



Corruption an attack on Human Rights of individual: Needs a Special Attention

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Abstract

According to the survey conducted by transparency international India stand 76th out of 176 countries across the globe. Corruption effect the national economy of many states especially the economies of developing countries are seriously affected by this. There is growing concern over checking the menace of corruption at many levels in civil society, national and international level. The civil society is creating opinion against the consequences of corruption and the national laws are taking efforts to check the incidence of the wrong. But Due to the Trans boundary effect of corruption now it cannot be controlled by the National laws only. The International organs have also seriously considered about the negative effect of corruption and tried to formulate provision to check the incidence of corruption. This Article advocates for a new kind of human right of corruption free society to be drawn at international level which will be made applicable to all signatory States and help the countries to mutually assist each other to check incidence of corruptions in their State. And by which the Human right of every person to have a corruption free society can be achieved.

Key Words: Corruption; National level; International level; Human rights and corruption free society etc.

Every time we access print and electronic media come across some news related to corruption in any of its form and in any kind of sphere of the state concerned. Uncountable in number of scams to the tune of trillions has shattered the national economy of the countries in general and the developing countries like India in particular. Further, the legal right of the individual is falling prey to the use of these illegal money and power or for adoption of corrupt means to the detriment to the interest of an ordinary citizen creating a serious concern in the civil society¹. At Present corruption become a global phenomenon and found in all countries more or less. Although it differs in magnitude and volume of effected person or society at large, but It is no more confined to politicians or bureaucrats or

any confined group and spread to all sections of society even to a common man. By the growth of social evils like bribery, nepotism and favouritism, corruption in gradually corruption in any of its form get acceptance in social psyche. India is ranked 76th out of 168 countries in the corruption perception index survey conducted by Transparency international.² The corruption is deep rooted among the mass to the determinate to the interest of the common man in the whole society. It affects the common man as the corrupt practice violates the human Rights of the sufferer in the society. It creates inequality between the poor and rich. Through corruption the individuals are able to make private gain within the public and private section determined in the interest of some deserved one. These



practices violate the norms, procedures and accountability which are fixed in the state.

All human beings are born free and equal in dignity³. Corruption attacks on the fundamental value of human dignity as political equality among the people. The UDHR prescribes corruption is immoral, unjust and repugnant to humanity. The International Council On Human Rights Policy in its review meeting on 'Corruption and Human Rights' Defined corruption as the bribery of national and foreign public officials, bribery in private sector, embezzlement in property by public officials, trading influence and abuse of authority by illegal gratification. In India corruption caused in the form of bribery, evasion of tax (white collar crime), use of public office by illegal globalisation embezzlement and favouritism, nepotism for unlawful gain. Presently corruption is considered as a cancer without cure. To tackle the problem apart from the provisions of general laws many specific laws such as: Corruption Act 1988 and the Right to Information Act 2005 etc. are enacted in India, but these Acts cannot become successful in combating the ailment. The reasons may be many but one of such reason is corruption is not limited to the origin state only and it affects the persons generally. Thus, serious violation of Human Rights occurs from the corruptions in different spheres of human life. In this present article an effort is made to create an opinion to create a new Human Right on corruption free society as international consciousness to combat corruption that may yield result to check corruption in individual society, though it cannot destroy corruption in totality.

Etymological corruption is derived from a Latin term "Corruptus" meaning to break⁴. The literal meaning of which is broken object. Conceptually, corruption is a form of behaviour which departs from ethics, morality, tradition, law and civic virtue. The Encyclopaedia Americana gave a very broad definition of corruption as 'the unsanctioned use of public/political resources and/or goods for non-public ends. The Transparency International put the same crisply in different words, defining corruption as 'the misuse of public power for private profit⁵. The World Bank, in its attempt to define corruption, held it as 'diversion of state revenues. It is very difficult to get a scientific definition of the term corruption. However it has been defined as various authorities Santhanam committee⁶ defines it as- in its wildest connotation, corruption includes improper or selfish exercise of power and influence attached to a public officer or to the special position one occupies in public life. According to Susan Rose Ackerman⁷ corruption is a symptom that something has gone wrong with the management of the state. Corruption is however a problem by much wider and deeper proportions than denying the state its rightful pride of flesh, corruption is also about the misappropriation of public monies and misuse of public power for the illegitimate benefit of private interest. In Dr S. Dutta case the Hon'ble SC explains corruption as- it includes the misconduct of the public servant. Corruption doesn't necessarily include an element of bribe taking. It is used in a much larger sense as denoting conduct which is normally unsound or debased. The word is not synonymous with the words dishonesty or fraudulently but is much wider. It ever includes the conduct which is not dishonest or fraudulently



