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# **CORRUPTION: MISUSE OF AUTHORITY, AN ISSUE WITH SOCIETAL AND LEGAL IMPLICATIONS.**

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## **ABSTRACT**

Corruption occurs when individuals misuse the power entrusted to them for personal gain. It hinders a nation’s economic growth, exacerbates poverty, and deepens inequality. The origins of corruption in India can be traced back to the British colonial era. In contrast, Denmark, Finland, New Zealand, and Sweden rank among the least corrupt countries globally. This paper examines the varying healthcare responses to the pandemic, highlighting how differing levels of corruption across nations influenced these outcomes. It is crucial that both Union and state governments had proactively managed the corruption risks that arose from the significant imbalances between demand and supply during the pandemic.

Corruption within prison systems, particularly among staff, is prevalent worldwide. Although the substantial authority guards hold over inmates makes such issues predictable, the problem is exacerbated by the low salaries guards typically receive. Inmates often supplement guards' incomes with bribes in exchange for contraband or preferential treatment. This paper introduces the issue of corruption within prisons in the context of varying healthcare responses in the United States.

This article primarily explores the various forms of corruption, including relevant legislative measures such as The Prevention of Corruption Act, 1866, The Indian Penal Code, 1860, and The Benami Transactions (Prohibition) Act, 1988. Additionally, it delves into corruption in jails, types of corruption, prevention strategies, and other related topics.

**KEYWORDS:** corruption, transaction, offence, prevention, punishment.

## INTRODUCTION

Corruption is when one misuses power entrusted to them for personal gain. This misuse of power abrades the trust between two or more parties and makes the democracy weak. Corruption also obstructs the economic growth of a nation and aggravate poverty and inequality. It is necessary to understand how corruption works to be revealed and the corrupt can be held responsible for creating a corrupt system.

India's economy endure agony from serious problems of corruption. One of the biggest barriers to progress for developing nations like India is regarded to be corruption. There are many definitions of corruption. According to the Oxford Dictionary, "corruption" is defined as "the abuse of public power for private gain."

Denmark, Finland, New Zealand, Norway, Singapore, and Sweden are those countries which are least corrupt nations in the world, which is ranking consistently high among international financial transparency, while the most apparently corrupt are Somalia (scoring No.12), Syria and South Sudan (both scoring No.13)

Corruption refers to abuse of public power for personal gain. It can be done by an elected politician, civil servant, journalist, school administrator, or anyone under authority. Apart from public corruption, there is private corruption between individuals and businesses. Thus, corruption definition applies to different forms.

Any employee or official of a Government Authority in India can be penalized for corruption under the Indian Penal Code of 1860<sup>1</sup> and or the Prevention of Corruption Act of 1988<sup>2</sup>. Benami transactions are prohibited by the Benami Transactions (Prohibition) Act of 1988. Any employee or official of a Government Authority who engage in money laundering are subject to punishment under the Prevention of Money Laundering Act of 2002.<sup>3</sup> Since 2005, India has been a participant to the UN Convention against Corruption. The Convention addresses a wide range of corrupt practices and from time to time encourages certain preventive measures.

The highest reported corruption cases in 2021 was Maharashtra, with 773 cases. This was followed by Rajasthan with 501 reported corruption cases.

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<sup>1</sup> Indian Penal Code, 1860

<sup>2</sup> Prevention of corruption Act,1988

<sup>3</sup> Prevention of Money laundering Act,2002

Now-a-days, corruption is commonly seen everywhere in the society just like an infectious disease. The great leaders of the India who have fought their entire life for removing corruption and other social issues completely from the society. It is the very shameful condition for us that even after losing various great lives, people are not able to understand our real responsibilities. Corruption has been widely spread in the public lives, politics, central governments, state governments, businesses, industries, etc. It is mostly in all field. Corruption is increasing everyday instead of decreasing or steady because of the continuous increase in the appetite of people for money, power, position and luxury.

The real responsibility of being a human is just forgotten because of the money. the need to understand that money is not everything. Corruption money cannot be kept forever, it can only give greediness and encourages more corruption.

