

Right to Corruption Free Governance

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Abstract

Background:

The National Human Rights Commission should revamp its mandate in the light of massive institutionalised corruption that has left no institution in India untouched. Human rights violations resulting from corrupt practices is no less than that of custodial violence or any other form of violation of civil political economic social and cultural rights.

Objective:

To examine the role of Corruption in Free Governance.

To understand the different forms of Corruption in Free Governance.

To know the Indian penal and special local laws of crimes against Corruption To provide some suggestion to overcome of these issues.

Methodology Primary data, Observation method, Secondary data, Library, news paper, Research Publication. Data analysis and interpretation.

Finding / Results:

NHRC engage with the leading anti-corruption agencies, which are most of the time on the other side when it comes to its work relating to human rights. However, this institutional engagement must be a facet of good governance.

Key Words: Right, Corruption and Governance.

Introduction

The most fundamental question the conference posed that needs to be addressed is how can the NHRC the right to corruption-free governance with a view to protecting and Human rights have traditionally been understood to be rights relating to life liberty equality and dignity. In the Indian context Section 2(d) of the Protection of Human Rights Act 1993 has defined human rights to mean the rights relating to life liberty equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. The preamble to The Right to Information Act 2005 notes the specific issue of corruption and

whereas democracy requires an informed citizen and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. Further human rights in India have also been given a strong constitutional foundation and have developed through innovative judicial interventions over more than five decades. The good governance agenda includes protection and promotion of human rights and rule of law. Both these functions will not be fully accomplished if corruption is rampant in government. It is important that institutions like the NHRC provide a framework to take up cases of corrupt acts of individuals and institutions that result in human rights violations. The NHRC should attempt to understand the implications of corruption for human rights not only from a theoretical perspective but also from a practical standpoint. It is useful to examine how many of the various cases that come before the NHRC are due to some act of bribery or other forms of corruption. Further the NHRC's research division may consider supporting studies on both the human rights consequences of corruption and how far the human rights discourse can help in ensuring corruption-free governance. One of the important developments due to the institutionalisation of human rights in India through the setting up of the NHRC and State Human Rights Commissions is that they have come to occupy a certain democratic space within the domestic political discourse. However the existence of democratic institutions does not necessarily mean human rights violations do not occur or that their incidence is reduced. What it means is that there are institutional mechanisms available for victims to seek justice. The effectiveness of these institutions in India is still a matter of opinion but, by and large, the NHRC has come to acquire a certain reputation because of its impartiality and independence. Of course its powers are limited and its opinions on human rights issues are recommendations, though they carry a lot of legitimacy and persuasiveness because of the composition of the Commission. The law enforcement agencies that are engaged in the task of anti-corruption work (such as the Central Vigilance Commission, the Central Bureau of Investigation, the Enforcement Directorate, etc.) would be truly empowered if institutions like the NHRC take cognisance of cases relating to corruption when it involves a human rights issue. This will bring the corruption problem to the centre of the governance discourse in India as it will be a human rights violation and the consequences of such actions will be significant. The recognition of corruption as a human rights issue does not warrant any amendment to the Protection of Human Rights Act 1993. The definition of human rights given in Section 2 and the functions of the NHRC given in Section 12 are wide enough to include corruption as a violation of human rights. The National Human Rights Commission should revamp its mandate in the light of massive institutionalised corruption that has left no institution in India untouched. Human rights violations resulting from corrupt practices is no less than that of custodial violence or any other form of violation of civil political economic social and cultural rights.

