



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **PREVENTING CORRUPTION: LEGAL MEASURES** **FOR CRIMINAL LIABILITY IN PUBLIC** **CORRUPTION CASES.**

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## **ABSTRACT**

This abstract explores legal measures aimed at preventing corruption by establishing criminal liability in public corruption cases. It examines legislative frameworks and enforcement mechanisms designed to deter corrupt practices among public officials. Key legal strategies include stringent anti-corruption laws, enhanced penalties for corrupt activities, and robust systems for monitoring and reporting corruption. The effectiveness of these measures is evaluated through case studies and comparative analysis, highlighting best practices and areas for improvement. Emphasis is placed on the importance of transparency, accountability, and judicial independence in upholding the rule of law and combating public corruption.

## **CORRUPTION: INTRODUCTION**

### **1.1 MEANING AND DEFINITION**

Corruption, the word always strikes to a lay man in a negative sense most often is related to the 'politics'. It does not limit itself to one field and also affects culture, economy, etc and most importantly a society as a whole. Moreover it is considered as using power for one's personal gain. Lord Acton once mentioned in his Letter to Bishop Mandel Creighton that, "*Power tends to corrupt, and absolute power corrupts absolutely.*"

The origin of the word "corruption" comes from the old French word "corrupt" meaning unhealthy, corrupt, or uncouth in language, and directly from the Latin word "corruptus", the past participle of "corrumpere", which means to destroy, spoil, or figuratively corrupt, seduce, or bribe. Many have

attempted to define corruption, but have faced challenges in providing a universally accepted definition. This difficulty arises because some definition of corruption are rushed or biased. The term “corruption” is very ambiguous, making it difficult to have a fixed definition. The definition of corruption is likely to vary depending on who is defining it and from what perspective. However, we can glance on some definitions of corruption mentioned here under :

In the words of Transparency International,

*“Corruption is one of the greatest challenges of the contemporary world. It undermines good government, fundamentally distorts public policy, leads to the misallocation of resources, harms the private sector and private sector development and particularly hurts the poor”*

As defined by Curzon corruption is: *“An inducement by means of improper consideration to violate some duty.”*

The United Nations Manual on Anti-corruption Policy defines corruption as:

*“An abuse of (public) power for private gains that hampers the public interest.”*

World Bank has expressed its views on Corruption as :

*“The abuse of public office for private gain”*

Political Corruption: An Introduction to the Issues by Inge Amundsen Gould explicitly relates corruption to immorality. According to Gould, *“Corruption is an immoral and unethical phenomenon that contains a set of moral aberrations from moral standards of society, causing loss of respect for and confidence in duly constituted authority.”*

In its simplest form, corruption can be defined as an act of bribery or the misuse of a public position or power by a public servant to fulfill selfish motives or obtain personal gratifications.

The roots of this complex term ‘Corruption’ lies in the deep structure of bureaucratic and political bodies which effects the development of the nation. Basically it covers a wide range of actions taken by humans, in which public administrative center are maltreated for personal or private advantage



through bribery or other methods. *“It leads governments to intervene where they need not, and it undermines their ability to enact and implement policies in areas in which government intervention is clearly needed—whether environmental regulation, health and safety regulation, social safety needs, macroeconomic stabilization, or contract enforcement.”*

During G20 Seoul Summit 2010, it was discussed in G20 Anti-Corruption Action Plan that, *“Corruption threatens the integrity of markets, undermines fair competition, distorts resource allocation, destroys public trust, and undermines the rule of law.*

*Corruption is a severe impediment to economic growth, and a significant challenge for developed, emerging and developing countries.”*

Supreme Court interpreted corruption in *M. Narayana Nambiar v. State of Kerala* in the following words – “Bribery which means the centering of benefits by one upon another in cash or in kind, to procure an illegal or dishonest action in favor of the gainer. Corruption includes bribery but it has wide connotation. It takes in use all kinds of corrupt practices.”

Corruption is a global issue with various facets. While it can occur in the private sector, it predominantly involves government officials. This is why its commonly described as “endemic in all governments”, as practically no region or country is immune to it. Corruption appears to have existed for as long as governments themselves.

Corruption impacts nearly every aspects of society. Similar to a cancer, corruption corrodes the cultural, political, and economic structure of society, disrupting the functioning of essential institutions.

The World Bank (WB) has identified corruption as “the single greatest obstacle to economic and social development. It undermines development by distorting the rule of law and weakening the institutional foundation on which economic growth depends.” This explains why anti-corruption measures rank high on the policy agenda of the World Bank and the United Nations.

Corruption has become pervading and affected every sector of the society. Every aspect of life is so affected by the roots of corruption that it is now regarded as a way of life. Its grown to gigantic proportions and there are hardly any sphere of life - Social, Economic, Political and Cultural- that is

free from corruption.