### **What causes the deep-rooted nature of corruption?**

The roots of corruption in India are dated back since the British colonial rule. The British administration were systematically excluded much of the Indian population from key political and administrative processes that helped to institutionalise graft culture by enacting the crucial Official Secret Act, 1923. This act made it an offence for any public official to disclose state information or secrets. This act continues to perform its role in sustaining graft culture in the post-Independence period, although India was mostly caught up in graft culture due to overzealous state regulation and particularly when it came to economic activities, that perversely brought in the infamous License Permit Raj.

This Permit Raj is which curbed foreign investment and severely suppress competition in the name of a “socialist economy”, severely encouraged a culture of bribery or rent-seeking activities for sourcing any business from the government. It created a black market for everything and smuggling of imported goods became very common.

The actual turning point for India’s culture of graft began with the commencement of economic reforms and liberalisation in 1991. While economic reforms led to the stoppage of licensing for industrial activities and the abolition of import quotas, thereby, removing many corrupt practices, this did not reduce the graft. Above that, the economic reforms and huge growth expanded the spaces for high volume of corruption. The rent seeking behaviour took on many new innovative ways.

## Causes of Corruption

According to a survey in 2017, the following reasons have been attributed as causes of corruption.

- Greed of money or desires.
- High levels of market and political monopolization
- Low level of democracy or weak civil participation and low political transparency
- Low press freedom
- Low economic freedom
- Gender inequality
- Poverty
- Political instability
- Weak property rights
- Contagion from corrupt neighbouring countries
- Low levels of education
- Lack of commitment to society
- Extravagant family
- Unemployment
- Lack of proper policies against corruption

## KEY ELEMENTS OF THE ACTS RELATED TO CORRUPTION

### Indian Penal Code, 1860

- As per the IPC, A "public servant" refers to any government official, military, navy, police officer, judge, or other officials of the Court of Justice, etc as well as any local (Government) authority established by a Centre or State Act.<sup>4</sup>
- A government official who buys or puts forward on any property unlawfully is in violation of Section 169.<sup>5</sup> A government official who violates the law will be punished with up to two years of imprisonment or a fine, or both. If the property is purchased, it shall be seized.
- As per section 409 pertaining to criminal breach of trust by government officials. The official will be penalized with either life imprisonment or a fine.<sup>6</sup>

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<sup>4</sup> Public servant under IPC

<sup>5</sup> Sec 169 Indian Penal code,1860

<sup>6</sup> Section 409 Indian Penal Code,1860

### Prevention of Corruption Act, 1988

- In addition to the groups included by the IPC, the term "public servant" also refers to any officials working for banks, universities, and the Public Service Commission as well as cooperative societies that receive government funding.
- A government official or public servant faces a minimum six-month sentence and a maximum five-year sentence and fine if he/she takes quench other than his or her legal remuneration in exchange for performing an official act or influencing other public employees. He/she can also be punished under the law for using illegal means to exert personal influence over another public servant or for obtaining quench from doing so.
- Section 7 of Prevention of corruption Act,1988 describes
- *Offence relating to public servant being bribed. — Any public servant who, —<sup>7</sup>*
- *(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant;<sup>8</sup> or*
- *(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant;<sup>9</sup> or*
- *(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.<sup>10</sup>*

### The Benami Transactions (Prohibition) Act, 1988

- The Act refuses any benami transaction, which is defined as buying anything under someone else's name without paying for it, keeping an exception of when a person buys something in his wife's or unmarried daughter's name.
- Anyone who is caught or engaged in a benami transaction shall be punishable with a sentence of up to three years in prison and/or a fine.

