secondary and tertiary effects throughout society that further exacerbate welfare.³

Corruption is an insidious plague that features a wide selection of corrosive effects on societies. It undermines democracy and therefore the rule of law, results in violations of human rights, distorts markets, erodes the standard of life and allows gangland, terrorism and other threats to human security to flourish. Corruption is defined because the use of position for personal gains. Scales of corruption are often Grand, Middling or Petty and payment of bribes are often thanks to collusion between the bribe taker and therefore the bribe giver, thanks to coercion or maybe anticipatory. Existence of corruption implies that there are corrupt people, there also are

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³ Heather Crowe, *The Impact of Political Corruption On Social Welfare in the Federal Republic of Nigeria*, available at stars.library.ucf.edu/cgi/viewcontent.cgi?article=2912&context=etd, last seen on 13/03/2019.

corrupt practices, and there's a corrupt system. Therefore, all the three need to be fought simultaneously to eliminate the vice of corruption. This system provides for taking over the corrupt persons through a legal mechanism, which has not been found to be very effective. Many corrupt practices fall outside the purview of existing laws and wish to be tackled by people themselves. The responsibility for handling corrupt people, corrupt practices and corrupt systems devolves equally on individuals, civil society institutions, legislature, executive, and therefore the judiciary. This evil phenomenon is found altogether countries—big and little, rich and poor—but it's within the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to supply basic services, feeding inequality and injustice and discouraging aid and investment. Corruption may be a key element in economic underperformance and a serious obstacle to poverty alleviation and development.⁴

According to CVC's Annual Report 2019, the total 6,226 corruption cases pending trials, 182 were pending for more than 20 years, 1,599 for more than ten years and upto 20 years, 1,883 for over five years and upto ten years, 1,177 for over three years and upto five years and 1,385 for less than three years, as on December 31, 2019.⁵ This reported number doesn't seem to be much higher if generally compared however it must be seen that the powers to affect the matter of corruption are given to the state governments where in political influence can cause securitisation of elite of persons involved in corruption.

II. PREVENTIVE PRINCIPLES IN ARTHASHASTRA

Corruption is so obvious, and yet so mysterious. Even Kautilya reflected serious concerns about opacity within the operations of the planet of the corrupt. Illegal transactions were so shrouded in mist that he compared embezzlers to fish moving under water and therefore the virtual impossibility of detecting when precisely the fish is beverage. He also noted that while it's possible to determine the movements of bird flying within the sky, it's difficult to measure the corrupt activities of state officials. During Mauryan times, superintendents were the very best officials, an edge they received for possessing the specified 'individual capacity' and adequate 'ministerial qualifications'. Given the overall emphasis of Kautilya on observing ethics and morality in reference to the functioning of a state, it seems the choice process would have involved not just a scrutiny of the tutorial attainments but also the proper quite aptitude for the

⁴ The United Nations Convention Against Corruption, available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf, last seen on 13/03/2019.

⁵ <https://www.ndtv.com/india-news/nearly-700-corruption-cases-with-cbi-25-for-over-5-years-central-vigilance-commission-cvc-2302341> . last seen on 07/05/2020

work including traits of honesty and impartiality. This shows that despite the best care taken in recruiting officials, corrupt persons made their way into the system. Kautilya was an excellent administrative thinker of his times. As he argued, an excessive amount of private interaction or union among the upper executives results in departmental goals being compromised and results in corruption. This is often because human emotions and private concerns act as impediments to the successful running of an administration, which is essentially a rule-based impersonal affair. Similarly, dissension among executives when team effort is required leads to a poor outcome. Kautilya suggested that the decline in output and corruption are often curbed by promoting professionalism at work. The superintendents should execute work with the subordinate officials like accountants, writers, coin examiners, treasurers and military officers during a solidarity. Such an attempt creates a way of belonging among members of the department who start identifying and synchronising their goals with the larger goals of the organisation, thereby contributing to the eventual success of the state. Kautilya provides a comprehensive list of 40 sorts of embezzlement. Altogether these cases, the concerned functionaries like the treasurer (nidhayaka), the prescriber (nibandhaka), the receiver (pratigrahaka), the payer (dayak), the one that caused the payment (dapaka) and therefore the ministerial servants (mantri-vaiyavriyakara) were to be separately interrogated. Just in case any of those officials were to lie, their punishment was to be enhanced to the extent administered to the chief officer (yukta) mainly liable for the crime. After the enquiry, a public proclamation (prachara) was to be made asking the folk to say compensation just in case they were aggrieved and suffered from the embezzlement. Thus, Kautilya was concerned about carrying the cases of fraud to their logical conclusion. The Arthashastra states that a rise in expenditure and lower revenue collection (parihapan) was a sign of embezzlement of funds by corrupt officials. Kautilya was sensitive enough to acknowledge the waste of labour of the workforce involved in generating revenues. He defined self-enjoyment (upbhoga) by government functionaries as making use of or causing others to enjoy what belongs to the king. He was perhaps alluding to the present practice of misusing government offices for selfish motives like unduly benefitting the self, relations, friends and relatives either in monetary or non-monetary form which harms the larger public good. Kautilya was also not unaware of corruption within the judicial administration. He prescribed the imposition of varying degrees of fines on judges trying to proceed with an attempt without evidence, or unjustly maintaining silence, or threatening, defaming or abusing the complainants, arbitrarily dismissing responses provided to questions raised by the judge himself, unnecessarily delaying the trial or giving unjust punishments. This shows that there have been incidents of judicial pronouncements