Corruption is a universal issue that has been around for a long time. It's not a new problem. Various ancient civilizations, like Jews, Chinese, Japanese, Greeks, Romans, and Aztecs, all dealt with bribery. In ancient India, corruption was widespread in public life. Even during British rule in India, corruption was rampant, with almost all officials at different levels being involved in regular and systematic corrupt practices.

## 1.2 GLOBAL PERSPECTIVE

Corruption is like a worldwide thing, you know? It's been hanging around in every society in some way or another for a long time. Back in ancient times, judges were taking bribes in places like Egypt, Babylon, and Hebrew societies. Even in Rome, bribes were a common thing during public office elections. France was selling off judicial positions in the fifteenth century. England was labeled as a 'sink-hole' of corruption in the seventeenth and eighteenth centuries. People were into bribery in various ancient civilizations, like the Jews, Chinese, Japanese, Greeks, Roman, and Aztecs. In the nineteenth century, corruption was so out of control in Britain that Gibbon called it "the most sure sign of constitutional liberty." In the United States, about 60 percent of folks felt like corruption had been on the rise in the last couple of years.

In Uganda, corruption happens because public servants aren't getting fair pay and the political system is all closed off. This corruption ends up causing a loss of much-needed money and skilled workers, messes up what should be the focus of public policy, and moves resources away from what's truly in the public's best interest.

Dang, the way corruption is organized in the government in Ghana is pretty interesting. They've got this whole system where bribe money is divided up like this: half goes to ministers, 20% to the junior ministers, 10% to the go-between, 10% to the political party's secretary, and the rest is kept by the minister for stuff like paying informers, giving gifts, and having attractive women around the office. It's just wild how structured and detailed it all is.

It's pretty cool how Singapore and Hong Kong have managed to tackle corruption so effectively in their public services. In Singapore, the People's Action Party (PAP) discovered corruption in the

bureaucracy and knew they had to do something about it in the Singapore Civil Service(SCS). So, overtime, the PAP government put in place various measures to reduce corruption, and it seems like they've been successful at it. It's impressive to see how they've been able to make such positive changes.

Its really sad to see how corruption has been a long standing issue in Zimbabwe, affecting both private and public sectors. In politics, it seems like politicians have to engage in corrupt practices just to secure their positions in elections. Unfortunately, it's the ordinary citizens who end up suffering as the wealth that should benefit everyone is often hoarded by top politician.

And it's right, corruption is a global problem. It's been a part of election campaigns in countries like Italy and the UK, leading to government changes in Japan and Indonesia, and even sparking legislative actions in Russia and the US. The impact of corruption is huge worldwide, with the world bank estimating that developing countries lose billions of dollars each year due to corruption and bribery. It's a tough situation for sure.

### **1.3 HISTORICAL PERSPECTIVE IN INDIA**

It's fascinating to learn about the deep-rooted history of corruption in India, dating back to ancient times like the Mauryan reign and even during the Mughal and sultanate periods. It's like corruption has seeped into every aspect of society, from hospitals to crematoriums. It's crazy how widespread it is, affecting everyone and every area.

It's interesting that even the ancient Indian religious texts and codes of conduct address bribery and corruption, providing guidance on how to tackle these issues. It's amazing to see how sages and law givers like kautilya, katyayana, Manu, Narada, and Brahaspati recognized the problem of bribery and corruption and offered solutions to combat it. It's a part of Inda's history that's both intriguing and concerning.

There are several references to the prevalence of official corruption in ancient India. But the text that provides an elaborate description of the menace is the Arthashastra of Kautilya. Kautilya wrote in Arthashastra, "Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out

while taking money for themselves". The ancient lineage of corruption in India sanctioned by tradition is evident by these words of Kautilya, the author of 'Arthashastra' provide an important clue to the character of a political regime.

It's incredible to delve into the detailed accounts of corruption practices from ancient times in India as described by Kautilya in the Arthashastra. The ways in which treasury officers embezzled funds back then, like through loans, obstruction, trading, causing less revenue, fabricating accounts, embezzling for personal gain, and defalcation, show how deeply ingrained corruption was in society.

It's interesting to see how corruption persisted through different periods, even during the Sultanate and Mughal eras. Despite the positive aspects of the Mughal reign, corruption was a significant issue, with revenue extortion and justice perversion being rampant. It's unfortunate that even rulers like Akbar struggled to effectively combat corruption, and this failure, among other factors, eventually led to the decline of the Mughal empire. Corruption's impact on historical events is quite intriguing to explore.

When East India Company took control of the country, corruption reached new height. "Keep the officers and men happy to win their loyalty" was their motto. What is called bribe today was then called a "fee" or "commission", and was given openly across the table and not, as now, under it. Warren Hastings and Clive were found to be involved in corrupt activities to an extent that they were tried by the parliamentary committee after their return to England.

