

## A study on the ancient judicial system and corruption in India

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**Abstract:** Corruption is not the name given in present, but it is an evil which is en-rooted from past. Today it has taken the ferocious shape engulfing all levels of people from lower level to higher level. Corruption can be defined as anything which is benefiting you by illegal means whether that is bribery, saying lies, ditching others etc. This is today a world-wide phenomenon. In our own country some people in high positions have been charged for it. A corrupt person is termed immoral, dishonest and unscrupulous in his dealings. His disregard for honesty, righteousness and truth results in his alienation from society. He is treated with contempt. But as erosion of values leads to decadence, remedies for the social malaise remain elusive, and so no amount of contempt can eradicate corruption which is a symptom of decadence. Corruption is the most virulent when crises everywhere threaten the very existence of the society and the faith in life is shaken. It has always been there like tie leech, but when the system grows weaker and the boat flounders, it gets bolder and drains its victims of the last drops of their blood. The menace of corruption was found to have enormously increased by first and Second World War conditions. The corruption, at the initial stages, was considered confined to the bureaucracy who had the opportunities to deal with a variety of State largesse in the form of contracts, licenses and grants. Even after the war the opportunities for corruption continued as large amounts of Government surplus stores were required to be disposed of by public servants. As a consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post war reconstructions involving the disbursement of huge sums of money which lay in the controls of the public servants giving them wide discretion with the result of luring them wide discretion with the result of luring them to glittering shine of the wealth and property.

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### 1.Introduction:

Today, when India is free, these officials representing all government departments are very close to the most corrupt businessmen who are too unscrupulous to let any opportunity of amassing profits slip. This collusion broadens the base of the vicious circle and corruption spreads 'like wild fire to engulf the entire society. The political and social guardians depend only too much on the richer communities and they look indulgently on while these communities hold the entire society and the government to ransom. Corruption starts at the top and percolates down to the whole society. Such corruption cannot be confined to the towns alone. It is as widespread in the villages where the dishonest officials and the traders carry the germs of the disease. The tyranny of confusion and price rules the land and the people are helpless victims of corruption everywhere. Now-a-days corruption can be seen everywhere. It is like cancer in public life, which has not become so rampant and perpetuated overnight, but in course of time. A country where leaders like Mahatma Gandhi, Sardar Patel, Lai Bahadur Shastri and Kamraj have taken birth and led a value-based is now facing the problem of corruption. When we talk

of corruption in public life, it covers corruption in politics, state governments, central governments, "business, industry and so on. Public dealing counters in most all government offices are the places where corruption most evident. If anybody does not pay for the work it is sure work won't be done. People have grown insatiable appetite for money in them and they can go to any extent to get money. Undoubtedly they talk of morality and the importance of value-based life but that is for outer show. Their inner voice is something else. It is always crying for money. It has been seen the officers who are deputed to look into the matters of corruption turn out to be corrupt. Our leaders too are not less corrupt. Thus the network of corruption goes on as usual and remains undeterred. Corruption is seen even in the recruitment department where appointments are ensured through reliable middle agencies. Nexus between politicians and bureaucrats works in a very sophisticated manner. Nexus does also exist between criminals and police. Everybody knows that criminals have no morals, hence nothing good can we expect from them. But police are supposed to be the symbol of law and order and discipline. Even they are indulged in corruption. This is more so because they enjoy

unlimited powers and there is no action against them even on complaints and sufficient proof of abuse of office atrocities and high handedness. Corruption can be need-based or greed-based. Better governance can at least help to check need-based corruption. Better governance can check greed based corruption also because punishment for the corrupt will be very effective and prompt in a better-governed country.

## 2. History of corruption:

History of corruption is very old in India and though recently, there is huge hue and cry against corruption. Indians, by default, are not willing to pay the price of remaining non-corrupt, so corruption is prevalent in every stage of life. We find the name of corruption even in the 'ChanakyaNiti'. In fact Chanakya suggests a King should adopt SAM, DAM, DAND and BHED for ruling a country effectively. One would say the corruption in India has an ancient lineage; it is sanctified by tradition. The author of the Arthashastra made some remarks on government officials of his time which are relevant even today: "Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up at least a bit of the king's revenue. These in the postwar world became only bolder while eating up government money and accepting bribes. 'Merely shouting from the house tops that everybody is corrupt creates an atmosphere of corruption. People feel they are in a climate of corruption and they get corrupted themselves.' The words of Jawaharlal Nehru. Popular resignation about the permanence of corruption is partly explained by the political purchase of 'corruption' as an idea and a term. Accusations of corruption have historically been wielded as a political weapon – a means of tarnishing rivals in the right circumstances. During India's very first General Election in 1951-2, newspapers and party offices, particularly those of the Congress party, were bombarded with allegations about corrupt electoral candidates. The system of food and civil supply was subject to commodity controls and rationing – a legacy of the war years which had generated complex systems of patronage. These involved deeply entrenched black markets in lucrative industrial and agricultural concerns. This was the background to what was later known as 'Permit-Licence-Quota Raj' – the linking of business interests with political brokers. It is partly this nexus that underpins the protests in post-liberalization India.