Rights-based approach

In this regard it is encouraging noting that the NHRC has been developing rights-based approaches to development in the area of population stabilisation and combating HIV. The NHRC can also engage with the leading anti-corruption agencies, which are most of the time on the other side when it comes to its work relating to human rights. However, this institutional engagement must be a facet of good governance. For if the NHRC has to take a proactive role in promoting good governance policies it has to understand the problem of corruption from a criminal law enforcement perspective as well. Having recognised that corruption affects human rights and the rule of law it is important for the NHRC to develop the right to corruption-free governance through a number of rights-based strategies in India. Rights-based approaches to governance are those strategies that rest on the conceptual foundation that social and economic goals do not remain policy objectives but get transformed into rights that are vested with the citizenry increasing incentives for public vigilance. In this conception there are right-bearers and duty-holders. The people will have rights relating to various social and economic goals that were hitherto described as policy objectives. The representatives of the government are vested with the duty of ensuring the protection and promotion of the particular right. A conceptual basis is essential for the NHRC to formulate various effective anti-corruption measures. Its role in protecting human rights by evolving rights-based approaches to development will help in eliminating corruption and promoting integrity and good governance in the following specific ways a) Corruption-free constitutional governance. The recognition of the right to corruption-free governance by the NHRC has the potential to bring the problem of corruption to the centre of the political discourse. This will ensure that the state and all its instrumentalities act in accordance with the Constitution and do not engage in any form of corrupt actions that will violate the fundamental rights of the Indian citizenry. This would require governance to be based upon the underlying ideals goals objectives aspirations and values of the Constitution. Unfortunately corruption has undermined all these constitutional values. All individuals and institutions within the government would be expected to take the necessary steps to fulfil this fundamental right.

b) Empowering the judiciary and other institutions. The recognition of the right to corruption-free governance will quickly empower the judiciary to bring forward the integration of the anti-corruption discourse and the human rights discourse. Both these discourses are about increasing the legitimacy of the state and ensuring accountability of the administration. The judiciary is best suited to continue this role as it has attempted in the past to create greater transparency and infuse institutional autonomy and independence in investigative agencies engaged in anti-corruption work. With the development of such a human right by the NHRC the judiciary is in a far better position to develop jurisprudence relating to good governance.

c) Galvanising social consciousness. The development of the human right to corruption-free governance will help in galvanising social consciousness on issues relating to bribery and other forms of corruption. It is

necessary for the NHRC to garner the support of the citizens, as it is their apathy and indifference to abuse of power that has resulted in corruption becoming institutionalised in India. Political morality cannot be brought about without the development of individual morality. The particular right can help in creating greater support for corruption-free governance and also result in the citizens valuing integrity and rectitude as important criteria for electing their representatives. At the same time citizens will feel a greater sense of urgency in reporting on corrupt activity.

d) Revamping the mandate of the NHRC. There is a need for the NHRC to revamp its mandate in the light of massive institutionalised corruption that has not left any institution in India untouched. The fact of the matter is that all human rights are violated due to corruption. The Protection of Human Rights Act 1993 in the first notes that it is An Act to provide for the constitution of a National Human Rights Commission for better protection of Human Rights and for matters connected therewith or incidental thereto. The NHRC must ensure that its investigations make due note that corruption is the root cause of potential violations of human rights. In this regard the NHRC may have to work in cooperation with anti-corruption Governance structure of India is affected by the social economic and political consequences of corruption, leading to the misallocation⁵ of resources. Corruption affects India at all levels of decision-making and in the distribution of the state's largesse. Corruption is a major obstacle to development. In the context of India, there are estimates, which suggest that only seventeen percent of funds allocated by the government for poverty reduction finally reach the poor. 2G spectrum scandal in India that broke in April 2011 made headlines around the world. A Times magazine special in spring that year placed the affair second on a list of the top ten abuses of power of all time—one place behind Nixon and Watergate and two places above the rampant nepotism of Colonel. India has continued to make the news in relation to corruption throughout 2012 with reports focusing on the fight back against graft at the grassroots level via the movements fronted by Anna Hazare at the level of national institutions in relation to the Controller and Auditor General (CAG) of India⁴ and of individual cartoonists. India is a fascinating place from which to consider questions of corruption governance and civil society resistance. At the same time in academia the race to produce works connecting corruption and human rights has hit break-neck speed.

Review of Study

Corruption in India is a major issue that adversely affects its economy. A study conducted by Transparency International in year 2005 found that more than 62% of Indians had firsthand experience of paying bribes or influence peddling to get jobs done in public offices successfully. In its study conducted in year 2008, Transparency International reports about 40% of Indians had firsthand experience of paying bribes or using a contact to get a job done in public office. In 2014 India ranked 85th out of 175 countries in Transparency

International's Corruption Perceptions Index, compared to its neighbours Bhutan (30th), Bangladesh (145th), Myanmar (156th), China (100th), Nepal (126th), Pakistan (126th) and Sri Lanka (85th). In 2013, India was ranked 94th out of 175 countries. Most of the largest sources of corruption in India are entitlement programmes and social spending schemes enacted by the Indian government. Examples include industry which is forced to pay billions in bribes annually to numerous regulatory and police stops on its interstate highways.