The period post-independence in India saw the implementation of heavy economic regulations aimed at fostering domestic markets. The Industries Act of 1951, for instance, mandated that new industrial ventures acquire licenses from the central government, limiting foreign investment and fostering a culture of bribery in business dealings. This era, known as the "license Raj" until 1991, was characterized by extensive government control over the economy.

The adverse effects of corruption were particularly harsh on the marginalized sections of society, diverting crucial public funds meant for development projects, assistance and social welfare initiatives. The heavy handed regulations and corrupt practices prevalent during this time hindered

the ease of doing business, with traders and businessmen resorting to unethical means to navigate the challenging economic landscape. It's intriguing to see how corruption has had a lasting impact on India's economic history.

From what started as petty 'commission' or 'fees' demanded by 'Babus' during the License Raj period, Corruption has taken a much loftier form today. However, the role of middle men has been minimalized or they have been eliminated, in toto in certain areas such as taxation, telecommunication sector, or acquiring permits or licenses etc.

In the present context, India is facing a different kind of challenge. It is not about petty 'commissions' or 'fees' or 'bakshish', but about scams to the tune of thousands of crores of Rupees that highlights a nexus between political and elite class of the society. The Bofors scandal, Airbus deal, Jain Hawala Racket, Sugar scam, Fodder scam and Tehelka tapes, etc., are a few instances. These scams, which got highlighted, were only the tip of the iceberg. Majorly, these scams relates to "public expenditure" by the Union and the State Governments.

The instances of corruption in public revenue collection are indeed alarming. The corrupt practices surrounding the non-recovery of loans from industrialists, the collection of direct and indirect taxes, and money laundering in the banking sector have led to the loss of significant amounts of money from the national treasury. Media reports on various scams highlight that while lower-level public servants may engage in minor corruption, larger-scale scams often involve collusion between the private sector and senior public officials, where bribes are exchanged to expedite work processes. It's disheartening to witness the extent of corruption and its detrimental impact on the the country's financial resources.

The findings from the 2005 Transparency International study in India are indeed concerning, revealing that over 50 percent of individuals have firsthand experience with paying bribes or using influence to navigate public offices. The prevalence of corruption in India has become ingrained in public life, with taxes and bribes being commonplace across state borders.

The intertwining of bureaucracy, politics, and criminal elements has fueled corruption in India, transforming it into a pervasive issue affecting various aspects of society. The country has

transitioned from being perceived as a lenient state to one where almost everything is attainable through illicit means. The dwindling number of ministers or public servants known for their integrity underscores the widespread nature of corruption. It's disheartening to witness how bribery has shifted from facilitating wrongful actions to expediting legitimate processes.

The Santhanam Committee, which was appointed in 1962 to examine the problem of corruption, observed in 1964 that: "There is widespread impression that failure of integrity is not uncommon among ministers and that some ministers, who have held office during the last sixteen years have enriched themselves illegitimately, obtained good jobs for their sons and relations through nepotism and have reaped other advantages inconsistent with any notion of purity in public life."

### **Conclusion-**

Corruption is a multifaceted social issue arising from various deficiencies in public administration and influenced by cultural, economic, political, and social factors. Though it cannot be entirely eradicated, it can be controlled within tolerable limits. Corruption adversely affects economic growth and international reputation. Diverse perspectives on corruption exist, leading to varied definitions and classifications.

Efforts to combat corruption include implementing strict codes of conduct, periodic risk assessments, shifting the burden of proof for asset accumulation to public servants, expediting trials under the Prevention of Corruption Act, amending protective constitutional provisions for public servants, ensuring equal legal treatment, and promoting ethical organizational cultures. The Right to Information Act, while helpful, requires better public awareness for effective use. Enhancing judicial independence and establishing whistle-blowing mechanisms are also crucial. India should ratify the United Nations Convention against Corruption and leverage both governmental and corporate efforts to improve governance, thereby boosting the nation's global image and economic competitiveness.

In order to curb corruption, organizations could adopt the following preventive mechanisms:

1. Draw up a comprehensive code of conduct and ensure strict enforcement of the code communicating zero tolerance towards corruption.
2. A comprehensive and periodic risk assessment mechanism, including third party audits with specific reference to corruption related risks.

3. Onus of proving accumulation of assets by public servants should be shifted to the public servant himself to show how he has obtained the ill-gotten money
4. It becomes difficult to take action against a corrupt public-servant due to lack of strong evidences and proof. Trial under Prevention of Corruption Act should be made expeditiously. Conviction should be made on the preponderance of evidences
5. A Public Servant is provided with maximum protection under the Constitution of

Industrial bodies can take the lead in standing up against bribery and corruption and take adequate steps to ensure that their members are committed to working in a corruption free environment by not paying or accepting bribes. Each step in the direction of building up effective governance to reduce the temptation of accepting bribes would also involve controlling the payer of the bribe. The steps taken by the Government of India along with Corporate India's efforts to mitigate corruption could help improve India's image on the global platform and improve the productivity and competitiveness of the economy.



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