The Congress governments of Bihar and Uttar Pradesh in those years also aimed to project themselves as realistic alternatives to the Raj – regimes which took the notion of 'public service'

seriously. The Special Police Establishment, which undertook to prosecute (albeit quite ineffectively) instances of government servant corruption, followed from 1941. And in March 1947, on the eve of independence, the Government of India passed the Prevention of Corruption Act. In the wake of Partition's mass migrations, seizure of evacuee property and mob violence, state governments across India sought to 'clean up' their administrations. In Uttar Pradesh, this operation was described by the early 1950s state government as an 'efficiency drive' to 'root out useless officers'. Conveniently, many of them were actual or intending evacuees to Pakistan.

It took a massive (pending) regime transition to initiate official drives for anti-corruption at that time. On the streets too, independence helped to generate citizens' movements in the late 1940s to protest against corrupt local rationing or police officers. The vernacular and English newspapers, previously muzzled by the British, were replete with corruption scandals, especially those linked to black marketers. But there was something more profound happening in early postcolonial India, just as there is today. The larger discussions of 'corruption' reached to the roots of what Indians thought about the state, and their own sense of national belonging or alienation. The recent criticisms of Anna Hazare bear this out. The writer Arundhati Roy points out the danger of creating another unaccountable anti-corruption 'oligarchy'. Others argue that Hazare's proposed Lokpal Bill could jeopardise constitutional protections for disadvantaged communities. Some Dalit organizations fear that Hazare's Lokpal Bill, the drafting of which has not hitherto involved minority representation, may undermine some structures of reservations. Still others suggest that Anna Hazare's style, and that of his supporters, smacks of demagoguery and 'aggressive nationalism'. In some ways, this is business as usual: India has a complex and highly developed system of fundamental rights provisions within its Constitution, and the country is certainly no stranger to vibrant public debate. Until President Obasanjo began his crusade against corruption via the Anti-Corruption law, "Welcome to the country of corruption" would have been an appropriate inscription at various countries' international airports! The anxiety of airport officials to extort money from those travelling into and out of the country, be they various countries or foreigners, was there for all the see. To the corrupt members of the police force, any criminal was welcome provided he paid the price being asked by the officer. And in the civil service, right from the messenger to the official at the very top, any duty performed was based on what could be extracted from whoever sought their services. In short, corruption pervaded

every stratum of various countries' society. The use of the past tense is not to suggest that various countries has now been transformed into a corruption free environment. Ranging from petty bribery to virtually ordering the central bank of siphon money into private bank accounts in overseas countries, corruption takes various forms that only a specialist in the subject will be keen to detail. The usual defence of the small offender is to blame corruption on the extended family system, which puts heavy demands on meagre earnings, but when it comes to the scale of graft by those at the top echelons of Government it is nothing but greed. Corruption has tended to be on the increase with successive government since independence in 1970.

Obasanjo faithfully handed over power to an elected government and that stood him in good stead. But the return of the political termites and the democratization of corruption . Corruption witnessed in every level of government, and was not limited to any political party. However, the NPN. Controlled executive was the worst offender. The competition by NPN stalwarts to own private jets and outsmart one another in the amount of money stashed in overseas banks was unprecedented. Most Various countries hailed the overthrow of the politicians of the second Republic. Their excess were such that the late Chief J.M. Johnson, a prominent politician in the First republic, prayed never again to witness democracy in his lifetime.