but otherwise blame worthy or improper⁸. The scope of corruption according to law commission of India pointed out that there is a vast field of Administrative action in which administrative authority may act outside the strict scope of law, rules and regulations depriving injured citizens to obtain effective redress. The law commission considered the corruption in public service as a socio-economic offence⁹. Corruption is also considered as white collar crime and white collar crime is defined as a crime committed by person respectability and with social status in the centre of his occupation. The forms of corruption in India was indicated by the Hon'ble SC as corruption is one of the most talked about subjects today since it is believed to have penetrate into every sphere of activity. The word corruption has wide connotation and embraces almost all the spheres of our day to day life the world over. In a limited sense it connotes allowing decisions and actions of a person to be influenced not by rights or wrongs, but by prospects of monetary gains or other selfish considerations. In Ram Narayan poply vs CBI¹⁰ the Hon'ble court observed the white collar crimes has affected the fibre of economic structure of the country. These cases are nothing but private gain at the cost of public and lead to economic disaster.

Some major causes of corruption are- (a) Administrative delays (b) much scope for personal discretion in exercise of powers vested in different categories of govt. servants (c) cumbersome procedures of dealing in the matters which are important in their day to day affairs (d) And ample opportunity of making corruption apart from change of value system and ethical qualities of men in the helm of affairs and illiterate and poor

economic infrastructure leads to corruption different ends.

In India two separate set of law and procedure namely criminal proceedings and departmental proceedings are followed, to charge, prosecute and punish the corrupt public servant. Apart from the statutory law other welfare laws and judge made law are also relevant in this field. Some of these laws are Indian penal code 1860, prevention of corruption act, 1988. The anti-corruption law 1961, criminal law Amendment Act 1966, special court (tribal of offence relating to transaction in securities act, 1992, central vigilance commission act 2003 and some relevant Rules: like central service conduct rules 1964, all India service rules 1968, Railway service rules 1966 . other important enactments in this area made by public demand are: The Lokpal And Lokayuktas Act, 2013 which came into force from 16 January 2014, seeks to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries in India. Whistle blowers protection Act, 2011, which provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices, has received the assent of the President Of India on 9 May 2014. Similarly, The Right to information act is also relevant to check the corruption in the public office.

At present there are no legal provisions to check graft in the private sector in India. Government has proposed amendments in existing Acts and certain new bills for checking corruption in



private sector. Big-ticket corruption is mainly witnessed in the operations of large commercial or corporate entities. In order to prevent bribery on supply side, it is proposed that key managerial personnel of companies' and also the company shall be held liable for offering bribes to gain undue benefits.

The Prevention of Money Laundering Act, 2002 provides that the properties of corrupt public servants shall be confiscated. However, the Government is considering incorporating provisions for confiscation or forfeiture of the property of corrupt public servant in the Prevention of Corruption Act, 1988 to make it more self-contained and comprehensive. The Companies Act 2013, contains certain provisions to regulate frauds by corporations, including, increased penalties for frauds, giving more powers to Serious Fraud Investigation Office, mandatory responsibility of auditors to reveal frauds, and increased responsibilities of independent directors. The Companies Act, 2013 provides for mandatory vigil mechanism which allows directors and employees to report concerns and whistleblower protection mechanism for every listed company and any other companies which accepts deposits from public or has taken loans more than 50 crore rupees from banks and financial institutions.

