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## ANTI-CORRUPTION LAWS IN INDIA - A SCHOLASTIC VIEW

By

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### WHAT IS CORRUPTION :

The etymological meaning of the term “Corruption” denotes depravity, perversion or destruction of integrity in the discharge of public duties by bribery or favour. Corrupting signifies moral deterioration and decay. Bribery and corruption constitute offences against society and State. Corruption involves the diversion of public funds into private hands. Corruption is the misuse of public power for private profit. According to *Edmund Burke*, famous crusader against corruption, corruption is the curse of the country. Undoubtedly it is an epidemic and requires panacea.

### WHETHER CORRUPTION IS CRIME :

“The higher the level of the person in the society, the greater the percentage of bribes in his total income.”. Any public servant in India who accepts a material favour (cash or kind) as gratification other than this legal remuneration (from a client) is liable to be prosecuted in a Court of Law for the crime of corruption. It is difficult to define the term ‘crime’. Crime denotes offence. The word “offence” is defined in Section 2(n) of the Code of Criminal Procedure, 1973 which runs as follows :

“Offence means any act or omission made punishable by any law for the time being in force.....”

Section 40 of the Indian Penal Code, 1960 denotes the same meaning for the word ‘offence’ which is punishable under the Code.

A crime is committed against the State, whereas the tort is against a person. Tort is a civil wrong and the remedy is compensation. A crime is a criminal wrong against the State and punishment by the State is its remedy. Civil Courts adjudicate Torts. Criminal Courts prosecute the criminals who committed crimes. Public servants taking gratification other than legal remuneration in respect of an official act amounts to offence and punishable under the provisions of the Prevention of Corruption Act, 1988 (Central Act No.49 of 1988).

### BACKGROUND OF ANTI-CORRUPTION LAW :

Corruption continued to flourish in our country since antiquity. During the Second World War in 1942 both official and non-official were unscrupulously enriched themselves dishonestly at the cost of the public. The then Defence Department later known as the War Department set up the Special Police Establishment to investigate the offence connected with the aforesaid illegal transactions. The jurisdiction of the Special Police Establishment was challenged before a High Court. This led to the promulgation of Ordinance No.XXII of 1943 conferring requisite legal authority on the Department. The said Ordinance lapsed on the 30th September, 1946 and was replaced by the Delhi Special Police Establishment Act (XXV of 1946) which came into force on 19-11-1946. A Committee was set up by the Government of India in 1949 with Dr. *Bakshi Tekchand* as Chairman to report on the Special Police Establishment and to

assess the success achieved by it in combating corruption. The Committee observed that the Establishment has no jurisdiction in the old Indian States. In 1963, the Delhi Special Police Establishment was absorbed into a newly created Central Bureau of Investigation as its investigating organ. In 1947, Prevention of Corruption Act, 1947 (Central Act 2 of 1947) was made and it was replaced by the extant Prevention of Corruption Act, 1988 (Central Act No.49 of 1988) which is more lucid to combat the ubiquitous corruption in India.

#### KINDS OF CORRUPTION :

Corruption is hideous practice prevailing in so many kinds like political corruption, bureaucratic corruption, scams, computer corruption, scandals, election related corruption, and so on.

Crimes are broadly divided into two, namely, Traditional and White collar. Murder, rape, hurt, assault and force, *etc.*, are known as traditional crimes. White collar crimes or corporate crimes are corruption driven. Election related crimes, the big economic crimes with political linkage have close nexus with the phenomenon of corruption. *Chanakya*, described 24 forms of corruption like corruption against society, corruption against State, corruption against individual, *etc.* According to *Chanakya* corruption is biological.

#### LEGISLATIVE VIEW :

In our country we have major criminal laws as well as minor criminal laws. Code of Criminal Procedure, 1973, Indian Penal Code, 1860 and Indian Evidence Act, 1872 are known as major criminal laws. We have number of minor criminal laws. Among them Prevention of Corruption Act, 1988 is an important Central legislation to combat the evil of corruption. It is a special law. It came into force with effect from 9-9-1988. It contains 31 sections and divided into 5 chapters. The Chapter I deals with preliminary provisions. The Chapter II deals

with provisions relating to appointment of Special Judges and their power to try the offences under the Act. The Chapter III deals with the provisions of offences and penalties. The Chapter IV contain investigation of cases under the Act. Lastly, the Chapter V explains sanctions for prosecution and other miscellaneous provisions of the Act.