The incoming administration of Major- General Muhammadu Buhari and his new conquerors of democracy is better remembered for its tyranny and 'triple standard' in political decision than for corruption, although it must be said that the prominent actors some of whom had served under the Murtala Obasanjo administration, refused to declare their assets publicly on assumption of office. What the era gave to the world of corruption was General Imrahim Babangida who overthrew his colleagues in a palace coup, and established a government of his own. Babangida was the decent operator compared with General Sani Abacha who transformed various countries into a family company in which every member was a shareholder. The Governor of the Central Bank of Various countries was accountable to the family, and had to make available whatever sums of money were demanded by any of its members. Revelations have continued to be made of Abacha's billions in foreign bank accounts, and the wealth of his collaborators is known to many residents of various countries.

### 3. Meaning of Corruption:

The corruption is an often used, but very rarely defined phenomenon of the social life. Corruption or

level of corruption is widely used in public discourse and usually hold a two fold common-sense meaning. On one hand it stands for those illegal practices, in which citizens or organizations bribe officials in charge for awarding permissions, contracts, or to escape punishment or fines for offences they committed. In a simpler definition: Corruption is to obtain privileges against law or against the rules of some bureaucracy. This is the narrow definition of corruption. Many scholars argue, however, that corruption is a broader phenomenon, or rather, a hardly definable set of phenomena, including achieving several advances through personal networking; paying gratitude money or giving gifts for usual services, what are already reimbursed from customers or state resources.

Viewed most broadly, corruption is the misuse of office for unofficial ends (Klitgaard, 19981). Usually the first, narrow definition of corruption is primarily considered as dangerous, illegal, immoral, and furthermore: totally illegitimate in today is developed or transforming societies (and economies). However, researches indicate that the narrow defined corruption closely correlate with the level of the broader phenomena of corruptive activities or deeds, which are just morally corrupt (Johnston, 1994). Therefore previous researches suggest measuring both types of corruption to get a reliable and useful resource in estimating actual level of corruption in a specific country, even across counties.

But there is another problem with the broad definition; it is largely dependent on culture, historic age, actual social climate, and social groups, which activities can be perceived as corruptive. Whereas the narrow definition can usually be read from the more or less uniform laws throughout the countries, the definition, and even more the structure - the patterns – of those what we call corruptive activities, are deviating in a wide and rather undiscovered range (Heidenheimer, 1989). Heidenheimer has outlined corruption as ranging from white through gray to black, depending upon patterns of elite and mass opinion in several kinds of communities. This extended definition of corruption is reflected in the fact that the majority of the respondents in our pilot study perceive to live in a social milieu where they personally know people who are corrupt. If a research wants to measure corruption, it has the assumption that there is a finite number of different corruptive activities what research can count. Interestingly the point that Johnston drew attention to is like the chaotic processes in natural science (see Gleick, 1987); the closer look we take on these activities the more complex these things appear to be, and one-by-one definitive categorization is impossible, simply because of the infinite complexity of the cases under

investigation. Still, corruption is measured and will continue to be measured increasingly, moreover, these measurements do not lack at least common sense validity and reliability, so these abstract heuristic problems must be solved if possible; we stress that there are researchers who are investigating this issue from a quantitative approach. The main consequence, however, is that the exact volume of the corruption cannot be measured in any society, due to infinity of definitions and secrecy problems.

Corruption has been described “as the abuse of public office for private gain.” This refers to gain of any kind – financial, in status – and it could be gain by an individual or a group, or those linked with such an individual or group.<sup>2</sup> Apart from bribery, it can include “patronage, nepotism, embezzlement, influence peddling, use of one’s position for self-enrichment, bestowing of favours on relatives and friends, moonlighting, partiality, absenteeism, late coming to work, abuse of public property, leaking and/or abuse of government information and the like.

The source of corruption in South Africa is “rooted in the country’s bureaucratic traditions, political development, and social history”. Corruption has thrived, firstly, due to institutional weaknesses.

“The normal motivation of public-sector employees to work productively has been undermined by many factors – including declining civil service salaries and promotion unconnected to performance. Staff members have also been demoralised by dysfunctional government budgets, inadequate supplies and equipment, delays in the release of budget funds, and a loss of organizational purpose. The motivation to remain honest has further been weakened as a result of senior officials and political leaders using public office for private gain.” Secondly, corruption arises out of social tensions. “The new social forces governing South Africa have historically been excluded from the economy, but now control state power, and are responsible for delivering services to previously excluded and marginalised people.” It is clear that South Africans perceive corruption as a significant problem - although actual experience of corruption is often lower than that perceived<sup>6</sup> - but measuring its impact on socioeconomic rights is difficult. There is a lack of centralised, collated information on incidents of corruption and their prosecution. Besides, it is difficult to measure the impact of corruption with certainty as it does not just refer to amounts of money lost, but also obstacles to development and increases in inequality – which are much more difficult to quantify. Also, corruption is by its nature secretive so not much is known about where and how widespread it is.