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<sup>7</sup> Section 7 of prevention of corruption Act,1988

<sup>8</sup> Prevention of corruption Act,1988

<sup>9</sup> Section 7(b) Prevention of corruption Act,1988

<sup>10</sup> Section 7 (c) Prevention of corruption Act,1988

- The appropriate authority may acquire all alleged benami properties without the need for payment of any kind.
- According to Section 2 of Benami Transaction prohibition Act,1988
- *(a) benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person;*<sup>11</sup>
- *(b) prescribed means prescribed by rules made under this Act;*<sup>12</sup>
- *(c) property means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.*<sup>13</sup>

### **The Prevention of Money Laundering Act, 2002**

- Any Government Officials who are involved in money laundering are subject to punishment under the Prevention of Money Laundering Act of 2002. According to the Act, whenever a person participates in any procedure involving the proceeds of crime and presents those proceeds as untainted property, money laundering has been committed. Any property acquired by a person as a result of criminal conduct connected to some of the offences enumerated in the schedule to the Act is referred to as "proceeds of crime." Only after being accused of committing a scheduled offence may someone be charged with money laundering.
- Money laundering is an offence that carries a rigorous punishment, which is three- to a seven-year prison sentence and a fine up to Rs. 5 lakhs.

### **OFFENCE OF MONEY LAUNDERING**

*According to Section 3 of The Prevention of Money Laundering Act,2002 - Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the 1 [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.*<sup>14</sup>

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<sup>11</sup> Section 2 benami transaction act,1988

<sup>12</sup> Rules under benami transaction Act,1988

<sup>13</sup> "Property" under Benami Transaction Act,1988

<sup>14</sup> Section 3 of The Prevention of Money Laundering Act,2002

## PUNISHMENT OF MONEY LAUNDERING

*ACCORDING TO SECTION 4 OF PREVENTION OF MONEY LAUNDERING ACT, 2002 -*

*Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.<sup>1516</sup>*

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.<sup>17</sup>

## HOW TO DEAL WITH CORRUPTION IN PUBLIC OFFICES?

Public corruption is stated as a promise, offering, or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself/herself or any person or entity, in order that the official act or abstain from acting in the conducting of his/her official duty.

The laws that are in place to regulate the behaviour of Government Officials and to address the problem of public bribery are

The Lokpal (independent ombudsman) to investigate and convict the public employees, including ministers, for corruption;<sup>18</sup>

The word "**Lokpal**" is from the sanskrit word "**loka**" meaning people and "**pala**" meaning protector or caretaker. Together it means "**protector of people**".<sup>19</sup> The aim of passing such a law is it to eradicate corruption at all levels of the Indian polity. For a nation to develop it needs to have an extremely well organized and meticulously planned organization.<sup>20</sup>

The Lokpal and Lokayuktas Act of 2013,

The Centre Civil Services (Conduct) Rules of 1964,

The All-India Services (Conduct) Rules of 1968, and

The Prevention of Corruption Act of 1988 (PCA).

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<sup>15</sup> Section 4 of Prevention of Money laundering Act,2002

<sup>16</sup> The words “which may extend to five lakh rupees” omitted by Act 2 of 2013, s. 4 (w.e.f. 15-2-2013).

<sup>17</sup> Exception of section 4 Prevention of Money Laundering Act,2002

<sup>18</sup> Lokpal an anti-corruption authority or body of ombudsman who represents the public interest in the Republic of India.

<sup>19</sup> Lokpal “Definition”

<sup>20</sup> <https://www.legalserviceindia.com/legal/article-50-lokpal.html>

## The Types of Corruption

Corruption can be defined and categorised into different types such as Petty corruption and grand corruption and systematic corruption.

Petty Corruption – Petty or administrative corruption takes place when the public meets public officials. Petty corruption is usually described from "grand" and political corruption. It usually takes where smaller amounts of money are involved but the damage may be caused significant in social terms.

*For Example - Illegal fees paid by parents to get their children admitted to schools or to be promoted or to pass their exams.*

**Grand Corruption** - Grand corruption is when there is abuse of high-level power that benefits the few at the expense of the many, and causes serious and drastic harm to individuals and society. It's often unpunished.

Corruption can occur to a massive extent that causes harm the honest law-abiding citizens. Exposing corruption and penalising the corrupt is the only solution to reduce it.

### How to report corruption in India?

The Indian judiciary has a very strong law against corruption. The main perspective is there is no need for a lawyer to file a complaint.