Indian media has widely published allegations of corrupt Indian citizens stashing trillions of dollars in Swiss banks. Swiss authorities, however, deny these allegations. The causes of corruption in India include excessive regulations, complicated taxes and licensing systems, numerous government departments each with opaque bureaucracy and discretionary powers, monopoly by government controlled institutions on certain goods and services delivery, and the lack of transparent laws and processes. There are significant variations in level of corruption as well as in state government efforts to reduce corruption across India. As of December 2008, 120 of India's 523 parliament members were accused of crimes, under India's First Information Report procedure wherein anyone can allege another of committing a crime. Many of the biggest scandals since 2010 have involved very high level government officials, including Cabinet Ministers and Chief Ministers, such as in the 2G spectrum scam and the scam. In cities and villages throughout India, consisting of municipal and other government officials, elected politicians, judicial officers, real estate developers and law enforcement officials, acquire, develop and sell land in illegal ways 2006 report claimed state-funded construction activities in Uttar Pradesh, such as road building, were dominated by construction mafias, which are groupings of corrupt public works officials, materials suppliers, politicians and construction contractors. Corruption caused problems in government funded projects are not limited to the state of Uttar Pradesh. According to The World Bank aid programmes are beset by corruption, bad administration and under-payments. As an example the report cites only 40% of grain handed out for the poor reaches its intended target. The World Bank study finds that the public distribution programmes and social spending contracts have proven to be a waste due to corruption.

Science and technology

CSIR, the Council of Scientific and Industrial Research, has been flagged in ongoing efforts to root out corruption in India. Despite being established with the directive to do translational research and create real technologies, CSIR has been accused of transforming into a ritualistic, overly-bureaucratic organisation that does little more than churn out papers alleged that corrupt government officials cooperated with Reddy, starting from government officials in charge of regulating mining to government officials in charge of regulating port facilities and shipping. These officials received monthly bribes in exchange for enabling the illegal export of illegally mined iron ore to China. Such scandals have led to a demand in India for consensually driven action plan to eradicate the piracy of India's mineral resources by an illegal-political-corrupt government officials-

business nexus, removal of incentives for illegal mining, creation of incentives for legal mining and domestic use of iron ore and steel manufacturing.

Driver Licensing

A study conducted between 2004 and 2005 found that India's driver licensing procedure was a hugely distorted bureaucratic process and allows drivers to be licensed despite their low driving ability through promoting the usage of agents. Individuals with high willingness to pay make a significant payment above the official fee and most of these extra payments are made to agents, who act as an intermediary between bureaucrats and applicants. Black money refers to money that is not fully or legitimately the property of the 'owner'.

A white paper on black money in India by the Government of India suggests two possible sources of black money in India. The first includes activities not permitted by the law, such as crime, drug trade, terrorism, and corruption, all of which are illegal in India. The second, more likely source is that the wealth may have been generated through a lawful activity but accumulated by failing to declare income and pay taxes. Some of this black money ends up in illicit financial flows across international borders, such as deposits in tax haven countries.

Black Money in Switzerland

According to a 2010 The Hindu article, unofficial estimates indicate that Indians had over US\$1456 billion in black money stored in Swiss banks (approximately US\$1.4 trillion). While some news reports claimed that data provided by the Swiss Banking Association Report (2006) showed India has more black money than the rest of the world combined, a more recent report quoted the SBA's Head of International Communications as saying that no such official Swiss Banking Association statistics exist. Another report said that Indian-owned Swiss bank account assets are worth 13 times the country's national debt. These allegations have been denied by Swiss Bankers Association. James of Swiss Bankers Association in an interview about alleged black money from India holds that "The (black money) figures were rapidly picked up in the Indian media and in Indian opposition circles, and circulated as gospel truth. However, this story was a complete fabrication. The Swiss Bankers Association never published such a report. Anyone claiming to have such figures (for India) should be forced to identify their source and explain the methodology used to produce them."

Public servants have very wide discretionary powers offering the opportunity to extort undue payments from companies and ordinary citizens. The awarding of public contracts is notoriously corrupt, especially at the state level. Scandals involving high-level politicians have highlighted the payment of kickbacks in the healthcare, IT and military sectors. The deterioration of the overall efficiency of the government, protection of property rights,

ethics and corruption as well as undue influence on government and judicial decisions has resulted in a more difficult business environment.