#### 4. Judiciary:

In a historical book Arthashastra and the Dharmasastras establish the fact that the King was the fountain of justice. In addition to the King himself as a court of ultimate resort, there were four classes of courts. The King’s court was presided over by the Chief Judge, with the help of counsellors and assessors. There were three other courts of a popular character called PUGA, SRENI and KULA. These were not constituted by the King. They were not, however, private or arbitration courts but people’s tribunals which were part of the regular administration of justice and their authority was fully recognized. PUGA was the court of fellow-townsmen or fellow-villagers, situated in the same locality, town or village, but of different castes and callings. SRENI was a court of judicial assembly consisting of the members of the same trade or calling, whether they belonged to the different castes or not. KULA was the judicial assembly of relations by blood or marriage. Kula,

Sreni, Puga and the court presided over by the Chief Judge (PRADVIVAKA) were courts to which persons could resort for the settlement of their cases and were a cause was previously tried, he might appeal in succession in that order to the higher courts. As the Mitakshara puts it, ‘In a cause decided by the King’s officers although the defeated party is dissatisfied and thinks the decision to be based on misappreciation the case cannot be carried again to a Puga or the other tribunals. Similarly in a cause decided by a Puga, there is no resort to Sreni or Kula. In the same way in a cause decided by a Sreni, no recourse is possible to a Kula. On the other hand, in a cause decided by Kula, Sreni and other tribunals can be resorted to. In a cause decided by Sreni, Puga and the other tribunal can be resorted to. And in a cause decided by a Puga the Royal Court can be resorted to’. These inferior courts had apparently jurisdiction to decide all law suits among men, excepting violent crimes.”

In regard of the judicial system against corruption in ancient India, the following points may be noted:

- a) King was supposed to be a fountain of justice in a figurative manner. The actual dispensation of justice was done by a complex system consisting of a hierarchy of people’s tribunals and the Royal Court headed by the Chief Judge.
- b) People at large participated in the dispensation of justice through Kula, Puga and Sreni.
- c) There was more than an arm’s length distance between the persons exercising the legislative function (the universities as discussed above) and the judicial system.



d) King's will had no role to play in the dispensation of justice and it was neither possible for him to show any favours or disfavours in matters involving justice. We have seen earlier that King's will had no role in the legislative function also.

#### 5. Ancient Judicial System against corruption in India:

Corruption in India has been a problem ever since the country had been having a multilayered administration by officers, ministers and other administrative chiefs. The corruption problem in ancient India, coupled with bribery, kept infesting the society more and more in an increasing rate. This is quite clear from the way the contemporary writers like Ksemendra and Kalhana have condemned the government officials, as well as other employees of different levels, in their celebrated works. Ksemendra in his *Dasavatacaritam* has advised the king to remove all the officials, ministers, generals and priests from office with immediate effect, who were either taking bribes themselves or have been indulging in corruption in some other way. Yet another work by Ksemendra, called *Narmamala*, depicts corruption bribery spreading fast like rampant maladies. He also found an answer to the much discussed question how to stop corruption in India of his time; he has explicitly addressed the contemporary intelligentsia to step forward and shoulder the responsibility of purging their folks. Kalhana too was merciless in his condemnation of the corrupt government officers in India of his own time. He damned the officials outright and asked the king to stay alert from their evil entente. Kalhana has also cited some examples of top incidents of corruption in India of his days. He said that Bijja became even richer than the king as he sought to unfair means of getting money, while Ananda managed to achieve a high post in the office by bribing his higher officials. **Embezzlements in India** was just the same problem in the yesteryears as they are now, mostly among the police and administrative officers.<sup>1</sup> In fact, Kautilya has given a detailed list, referring to not less than forty ways of embezzlement that the treasury officers in his time were used to practice. The most common of them were *pratibandha* or obstruction, *prayoga* or loan, *vyavahara* or trading, *avastara* or fabrication of accounts, *pariahapana* or causing less revenue and thereby affecting the treasury, *upabhoga* or embezzling funds for self enjoyment, and *apahara* or defalcation. And he uses a nice metaphor too – just like one cannot resist tasting the drop of honey or poison on the tip of the tongue, a government servant can never resist devouring even a bit of the government revenue. Again, we cannot confirm if a

fish under water is drinking water or not; similarly, ascertaining the bribery, corruption and embezzlement on the part of government officials and policemen were equally impossible. And no wonder, this huge amount of embezzlement in different spheres of the administration and in varied degrees led to the piling up of a huge amount of black money in Indian market in the age of the *Arthashastra*; nevertheless, we would not enquire into that in detail and make this article unnecessarily long. In brief, that caused all the similar problems we find today, including sudden and unpredictable hikes in the prices of essential goods. It would have been quite interesting to address the issue under the present economic circumstances of the present day India, but the scope of this article would ask to better leave that out.