In India anyone can report corruption through government-initiated agencies like

- Central Vigilance Commission (CVC)

The Central Vigilance Commission was set up by a Resolution No. 24/7/64 -AVD which was dated 11th February 1964 from the Government of India, on the recommendations of Committee on Prevention of Corruption formed under the Chairmanship of Shri K. Santhanam.

Central Vigilance Commission was set up with a scope to exercise supervision over vigilance administration of the organisations in respect of which the executive powers of Government of India extended. It was known as the apex Integrity Institution, which have completed independence and autonomy in its functions. Central Vigilance Commission has been mandated to advise the authorities, which is in respect of an act of improper conduct or corrupt practices, along with review and modification of procedures and guidelines, which may afford scope for corruption or corrupt (practices).

- Central Bureau of Investigation (CBI)

CBI stands for the Central Bureau of Investigation. It is an important investigative agency of India which is responsible for **investigating a great range of crimes such as corruption or**

**economic offenses or major frauds, and high-profile cases.** The agency was established in the year 1963 and employed under the administration of the Ministry of Personnel, Public Grievances, and Pensions.

The CBI stated the authority to investigate from the Delhi Special Police Establishment (DSPE) Act, 1946<sup>21</sup>, and the headquartered is in New Delhi, India. The Central Bureau of Investigation is involved in big criminal probes and is also know the Interpol agency in India. The CBI investigates cases that are given to it by state governments, courts, and the central government. It has the power to take up cases on its own will in certain circumstances.

- Lokpal

How to report corruption against a Central government employee?

To report corruption against Central Government employees, one should reach out to Central Vigilance Commission (CVC).

The Commission has the power to inquire or cause inquiries to be conducted into offences alleged to have been committed by certain department or official of public servants of the Central Government.

#### **Categories of such public servants are as stated**

- a) Members of All-India Services serving in connection with the affairs of the Union and Group A officers of the Central Government of India.
- b) Officers of the rank of Scale V and higher in the Public Sector Banks
- c) Chief Executives and Executives on the Board and other officers of E-8 and higher in Schedule 'A' and 'B' Public Sector Undertakings
- d) Chief Executives and Executives on the Board and other officers of E-7 and higher in Schedule 'C' and 'D' Public Sector Undertakings
- e) Officers in Grade D and higher in Reserve Bank of India, NABARD and SIDBI
- f) Managers and higher in General Insurance Companies
- g) Senior Divisional Managers and higher in Life Insurance Corporations
- h) Officers drawing a salary of Rs.8700/- per month and above on Central Government D.A. pattern, as on the date of the notification (dated.12th September 2007) and as may be revised from time to time in Societies and other Local Authorities

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<sup>21</sup> DSPE – Delhi Special Police Establishment Act,1949

## CORRUPTION IN PRIVATE OFFICES

Corruption is unacceptable for both society and business and poses serious financial, operational, and reputational concerns. Now Companies are working to incorporate serious and effective ways of anti-corruption measures and policies inside their strategy and operations.

Here are some ways for encouraging accountability and transparency in a private company:

- **Commit:** Integrate strong anti-corruption practises into business practises. Make it clear to the company staff, clients, and suppliers that bribery and corruption are not tolerated at all.
- **Define:** Specify what a company's success demands. Create objectives, plans, and policies to gain support from colleagues by emphasising the significance of these policies in clear terms.
- **Implement:** Integrate strong anti-corruption policies and programmes across the whole organisation, including the value chain.
- **Measure:** What is measured, is to accomplish. Track and assess the results of anti-corruption initiatives to determine what is effective and what still needs improvement either of the way.

A strong emphasis on corporate governance and fraud prevention, the Companies Act of 2013 and the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 were made to regulate instances of private corruption among businesses (both domestic and foreign) either way.

For regulating corruption among individuals those with undisclosed income and tax evaders have been targeted under “Black Money” (Undisclosed Foreign Income and Assets), the Imposition of Tax Act of 2015, and the Fugitive Economic Offenders Act of 2018.