Armed Forces

The Indian Armed Forces have witnessed corruption involving senior armed forces officers from the Indian Army Indian Navy and Indian Air Force. A number of scandals in the 2000–2010 periods damaged the military's reputation such scandals included skimming of armed forces money, re-selling of government property, and faking combat missions.

Right to Information Act

The 2005 Right to Information Act required government officials to provide information requested by citizens or face punitive action as well as the computerization of services and the establishment of vigilance commissions. This considerably reduced corruption and opened up avenues to redress grievances.

Right to public services legislation

Right to Public Services legislation, which has been enacted in 19 states of India, guarantee time bound delivery of services for various public services rendered by the Government to citizen and provides mechanism for punishing the errant public servant who is deficient in providing the service stipulated under the statute. Right to Service legislation are meant to reduce corruption among the government officials and to increase transparency and public accountability.

Anti-corruption laws in India

Public servants in India can be penalised for corruption under the

- Indian Penal Code, 1860
- Prosecution section of Income Tax Act, 1961
- The Prevention of Corruption Act, 1988
- Prevention of Money Laundering Act, 2002

India is also a signatory to the United Nations Convention against Corruption since 2005 (ratified 2011). The Convention covers a wide range of acts of corruption and also proposes certain preventive policies.

The Lokpal and Lokayuktas Act 2013 which came into force from 16 January 2014, seeks to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries in India. Whistle Blowers Protection Act 2011 which provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices, has received the assent of the President of India on 9 May 2014, and

(as of 02 August) is pending for notification by the Central Government. At present there are no legal provisions to check graft in the private sector in India. Government has proposed amendments in existing acts and certain new bills for checking corruption in private sector. Big-ticket corruption is mainly witnessed in the operations of large commercial or corporate entities. In order to prevent bribery on supply side it is proposed that key managerial personnel of companies' and also the company shall be held liable for offering bribes to gain undue benefits. The Prevention of Money Laundering Act, 2002 provides that the properties of corrupt public servants shall be confiscated. However, the Government is considering incorporating provisions for confiscation or forfeiture of the property of corrupt public servant in the Prevention of Corruption Act, 1988 to make it more self-contained and comprehensive. In a 2011 report on Corruption in India, one of the world's largest audit and compliance firms KPMG notes several causes that encourage corruption in India. The report suggests high taxes and excessive regulation bureaucracy as a major cause. India has high marginal tax rates and numerous regulatory bodies with the power to stop any citizen or business from going about their daily affairs. This power of Indian authorities to search and question individuals creates opportunities for corrupt public officials to extract bribes - each individual or business decides if the effort required in due process and the cost of delay is worth not paying the bribe demanded. In cases of high taxes, paying off the corrupt official is cheaper than the tax. This, claims the report, is one major cause of corruption in India and 150 other countries across the world. In real estate industry, the high capital gains tax in India encourages large-scale corruption. The correlation between high real estate taxes and corruption, claims the report, is high in India as well as other countries including the developed economies; this correlation has been true in modern times as well as for centuries of human history in numerous cultures. The desire to pay lower taxes than those demanded by the state explains the demand side of corruption. The net result is that the corrupt officials collect bribes, the government fails to collect taxes for its own budget, and corruption grows. The report suggests regulatory reforms, process simplification and lower taxes as means to increase tax receipts and reduce causes of corruption. Excessive regulations and authorisation requirements, complicated taxes and licensing systems, mandated spending programmes, lack of competitive free markets, monopoly of certain goods and service providers by government controlled institutions, bureaucracy, lack of penalties for corruption of public officials, and lack of transparent laws and processes. A Harvard University study finds these to be some of the causes of corruption and underground economy in India.

Conclusions

Corruption in India is conducted in 2013 by one of the largest global professional services firms Ernst & Young a majority of the survey respondents from PE firms said that a company operating in a sector which is perceived as highly corrupt, may lose ground when it comes to fair valuation of its business, as investors

bargain hard and factor in the cost of corruption at the time of transaction. According to a report by KPMG, high-level corruption and scams are now threatening to derail the country's it is credibility and its economic boom.

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