being biased, favouring one party to the detriment of others. In an environment of corruption prevailing within the judicial administration also, Kautilya perhaps wanted to make sure that the litigants are encouraged and given voice to air their legitimate grievances. He expected judges to be more receptive to the complaints and be fair in delivering justice. Kautilya prescribed reliance on an elaborate network for detecting financial misappropriation and judicial impropriety. Spies were recruited for his or her honesty and good conduct. They were to stay a watch even over the activities of accountants and clerks for reporting cases of fabrication of accounts (avastara). On successful detection of embezzlement cases, Kautilya advocated hefty fines to be imposed aside from the confiscation of ill-earned hordes. If a functionary was charged and proved even of one offence, he was made in charge of all other associated offences associated with the case. Since taxes paid by the people are utilised for his or her welfare, any loss of revenue affects the welfare of the society at large. This is often precisely the rationale why Kautilya explicitly argued that the fines imposed should be “in proportion to the worth of labor done, the amount of days taken, the quantity of capital spent and therefore the amount of daily wages paid”. The threat of fines being imposed and subsequent public embarrassment do deter judicial officials, to some extent, from resorting to corrupt practices. But Kautilya was proactive in laying down traps to catch public functionaries with loose morals and inclination to resort to bribery or seek undue favour. The strategy he prescribed was for secret agents to require a judge into confidence through informal channels and ask him to pronounce judgments favouring their party reciprocally for a payment. If the deal was fixed, the judge was treated as accepting the bribe and prosecuted accordingly.

Interestingly, Kautilya also addressed the concept of whistle-blowers. Any informant (suchaka) who provided details about financial wrongdoing was entitled a gift of one-sixth of the quantity in question. If the informant happened to be a government servant (bhritaka), he was to tend just one twelfth of the entire amount. The former's share was more because exposing corruption while being outside the system was tougher. But within the case of bhritakas, striving for a corruption free administration was considered more of a requirement that was ideally expected of them. Kautilya also warned at an equivalent time about providing wrong information or not having the ability to prove the accusations. He advocated either monetary or punishment for such informants in order that the tool couldn't be misused for settling personal scores and harassing genuine officials. If an informant himself were to backtrack on the assertions he made against the accused, Kautilya suggested the execution for him. This provision wasn't only draconian, but would have effectively discouraged whistle-blowers. While such provisions would definitely make people consider before levelling accusations, the threat of execution was

too harsh to assist people uproot the corrupt. In an environment of all round corruption, honesty becomes a virtue and not a desired duty. Kautilya argued for advertising the cases of increase in revenue thanks to the honest and dedicated efforts of the superintendents by giving rewards and promotions. Bestowing public honour creates a way of pride and boosts the motivation and morale of honest officials. They act as role models for ideal youngsters who wish to hitch the administration and serve the state. Kautilya also proposed variety of measures to avoid cases of corruption arising in the least. Several positions in each department were to be made temporary. Permanency for such positions was to be reserved as a gift granted by the king to those that help augment revenue instead of eating up hard-earned resources. Kautilya also favoured the periodic transfer of state servants from one place to a different. This was through with the intention of not giving them enough time to select holes within the system and manipulate it to their advantage. Kautilya wrote that “dispensing with (the service of too many) government servants is conducive to financial prosperity”. this is often not only due to the reduction in expenditure on salary but rightsizing the bureaucracy also leads to faster deciding and therefore the transaction of state business without unnecessary delay and bureaucratic procedure. This effectively reduces the scope for bribery especially and corruption generally. It is interesting to notice that the superintendents couldn't undertake any new initiative (except remedial measures against imminent danger) without the knowledge of the king. Kautilya, therefore, laid emphasis on some quite an accountability mechanism. Aside from using the services of spies for unearthing cases of fraud, Kautilya also talked about an intra-departmental, self-scrutinising mechanism under the headship of chief officer (adhikarna) to detect and deter imminent cases of corruption. The Arthashastra of Kautilya thus shows that the traditional system of governance and administration was quite contemporary in operational guidelines when handling corruption. It also quite convincingly demonstrates that corruption isn't an exclusive feature of recent times alone. the very fact that the menace has survived and thrived through the ages speaks volumes about its endurance. Governments of all historical eras have recognised its illegality and devised legal instruments to tackle the matter, but they need not been ready to overcome its spread also as acceptability in society. If corruption has persisted through centuries, what's it that has stopped administrative systems from eradicating it? Was Kautilya right in his generalisation that ‘humans are fickle-minded’? the bulk would disagree. Interestingly, however, even Kautilya, despite having such an understanding of attribute and behaviour, never used it to justify corruption. Rather, he realised its inevitability³⁰ but chose to stay positive and committed to root it call at the administration through elaborate and strict

measures. this is often the important significance of the Arthashastra as far because the issue of corruption in contemporary times cares.⁶