## CASE LAW

### **Vijay Madanlal Choudhary v. Union of India<sup>22</sup>:**

When interpreting Section 3 of the Prevention of Money Laundering Act, 2002, The Supreme Court of India held that it is not necessary to demonstrate that the proceeds of crime are untainted in order for the offence to be prosecuted under the PMLA. As a result, the word "and" for demonstrating the proceeds of crime are untainted property is construed as "or" because it must not defeat the very purpose of the Act. The court further asserted that indulging in or

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<sup>22</sup> (2005) 5 SCC 294

aiding in the activity of obtaining the proceeds of crime is a sufficient and reliable piece of evidence for attracting the crime under PMLA, and the property need not be shown to be untainted. The court argued that if this were not the case, members of crime syndicates would keep the proceeds of crime for years and would benefit from them without any intervention from law enforcement agencies. Therefore, the section must be read in conjunction with the explanation added by an amendment in 2019, which is sufficient to declare participation in an activity to get the proceeds of crime a crime under the PMLA, 2002.

### **Measures that can be taken to tackle corruption**

- **Legal steps that can be taken :**
  - Prevention of corruption Act 1988
  - Benami property Act
  - Central vigilance commission act
  - Right to Information act, 2005
  - Whistleblower protection Act 2014
  - Lokpal and Lokayukta Act 2013

### **CORRUPTION DURING COVID – 19 Pandemic**

Governments of states and union territories should had immediately launch a crackdown on black-marketing of essential medical items and services across the country, the demanded anti-graft watchdog Transparency International India (TII), which called corruption as the "second pandemic" during the Covid-19 crises.

Amid the unusual surge in coronavirus cases across the country, the most needed resources for Covid-19 response, included oxygen, medicines, ambulances, beds and ventilators were being provided to patients at exorbitant prices.

Corruption is defined as dishonest or criminal offence undertaken by a government official or organisation, who have been kept in the position of authority, to get illicit benefits for their personal gain. Corruption in healthcare became even more strong during COVID-19 as embezzlement of health care funds, using expired vaccines, fraudulent health contracts, etc have got a life-or-death consequence. It would not be inaccurate to term COVID-19 as the main cause of corruption pandemic as citizens across the globe have reported a widespread rise in corruption post-pandemic (Transparency International, 2020a). It is in this context that we

discuss the heterogeneity in healthcare response to the pandemic in the light of drastic levels of corruption across the nations.

It is high time that governments (Union and states) should have pro-actively managed the corruption risks that have emerged due to the extraordinary between demand and supply during the pandemic. Government should have immediately launched a block on black-marketing of essential medical items and services across the country, said Rama Nath Jha, Executive Director, TII, he added that corruption in these times is like the "second pandemic".

It also informed all the governments to immediately set up a "anti-corruption control rooms" up in all the district-level for relief on phone or other technology platforms.

### **CORRUPTION IN JAIL**

Corruption by prison staff and its less aggressive effect, guard corruption, is very common in prisons around the world. Given that the substantial powers for guards exercised over inmates and these problems are very much predictable, but the lower salaries that guards are generally paid severely aggravate them. In exchange for contraband or special treatment, inmates supplement guards' salaries with along with bribes.

### **CONCLUSION**

The development of any country is only accomplished when the economy of the country is strong and no hindrance would weaken the economy. Due to the direct influence of corruption has the country's economic structure, it is both a social ill and one of the main elements affecting the country's progress. The government has made many attempts to fight corruption, and as a result, laws pertaining to corruption have been passed. The Money Laundering Act, Black Money Act, and Prevention of Corruption Act, as well as the Indian Penal Code Act, 1988 mention the crime and stipulate punishment for the Acts of Corruption in India. Even though India is a developed country with a strong legal system and similar provisions, corruption has not been completely removed from the country. However, there has been a reduce in the level of corruption, trying to make India the least corrupt of all the developed countries.

Stopping corruption in a democracy like India is unlikely, instead, it is openly questioned or analysed, and scrutinised. Corruption is a political issue in India with long-reaching economic implications, as seen by the country's history before and after. Since many years, India has

been tortured with corruption, which has failed successive governments. Bribes were generally paid for doing the wrong thing, but today they are compensated for doing the proper thing at the right moment. However, these corruption cases eventually are not covered, and voters respond by holding politicians responsible when the opportunity arises.