The Criminal Law (Amendment) Ordinance, 1944 is still operative.

Addendum there are Lokayuktas, Vigilance Department in each State to attack the radical of corruption. In the Centre, there is a statutory Vigilance Commission known as the Central Vigilance Commission.

#### JUDICIAL VIEW :

The Central Bureau of Investigation is the prime investigating agency in India, and it has three investigation divisions, namely, Anti-Corruption Division, Special Crimes Division and Economic Offences Division. The Central Bureau of Investigation was established on 1-4-1963 *vide* Government of India's Resolution No.4/31/61-T/MHA. The CBI at the Centre and the ACB at States control Corruption invoking the provisions of the Prevention of Corruption Act, 1988.

In *K. Veeraswamy v. Union of India*, (1991) 3 SCR 189 = (1991) 3 SCC 655, the Supreme Court held that the provisions of the Prevention of Corruption Act are applicable even to the Judges of the High Court and the Supreme Court.

In *P.V. Narasimha Rao v. State*, 1998 (1) ALD (Cr.) 762 (SC), the Supreme Court declared that the Parliament or a Legislative Assembly is a public servant for the purposes of the Prevention of Corruption Act, 1988. In the same decision the Supreme Court of India observed that immunity can be claimed only by the members who take bribes but not by those who give bribes.

In *Vineet Narain v. Union of India*, reported in AIR 1988 SC 889, the Apex Court directed that the Central Vigilance

Commission (CVC) shall be given statutory status and fixed responsibility on it for the efficient functioning of the CBI.

#### CONCLUSION :

One of our former Prime Minister said, "Corruption is like diabetes, it can only be controlled but not eliminated.". Corruption retards economic development, and it fractures the society. Three elements, namely, population, pollution and corruption are shrinking the growth of our country and leading us towards the direction of poverty. It is unfortunate to say that we are running to equal poverty, instead of equal property. It is no doubt true that public distribution system controls poverty, secures food and helps to strengthen the public. Introduction of corruption in the system will lead us towards unsuccess. Elimination of corruption in the system will lead us towards success.

The next question that emerges, how to save ourselves from this evil ? No doubt corruption is a social evil. Excess of this practice results gloomy. Controlling this evil within the scale or in the equilibrium results light.

On a sample survey in 54 countries, the Transparency International of Germany ranked India as the 9th most corrupt country. The ranking is 0 to 10. '0' is the most corruption, '10' is less corrupt. Least corrupt countries are Newzealand, Denmark and Finland. Top corrupt countries are Nigeria, Pakistan, Kenya, Bangladesh, China, *etc.* India's place is at 9th and corruption in India falls at 2.6.

Bureaucratic corruption can be extinguished by introducing a three tier hierarchy. In the lower side three position, *viz.*, Junior Assistant, Senior Assistant and Assistant are to be introduced, in the higher side three Officers, *viz.*, Officer A, Officer B and Officer C are to be introduced. Time bound promotions at phased intervals are to

be awarded. Uniform retirement age, uniform wages are to be prescribed. Adequate responsibility is to be fixed at every level. These reforms in administration will no doubt mitigate litigation in the area of service jurisprudence. If the litigation is less corruption may also go down.

Every religion preaches righteousness. Old Testament says "Righteousness exalteth a nation."

According to *Bacon*, "Judges ought to be more learned than witty, more reverent than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue". (Source - C.B.I. Bulletin, August, 1998, page 36). Judges are earnestly requested to be more ascetic, judicious and judicial in delivering judgments in corruption cases. Also requested to adopt the technics of Jurisprudence with research orientation. At present a corruption official is being dismissed from service when he was proved guilty. It is not deterrent to others, as the said officer is starting his career as a politician, or a businessman, *etc.*, without contrition. Of course, some are ruining. The suitable punishment due to the convict is reduction in rank to a lower place. A Deputy Collector found guilty in a corruption case is to be reduced as Junior Assistant in rank and to be posted in the same office under his junior. His experience will caution others. Courts may explore the possibility of judging the corrupt as guilty. The punishment has to be imposed by the executive. It may be cleared that judiciary has to adjudicate and found guilty or not in corruption cases. The punishment has to be awarded suitably by the executive. To achieve this legislation may be changed suitably. A national level meeting may be organised by the law makers to examine the *pros* and *cons*.

Corruption free Government flourish.

Let us give a clarion call that "*Honesty is the Best Policy*".