

## **CORRUPTION IN GOVERNANCE: HUMAN RIGHTS DIMENSIONS**

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### **INTRODUCTION:**

“Corruption threatens 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.” –*The Preamble of the Council of Europe Criminal Convention on Corruption.*

“Ignorance, forgetfulness or contempt for human Rights are the only causes of public misfortune and the corruption of Governments.” - *The Preamble of the Declaration of Human and Citizens Rights, 1789.*

Corruption has been prevalent in human society since time immemorial and is an inevitable evil in public governance. However in the recent past corruption has gained ascendancy to such an extent that, it has adversely affected the nation building programs and processes. In this paper an attempt has been made to study the disastrous link between corruption and human rights violation. The study also focuses on significance of linking human rights to corruption. The study analyses the impact of corruption on human rights and how human rights mechanisms can act in conciliation to combat corruption.

### **MEANING AND DEFINITION OF CORRUPTION**

The term corruption is derived from the Latin word corruption which means “moral decay, wicked behavior, putridity or rottenness”. Corruption in common parlance is associated with giving and accepting some kind of compensation in the form of money, office or position for a service, rendered in an illegal form, or by overstepping ones legal authority.

However, to link corruption with human rights, a definition based on law is required. In the legal sense the term corruption is usually used to denote several criminal acts like bribery and embezzlement, trading in influence, money laundering etc which correspond to the general notion of an abuse of entrusted power. In fact International conventions against corruption like UN convention against Transnational Organized Crime, the Council of Europe Civil law convention on Corruption etc also reflect this. They do not define corruption instead enumerate criminal acts that amount to corruption.

### **MAJOR CAUSES OF CORRUPTION**

The Santhanam Committee constituted by the Central Government of India, has identified certain procedural causes of corruption like red tape and administrative delay, unnecessary regulations, scope of personal discretion, cumbersome procedures, scarcity of goods and services, and lack of transparency. In India there are two dimensions of corruption. One is exploitative corruption where the public servant or the private party entrusted to perform the specific tasks exploits the helpless poor citizen. The second one is collusive corruption where the citizen corrupts the public servant by bribe and avails better benefits. In fact both perpetuates inequality thus striking at the very concept of rule of law-the bed rock of democracy, which is

acknowledged as the best system of governance to ensure respect for human rights

### **IMPACT OF CORRUPTION ON HUMAN RIGHTS**

Modern state wedded to the principle of general public welfare is duty bound to provide such governance which can guarantee to one and all without discrimination, the basic human rights. Thus state has three levels of obligations in relation to human rights: obligation to respect, to protect and to fulfill. The obligation to respect requires the state to refrain from any measure that may deprive individuals of the enjoyment of their rights or their ability to satisfy those rights by their efforts. The obligation to protect requires the state to prevent violations of human rights by third parties. The obligation to fulfill requires the state to take measures to ensure that people under its jurisdiction can satisfy basic needs (as recognized in human rights instruments) that they cannot secure by their own efforts. Hence violation of human rights occur when state's action or omission fails to conform with its obligation to respect, protect or fulfill recognized human rights of its person under its jurisdiction. While analyzing the link between corruption and human rights violation, it is of three fold. Corruption may amount to direct violation of human rights, when state or an official acts or omits in a way that prevents individuals from having access to that right. It may be indirect violation when even without a direct connection; corruption may be an essential contributing factor (a necessary condition) in a chain of events that lead to violation of human rights. For instance, Corruption may be an indirect cause where corrupt authorities seek to prevent the exposure of corruption or may turn blind eye to corruption. It may be remote when corruption is one factor among others for human rights violation.

### **CORRUPTION AND SPECIFIC HUMAN RIGHTS**

The idea of reconciling corruption and human rights violation can be seen in several human rights instruments like UDHR, ICCPR, and ICESCR etc. These instruments reveal that right to corruption free governance is a basic human right and corruption is really a human rights violation especially right to life, liberty, equality and non discrimination, right to political participation, right to information, several economic social and cultural rights like, right to food, water, housing, education, environment, right to law enforcement and fair trial and access to justice.

#### **a. Principles of equality and non discrimination**

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 favor 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. Right to political participation**

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. In a repressive regime where political participation is curtailed and the accountability is poor, the right to life, liberty, security of person and freedom of expression and association are less likely to be protected. Moreover the suppression of rights essential to political participation like, freedom of expression may increase opportunities of corruption.

### **c. Economic, social and cultural rights**

With respect to economic, social and cultural rights like right to food, water, housing, education etc, also, the state has the three fold obligations: Obligation to respect, obligation to protect and obligation to fulfill. Apart from that in order to assess whether an act of corruption violates economic, social and cultural rights, two essential obligations should be taken into account: the duty that a state has to take steps to realize these rights progressively; and its duty to prioritize human rights when allocating resources. Progressive realization require the state to take immediate measures to make sure that the economic, social and cultural rights will progressively become available to all those under its jurisdiction and to prohibit retrogressive measures. The state must take deliberate, specific and targeted steps towards the goal of full realization of the relevant rights. Corruption 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 dependant on bribes, state's resources are not being used to its optimum level to realize socio economic and cultural rights In addition to that, the four standards of availability, accessibility, acceptability and adaptability which protect the core content of Economic, Social and Cultural rights must be ensured

### **d. Right to law enforcement and fair trial**

Corruption in investigation level and political interference in judiciary will undermine its quality affecting the independence and impartiality of judiciary denying access to justice of the public, which is sine qua non for rule of law, the foundation of all human rights.