Despite having a plethora of legislation in India to check prosecute and punish corruption but practically we had come across many big scams like fodder scams, coal scams, urea scam, common wealth game scam, Adarsh housing system scams, 2G spectrum scams and uncountable in number of scams including siphon of public money by Shara Group and other business

tycoons of various business house are becoming possible due to the nexus between politician, bureaucracy and criminals. There is a very weak mechanism available in India to try such persons and recover the money obtained through corruption especially when these persons park the illegal money or fled away to any foreign country. The apex court gave its comment on the far reaching effect of corruption. It observed that corruption in a civilised society is like cancer, which is not detected in time malign the polity of the country leading to disastrous consequences. It is termed as plague which is not only contagious but it not controlled spreads like a fire in jungle¹¹. Its virus is compared with HIV leading to AIDS an incurable. Corruption is opposed to democracy and social order, being not only anti people, but also aimed and targeted at them. It affects economy and destroys the cultural heritage unless nipped in the bud at the earliest¹². It is likely to cause turbulence in the socio-economic political system in an otherwise, healthy wealthy and vibrant society. Thus corruption is a serious threat to democracy and the social, economic and political rights of the citizen.

Impact of corruption on human rights:

Corruption leads to violation of human rights on the events where the welfare programmes for the poor are not implemented properly. It effects directly when a corrupt act deliberately effect the legitimate right of a person. Corruption creates injustice and disregard rule of law. Corruption squeezes the scope of a person negatively the right of equality. Basic human rights and freedom come under threat when it is affected or curtailed by a corrupt practice. In



numerous ways corruption encourages discrimination, deprives the vulnerable people from their economic rights, prevent the people from exercise their civil, political economic social and cultural rights. Each kind of violation was well established by the corrupt practise made by various actions which are brought before the pubic general. Thus it can be stated that corruption directly violates the Human Right¹³.

The idea of reconciling corruption and human rights violation can be seen in several human rights instruments like UDHR¹⁴, UNCAC,¹⁵ apart from the other covenants under ICCPR, and ICESCR etc. These instruments reveal that right to corruption free governance is a basic human right and corruption is violation of a human rights especially effecting the right to life, liberty, equality. Further, right to political participation, right to information, several economic social and cultural rights like, right to food, water, housing, education, and environment, right to law enforcement and fair trial and access to justice of a person are also effected by means of corruption.

The welfare of General public is duty of The State In a modern welfare state, Thus the State Is under duty to provide governance that will ensure can guarantee the basic human rights to all without any discrimination. With regard to the link between corruption and violation of human rights, it can be stated that - Corruption may amount to direct violation of human rights of a deprived, by wrongful denial of access to any right of individual for any illegal act or omission of States Employee. It may be indirect violation when even without a direct connection; corruption may be an essential contributing factor in a chain of

events that lead to violation of human rights. Whatever may be the cause or extent of corruption but the State owes duty to its citizen an environment in which full enjoyment of Human right can be done. And this can be made by enacting specific legislations. And non-compliance of the human rights is the breach of the fundamental pledge made for providing human rights in UDHR is made. Presently, India is also a signatory to the United Nations Convention Against Corruption since 2005¹⁶. The Convention covers a wide range of acts of corruption and also proposes certain preventive policies.

Instance of Corruption effecting human rights

Corruption has a far-reaching effect in the human life. The denials of legitimate rights of the persons are causing the violation of human rights of the persons. Such violations can be studied in three broad heading such as: Violation of Natural justice by corruption; Violation of Political justice by Corruption; Economic, social and cultural rights by corruption.

a. Violation of Natural justice by corruption: The principles of equality and non-discrimination are fundamental principles of human rights and are recognized in all human rights instruments and by the Constitution of India. This implies that direct as well as indirect forms of discrimination are prohibited. The prevalence of corruption creates discrimination in access to public services including health, education and welfare services, in favour of those able to influence the authorities to act in their personal interest. The economically and the politically disadvantaged and the



marginalized group suffer disproportionately from the consequences of corruption thus leading to discrimination and arbitrariness.

b. Violation of Political justice by

Corruption: From human rights perspective this right affirms that a citizen is entitled to participate in the decision making process affecting them. This right include right to vote, to stand for elections, right to freedom of association and assembly and right to equal access to public services. In fact corruption in the form of bribery, abuse of office, trading in influence etc. infringe the free expression of the will of the electorate and as such directly violate the rights of all citizens whether as voters or as candidates. Moreover corruption effects the suppression of rights essential to political participation like, freedom of expression vital components of civil and political rights of citizen. It is found more corrupt practice are adopted through or by the political persons.

c. Economic, social and cultural rights by

corruption: With respect to economic, social and cultural rights like right to food, water, housing, education etc. also, the state has the Obligation to respect, to protect and to create an environment for realisation of these rights. The realization of these rights requires positive action in the part of the State targeted steps towards the goal of full realization of the relevant rights. Corruption in these sectors implies that the state is not taking steps in the right direction. When allocated funds are diverted by interested officials in collusion with interested persons, or when access to health care, education and housing is dependent on bribes, state's

resources are not being used to its optimum level to realize socio economic and cultural rights.