III. EXISTING ANTI-CORRUPTION LAWS AND POLICIES

“The Fight against corruption can be successful if the citizens stand up and take up the fight. The Anti-Corruption Bureau will always be there to assist the citizens, whenever they stand up against any corrupt practice.”

The mechanism for control and regulation of corruption in India is governed by the Prevention of Corruption Act 1988, and were as the pending bill for its amendment of 2013 has proposed stringent provision to curb the mal practices of corruption especially in the ward of governmental mechanism as well as others. The Prevention of Corruption Act, 1988 covers taking a bribe, criminal misconduct and mandates prior government sanction to prosecute a public official. In 2008, an amendment Bill was introduced which included provisions related to extending prior sanction for prosecution to former public officials, and the attachment of property of corrupt public officials. However, that Bill lapsed.

In addition to the laws thereby even listed below are some of the legislations which do enforce a controlling measure on the practice of corruption-

(A) The Indian Penal Code, 1860

Public servants in India can be penalised for corruption under the Indian Penal Code 1860 and the prevention of Corruption Act, 1988. The IPC defines “public servant” as a government employee, officers in the military, navy or air force; police, judges, officers of the court of Justice, and any local authority established by a central or state Act.

Section 169 pertains to a public servant unlawfully buying or bidding for property. The public servant shall be punished with imprisonment of up to two years or with fine or with both. If the property is purchased, it shall be confiscated.

Section 409 pertains to criminal breach of trust by a public servant. The public servant shall be punished with life imprisonment or with imprisonment of up to 10 years and a fine.

(B) Prevention Of Money Laundering Act, 2002

The Act states that an offence of money laundering has been committed if a person is a party to any process connected with the proceeds of crime and projects such proceeds as untainted property. “Proceeds of crime” means any property obtained by a person as a result of criminal

⁶ “Corruption in Administration: Evaluating the Kautilyan Antecedents”- Article by Tarun Kumar; Also refer the book “Kautilya Arthashastra” by R. Shamasastri.

activity related to certain offences listed in the schedule to the Act. A person can be charged with the offence of money laundering only if he has been charged with committing a scheduled offence.

The penalty for committing the offence of money laundering is rigorous imprisonment for three to seven years and a fine of up to Rs 5 lakh. If a person is convicted of an offence under the Narcotics Drugs and Psychotropic Substances Act, 1985 the term of imprisonment can extend up to 10 years.

The Adjudicating Authority, appointed by the central government, shall decide whether any of the property attached or seized is involved in money laundering. An Appellate Tribunal shall hear appeals against the orders of the Adjudicating Authority and any other authority under the Act.

Every banking company, financial institution and intermediary shall maintain a record of all transactions of a specified nature and value, and verify and maintain records of all its customers, and furnish such information to the specified authorities.⁷

(C) Right to Information Act, 2005

The great personality Anna Hajare is the man who fought against corruption and tried at his level best to face this problem. Due to his efforts only, the Right to Information Act was firstly came into force in Maharashtra in year 2005. This Act mandates timely response to citizens requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a RTI Portal gateway to the citizens for quick search information about RTI related information and disclosures published on the web by various Public Authorities under the government of India as well as the State Governments.

The main objects of this Act are: (a) to empower citizens for fighting against the corrupt activities (b) to promote transparency and accountability in the working of Government (c) to make our democratic nature of the constitution for the people in real sense. Thus, this Act is the big step towards the corruption-free acts in the state administration and it is the way to get the information/access to the information of the government officials by any citizen who wants know it. The Act is came into force to bring the transparency in public administration by the state authorities. The citizens are empowered now with the weapon of RTI to overcome with the corrupt activities in public administration.

⁷ *Corruption Laws in India*, PRSINDIA, available at, www.prsindia.org/.../1302844978_PRS%20Note%20on%20corruption%20laws.pdf, last seen on 15/03/2019.

(D) Central Vigilance Commission Act, 2003

The Central Vigilance Commission Act, 2003 came into force to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned and controlled by the Central Government and for matters connected therewith or incidental thereto.