### **e. Right to development**

Respect for human rights is the route for human development and realization of the full potential of each individual which in turn leads to augmentation of human resources with the progress of the nation. Corruption tends to skew public expenditure away from the needed and impairs development programs thus hampering economic growth and the right to development of every individual which results in the denial to the people of their legitimate rights.

## **NEED FOR LINKING HUMAN RIGHTS TO CORRUPTION**

If corruption is viewed as human rights violation, it will influence public attitudes. Moreover identification of specific links between corruption and human rights may persuade key factors—public officials, parliamentarians, judges, prosecutors, lawyers, business people, bankers, accountants, the media and the public in general – to take a stronger stand against corruption. A clear understanding of the practical connections between acts of corruption and human rights may empower those who have legitimate claims to demand their rights in relation to corruption, and may assist states and other public authorities to respect, protect and fulfill their human rights responsibilities at every level. Connecting acts of corruption to violations of human rights also creates new possibilities for action, especially, as, acts of corruption can be challenged using the different national, regional and international mechanisms that exist to monitor compliance with human rights. When acts of corruption are linked to violations of human rights, all these institutions could act to force accountability and so as to create disincentives for corruption. A human rights perspective requires policy-makers to ask how the design and/or implementation of anticorruption programs will affect people who are marginalized or impoverished, subject to social discrimination, or disadvantaged in other ways. Analyzing anti-corruption programs from a human rights perspective may assist states to comply with human rights standards when they draft and implement laws and procedures to detect, investigate and adjudicate corruption cases

### **ROLE OF HUMAN RIGHTS MECHANISMS TO COMBAT CORRUPTION**

Civil society organizations, including NGOs, trade unions, business associations, scholars and the media, can play a crucial role in efforts both to combat corruption and to promote and protect human rights. National human rights institutions can help to strengthen the impact of anticorruption organizations. Human rights and anti-corruption organizations can also work together to develop firmer professional standards and codes of conduct, ideally in cooperation with law enforcement officials and members of the judiciary. They could also target other actors, such as bankers, accountants, real estate agents and other professionals, without whose assistance corruption and its proceeds cannot be concealed; and work to raise awareness among journalists and media professionals. Human rights and anti-corruption organisations could explore common interests in several areas. They could work to enact laws and develop policies that will promote transparency in Government transactions. One effective way to restrict corruption and protect human rights is to give the public and civil society better tools and more authority to assess social programs in which they have an interest. Communities and civil society organisations have developed many ways to hold governments accountable, in addition to litigation and voting at elections. They include lobbying and advocacy, citizen advisory boards and budget analysis. Public interest litigation has also addressed some of these challenges.

### **CONCLUSION AND SUGGESTIONS**

Though corruption free governance is a basic fundamental right, corruption is still rampant in the country. In the past few years, the press had been reporting various scams like, The Bofors scam, Bihar fodder scam, Hawala scam, CRB scam etc and lastly 2G Spectrum scam. As per Transparency International's 2010, Corruption Perception Index, India ranks 87 out of 178 countries. Corruption in India threatens derailment of its growth and development. World Bank has suspended \$88million worth of loans to India's health sector after detecting corruption in

procurement. However the recent trends prevailing in India is really commendable. India's ratification of UN Convention against corruption shows India's commitment to battle corruption by introducing a slew of administrative and legislative measures to strengthen legal and regulatory regime. The Central Government has come up with draft anti-corruption strategy which prescribes a clear time frame for sanctioning authority to communicate its decision. The Government is also working upon an anti graft law, the prevention of bribery of foreign public officials and officials of public International organizations Bill, 2011. Moreover the Government is committed to draft a strong "Jan LokPal Bill". Apart from that the country has enacted several anti corruption legislations like Prevention of Corruption Act, Right to Information Act, Money Laundering Act, Public servants (Forfeiture of Property Act),1999, Whistle blowers Bill,2010, Benami Transactions legislations, Foreign Exchange Management Act, Customs and Income Tax legislations etc. Further several institutions fighting for anti corruption like Central Vigilance Commission, CBI, Information Commission etc are in place. Contribution of higher judiciary is also laudable. While exercising its jurisdiction in PIL cases, the apex court has unearthed corruption in several instances and has monitored the probe on several scam, Recently in a major move the apex court has directed all trial courts in the country to dispose of corruption cases quickly and required the High Court to call for quarterly report from all lower courts in this regard.

Another significant trend is the development of complementarily between the Supreme Court and the national human rights commission in the enforcement of human rights and in combating corruption. The better capacity of the NHRC to directly monitor performance of institutions in certain situations has been utilized by Supreme Court in several cases. NHRC along with the national judiciary can facilitate the state responsibility of fulfilling the basic human right of corruption free governance. Vigilant and objective press can also make remarkable contribution.

Good law and strong institution alone are not sufficient to tackle the problem of corruption. We need to focus on simplifying procedures, reducing discretion, eliminating arbitrariness, and increasing transparency in the way of Government functions. Recent Indian political scenario has witnessed the development of a vigorous civil society involving a plurality of independently organized groups progressively working towards the goal of good governance transcending to the level of human governance as enshrined in the Constitution of India.

The struggle for combating corruption and promotion of human rights is long and arduous. The judiciary the NHRC, the civil society, NGO's, the media, must constantly provide excellent mechanism for influencing the national agenda on combating corruption and ensuring human rights. However common man must be in the forefront in this mission. It is true that an independent judiciary is the Constitutional watch dog in our scheme, but the ultimate responsibility for good governance is the common man.

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