Human rights and corruption an international concern:

Human rights are indivisible and interdependent, and the consequences of corrupt governance are multiple and touch on all human rights — civil, political, economic, social and cultural, as well as the right to development. Corruption leads to violation of the government's human rights obligation "to take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the International Covenant on Economic, Social and Cultural Rights". The corrupt management of public resources compromises the government's ability to deliver an array of services, including health, educational and welfare services, which are essential for the realization of economic, social and cultural rights. Also, the prevalence of corruption creates discrimination in access to public services in favour of those able to influence the authorities to act in their personal interest, including by offering bribes. The economically and politically disadvantaged suffer disproportionately from the consequences of corruption, because they are particularly dependent on public goods. Corruption may also affect the enjoyment of civil and political rights. Corruption may weaken democratic institutions both in new and in long-established democracies.

United Nations human rights mechanisms are increasingly mindful of the negative impact of corruption on the



enjoyment of human rights and consequently of the importance of effective anti-corruption measures. The Human Rights Council and its Special Rapporteurs and Universal Periodic Review Mechanism, as well as Human Rights Treaty-monitoring bodies addressed issues of corruption and human rights on numerous occasions.

In 2003, a Sub-Commission on the Promotion and Protection of Human Rights appointed a Special Rapporteur with the task of preparing a comprehensive study on corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights. As requested by the then Commission on Human Rights, in 2004 OHCHR organized a seminar on good governance practices for the promotion of human rights, including anti-corruption, in Seoul. In 2006, OHCHR organized a conference on anti-corruption measures, good governance and human rights in Warsaw¹⁷. The Human Rights Council has continued to promote work on human rights and anti-corruption. In 2011, the Council stressed that States should promote supportive and enabling environments for the prevention of human rights violations, *inter alia*, by fighting corruption. Furthermore, the Council considered the issue of the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, including a study by the High Commissioner for Human Rights on the subject matter. In 2012, a cross regional statement on corruption and human rights was delivered by Morocco to the 20th session of the Human Rights Council. The statement called for deepening reflection on the close connection between human rights and

anti-corruption measures and urged the anti-corruption and human rights movements to work together. Subsequently, the Human Rights Council convened a panel discussion on the negative impact of corruption on the enjoyment of human rights in March 2013¹⁸. In 2013, the Human Rights Council requested its expert Advisory Committee to submit a research-based report to the Council at its twenty-sixth session in June 2014 on the issue of the negative impact of corruption on the enjoyment of human rights, and to make recommendations on how the Council and its subsidiary bodies should consider this issue. This on-going commitment by United Nations to address the negative impact of corruption on the enjoyment of human rights reflects a common understanding of the importance and interconnectedness of these issues and informs OHCHR's work in this area. As the long term process in this area is continuing although the negative impacts of corruption on human rights are realized but no effective measure can be drawn so far.

Conclusion:

Corruption has been prevalent in human society since time immemorial and is an inevitable evil in public governance. In the words of Kautilya "Just as it is impossible not to taste the honey that find itself in the tip of the tongue, so it is impossible for a Government assistant not to eat up, at least a bit of King's revenue¹⁹." But, in the present days it is so rampant one cannot dream about realisation of its right in fair means. Corruption causes massive human deprivations and creates sudden and extreme income inequalities; it



introduces uncertainties into the economic environment and forms webs of illegal obligations. Extortions, robberies, assaults, crimes on women, children and the weak and even all that is associated with terrorism and under-world are some of the outward expressions or manifestations of corruption that hurt human beings and their rights deeply and more. As corruption leads to discrimination and arbitrariness in decision-making, established rules, regulations and procedures become meaningless; peoples' fundamental rights to corruption-free services from public institutions and Governments get trampled mercilessly. The sum of all these, rise as notorious impediments against protection and promotion of human rights and ultimately violates a very wide spectrum of human rights, deeply.