#### 6. Punishment for corruption:

There were a wide range of legal punishments for corruptions in ancient India for the depletion of treasury – monetary, corporal, and even sentences to death. Sometimes corrupt police officers would let the prisoners break away after taking a healthy amount of bribe. However, if they were caught, both the escaping prisoner and the corrupt police official were sentenced to death at the same time. Considering the present day situation of law and order in a number of agitated places in India, as well as the general corruption on the part of some police officers, we may quite confidently conclude that the system of the age of the *Arthashastra* was quite good enough as it succeeded to reduce the number of such cases by a significant degree. The accountants of all sections, departments and tiers needed to submit their accounts and audit reports to their respective higher officials on a regular basis. The work officers or the *Karmikas* needed to report the details to the Officer in Charge of Accounts, or the *Karanika*, every year. In *Police Administration in Ancient India*, K. K. Mishra has explicitly shown how they were punished for lack in their parts in audits and related jobs – "If they did not turn up for this purpose and came without the account books or balance sheets properly arranged, they were to be fined ten times of the amount involved. Again, if the work-officer presented himself with the records for being audited but the accounts-officer was not ready for audit, he (accounts-officer) was to be imposed the fine of the first amercement." Passing counterfeit coins as genuine ones was also widely practiced, and less often met with punishment, just as we find the circumstances today. There were several other severe punishments for the plethora of corruptions in ancient India which we simply cannot exhaust within the scope of this article.

**Discussion:**

Well, it looks like the mentality of the country has not changed much even in millenniums, and anti corruption measures by Govt of India 2011 do not seem do anything real good, very much like the state policies of the Maurya empire that were also only partially successful. Judges rightly turned down plea of defence-counsel that swallowing of ticket-money of some passengers by a UP State Roadways bus-conductor was a very minor offence as compared to the harsh punishment of terminating him from the service. Recently in a divisional bench verdict of Supreme Court<sup>1</sup> ordering immediate dismissal from service of a government-employee found guilty of swallowing even a tiny amount of public-money is totally justified, and may tend to root out malpractices and corruption at root-level. Judges rightly turned down plea of defence-counsel that swallowing of ticket-money of some passengers by a UP State Roadways bus-conductor was a very minor offence as compared to the harsh punishment of terminating him from the service. But why such harsh punishments are only at junior levels? Similar such thing should be there for political community as well where many political rulers are openly minting money out of their corrupt deeds. Supreme Court acquitted parliamentarians including Shibu Soren in infamous JMM bribery case only because act of these parliamentarians, voting in favour of confidence-motion by PV Narsimharao government, was considered immunized from judicial intervention because of it coming under Parliamentary proceedings! Rules and verdicts should be same for all, big or small.

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**References:**

1. R.C. Lahoti (CJI) “ The Cannon of Judicial Ethics”.
2. Dr . Sachdeva & Vidya Bhushan ‘An Introduction to the Sociology.’
3. Veerpa Moily ‘ Judicial reform’ edition 2010.
4. Dr. Johann Graft ‘ How corruption in government affect public welfare.’
5. Dr. Kailash Rai ‘Legal Ethics Accountability for Lawyers and Bench Bar Relations’.

6. M. A. Shewan & Udni Veer; Corruption money Laundering & law; A Mittal publication 2012.
7. Dr. Justice Arijit Pasayat; Judicial Independence and Accountability: Nyaya Deep. 8. <http://news.vakilno1.com/judiciary-should-not-be-under-lokpal-pm-1522.htm>.
9. Conversation of Justice Bhagwati and Justice Verma on Judicial activism. 10. <http://www.merineews.com/article/punishment-for-corruption-should-be-same-from-top-to-bottom/2012>.
11. <http://indiaassuperpower.blogspot.in>, <http://www.Lawyersclubindia.com>.

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