(E) Lok Ayukta Act of Various States

In 1999, the Law Commission of India recommended that a separate Bill related to forfeiture of property of corrupt public officials be introduced. In 2007, the report of the Second Administrative Reforms Commission recommended that the Act be amended to include bribe giving as an offence, limit prior sanction for prosecution to certain cases, and provide for the attachment of property of public officials accused of corruption. In 2011, India ratified the United Nations Convention against Corruption, and agreed to bring its domestic laws in line with the Convention. The UN Convention covers giving and taking a bribe, illicit enrichment and possession of disproportionate assets by a public servant as offences, addresses bribery of foreign public officials, and bribery in the private sector.⁸

(F) The Prevention of Corruption Act, 1988

The Indian legal code was enacted to define various offences and therefore the punishments for them keeping in mind to stop criminality within the society. When it had been enacted, it defined and provided for the punishment for the offence of bribery also as corruption amongst the general public servants. But, afterward it had been realised that these provisions aren't capable meet the requirements of your time. Thus, it had been felt necessary to introduce the special legislation with a view to eradicate the evil bribery and corruption. Then this Act i.e. Prevention of Corruption Act has been enacted in 1947 which undergone with two amendments in 1952 and 1964. Then also, it had been did not meet the requirements of the society to face the evils of corruption. Then the bill was introduced within the Parliament and it had been passed on 9th September, 1988. This Act is enacted to stop the corruption in India. This Act specifically defines some activities as corrupt activities. This act also widens the scope of definition of Public servants. Employee means a person within the service, pay of the government, or remunerated by the government by fees or commission for the performance of

⁸ Legislative Brief, The Prevention of Corruption (Amendment) Bill, 2013, available at the-prevention-of-corruption-amendment-bill-2013-2865, last seen on 13/03/2019.

any public duty. Public duty means a requirement within the discharge of which the state, the general public, or the community at large has an interest. The 'State' includes an organization established by or under a central, provincial or state act or an authority or a body owned or controlled or aided by the government or a government company defined in section 617 of the Company's Act 1956. In India additionally to an outsized number of health and academic institutions, the government also aids many other forms of organisations. Hence, the workers of such bodies also are covered by this act. Normally corruption is defined as using position for personal gains. In PCA 1988 employee and Public duty have very wide definitions covering every one who is within the possession of things of an employee and discharging public duty which the state, public or the community at large features an interest. Persons holding various public offices are public servants, whether appointed by the government or not. If an employee takes gratification aside from his legal remuneration in respect of a politician act or to influence public servants is susceptible to minimum punishment of six months and maximum punishment of 5 years and fine. The Act also penalizes an employee for taking gratification to influence the general public by illegal means and for exercising his personal influence with a employee. If a employee accepts a valuable thing without paying for it or paying inadequately from an individual with whom he's involved during a business transaction in his official capacity, he shall be penalized with minimum punishment of six months and maximum punishment of 5 years and fine. It's necessary to get prior sanction from the central or government so as to prosecute an employee.

(G) The Black Money (Undisclosed Foreign Income and Assets) and Imposition Of Tax Act, 2015 [BMA]

The evil of black money is taken into consideration by the Legislature and ne Act has been enacted by Indian Parliament. This Act is also known as Black Money and Imposition of Tax Act, 2015 which has got an approval on 27 May 2015. This Act is enacted to deal with undisclosed foreign income and assets held outside the Indian Territory. The procedure of this Act deals with such undisclosed income and assets outside India which also aims at imposing income tax on such undisclosed assets.

This is the legislative action which has been taken to deal with black money by which this Act has been enacted. The Act can be known as Black Money Act, 2015 or shortly BMA. The Act specifically deals with the undisclosed foreign income and assets which were not brought under the purview of income tax. Therefore, this Act aims not only on disclosing foreign income /assets but also aims on imposition of income tax for which it has not been paid. This is the main crux of BMA that it has put light on undisclosed property and assets which are not shown

while assessing income tax of tax payer. The procedure which is laid down by this Act aims at imposition of income tax by which the undisclosed foreign income or assets become traceable. Also, it is very much important to know that the foreign income and assets become taxable and the procedure is made in that regard to get the payment of taxes from such undisclosed assets or foreign income.

IV. CONCLUSION

After going through various existing laws and policies regarding prevention of corruption, it is observed that there are no policies to 'prevent' corruption. The legal actions take place and it starts to punish the person who has committed the corrupt activity. Therefore, the laws which are in existence fail to deal with corruption. Still we all know that are not successful to deal with this evil problem. It has become the need now to change the mentality of people towards corruption. People should stop giving money to public officers and other authorities to get their work done. Again, the international perspective of corruption should be taken into the consideration. The UNO should have the watch on the countries. There must be some mechanism which will make all the countries in the world to reduce the rate of corruption in their respective territories. And thus, the system suggested by Kautilya will help to some extent in answering this problem.