It has been realised that :-
(A)Corruption is an enormous obstacle to the realization of all human rights — civil, political, economic, social and cultural, as well as the right to development.(B)A human rights based approach to anti-corruption founded on the principles of transparency, accountability, equality, non-discrimination and participation is needed to strengthen anti-corruption efforts. Upholding specific human rights, in particular the rights to information, freedom of expression and assembly, an independent judiciary, and participation in public affairs, is critical. And (C) There is an urgent need to strengthen collaboration between international efforts in the fields of anti-corruption and human rights and to integrate human rights into the activities of UN agencies working to fight corruption, and other relevant stakeholders including civil

society and social media. This will require greater normative and policy coherence, the identification of common goals, and the appropriate division of tasks and responsibilities

In recent years, a number of international documents signed under the auspices of both the United Nations and regional organizations have acknowledged the negative effects of corruption on the protection of human rights and on development. Moreover, the treaty bodies and special procedures of the United Nations human rights system in their examination of states' compliance with international law have commented on the inability of states to comply with their obligations as a result of corruption.

Despite of a many approaches made in the individual State level and international level it is witnessed that the usufruct of corruption are parked in many tax heavens like Switzerland, panama, Italy etc. These countries are allowing parking of this illegal money in their country and proper information regarding them cannot be provided to the relevant states. Further, it also becomes hard enough to bring these persons to the legal net due to lack in coordination between the countries. The present provisions of Human Rights And the International Laws are neither having stringent provision to prosecute the violators of State laws in a foreign State nor have standard provision to hand over the violator of State Law to that particular State for prosecution. So the corrupt personals can escape from the State action even though they were guilty in their state. In this context it is expected that mutual sharing of information between all states can check



the incidence of corruption at international level. And allowing prosecution of the persons a party to corruption by handing over such violator to the effected State can some extent check the incidence of corruption at the State level. But as many states are to be involved in the process of combating corruption such as the originated state where the corruption occur , secondly some other state which may be a beneficiary of such corruption or a third party State in which the violator of law is staying. In such a situation it needs affirmation of all the State involved in the process so virtually become impossible to prosecute the violators. Thus, the violators taking the opportunity escape from the legal net of the countries. This can be possible by making an International Covenant in this regard which can be enforced between the signatory States. In this above context, the author advocates for a specific Human Right covenant on corruption free society to be made at International sphere, which can oblige the international order to share information regarding corrupt practice in different States and also prosecute the violator of law in any other State also.

References:

¹India against Corruption was a popular movement active during 2011-12 that created much public awareness and demand for anti-graft law.

²The Hindu 27 .01 .2016 -The Berlin-based corruption watchdog Transparency International (TI) has put India at rank 76 out of 168 countries in its latest Corruption Perception Index. The country's 2015 corruption perception

score remains the same as last year's – 38/100 – showing lack of improvement.

³ The Universal Declaration of Human Rights Speaks

⁴Oxford advanced Lerner dictionary

⁵Transparency International in1996

⁶In1964 santhanam committee was setup to examine the increasing menceofcurroption in administration

⁷Rose Ackerman, Government and corruption (1999) (9)

⁸Dr.S. Dutta v State Of UP, AIR 1966 Sc523

⁹ Law Commission in India in its 29th Report

¹⁰AIR 2003, SC 2748

¹¹AIR 2000 Sc 870

¹²Ibid

¹³The Preamble of the Council of Europe Criminal Convention on Corruption had stated"Corruptionthreatens the rule of law, democracy and human rights; undermines good Governance, fairness and social justice; distorts competition, hinders economic development, and endangers the stability of democratic institutions and moral foundations of society."

¹⁴ UN declaration against corruption and bribery in international commercial transaction was made in 1997

¹⁵ The United Nations Convention against corruption 2003 came into force from 2005

¹⁶India ratified the covenant in2011

¹⁷ OHCHR on good governance practice for promotion of human rights

¹⁸ Resolution 23/9 on negative impact of corruption on the enjoyment of human rights

¹⁹Mahapatra DC; Corruption And Public servant; Lecture in refresher course on Law And human rights, utkal university.30.1.2010.