

On the onset of the globalisation corruption has been recognised as a major non-trade barrier in international commercial transactions. It is now a well documented fact that corruption has transcend the national boundaries, because after liberalisation the Transnational Corporations (TNCs) have been investing the capital in developing economics in order to capture the huge consumer market. In this process the TNCs' are paying huge amount of bribe known as 'business expand expenditures' in order to avoid direct competition with the other TNCs' and to ensure the contracts. Nuances of corruption are different in different countries at different times in the course of history. Fighting against corruption too is as ancient as the phenomenon itself. Since ancient times every society has condemned and proscribed corruption through appropriate legislations. Every moral, legal and religious school of thought bitterly condemns the practice of corruption. In the "Old Testament" Moses teaches the people of Israel that "Do not accept a bribe, for a bribe blinds the eyes of the wise and twists the worlds of righteous". Some thousand years later Confucius found in China a corrupt government and began to set the high moral standards as he believed would make for a more harmonious society. The Holy Koran says "Oh my people! Give full measure and full weight in justice and do not evil in the earth, causing corruption". The ancient text, Kautilya's Arthashastra states that "the king shall protect trade routes from harassment by courtier, state officials, thieves and frontier officers shall make good what is lost. Just as it is impossible not to taste honey or poison that one may find at the tip of one's tongue, so it is impossible for one dealing with government funds not to taste at least a little bit of the king's wealth". In this way Kautilya clearly indicated the existence of the transborder corruption and the role of the state to prevent

Feature

Globalised Corruption and International Law

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it. It shows that anti-corruption legislations are in existence since time immemorial. But with the emergence of the welfare state the welfare of citizens greatly depends on the four vital organs of states machinery: the executive, the legislature, the judiciary and the military. There is a growing belief that all these organs are becoming tainted with cases of corruption and similar malpractices.

Definition of Corruption

Etymologically the term corruption comes from Latin verb *rumpere* "to break". It traced to Latin "*corrumpere*" meaning 'decay or putrefaction'. In fact, modern usage of it does not ignore the stinky order of a decomposing morality. Bouvier's Law Dictionary defines it as "it is an act done with an intent to given some advantage inconsistent with official duty and the rights of others, which includes bribery and extortion". The Indian Penal Code section 161-162 means corruption as 'gratification' other than legal remuneration, accepted or agreed to be accepted, by a public servant or a person accepted to be a public servant, for himself or for any other person, for showing as a motive or reward for doing or forbearing to show official favour. The Prevention of Corruption Act of India 1988 section 7 also covers certain aspects of corruption. The different international and regional organisations have tried to develop a common definition of corruption in their different anti-corruption legal instruments.

The 1996 United Nation's General Assembly resolution on "UN Declaration against Corruption and Bribery in international commercial transaction" defined the nature of bribery. The United Nation's Economic and Social Council (ECOSOC) in its "Draft International Agreement on Illicit Payment" defined the mode of illicit payment about public official and commercial transaction. Further the ECOSOC in its Adhoc inter-governmental Working Group Report on "Problem of Corrupt Practices in International Commercial Transactions" also explained on bribery, that "bribery is to be understood as determined in the relevant national law of each contracting state, which includes at least the offering, demanding, giving and receiving of any payment or gift to a public official in connection with his official functions with the intention of improperly influencing a governmental decision in connection with an international commercial transaction. According to the report "illicit payment" means bribery as well as illegal political contributions as defined in the national law and regulations. The World Bank in its "procurement guidelines" defines "corrupt practices" means "the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution" and "fraudulent practices" means a representation of facts in order to influence a procurement process on the execution of a

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contract to the detriment of the borrower". The International Monetary Fund, in its guidelines regarding "governance issues" mentions "corruption" as 'abuse of public office for private gain'. The International Chamber of Commerce (ICC) in its 'rule of conduct' in international business transaction defines corruption in terms of "extortion, bribery and kickbacks".

Scope and Impact of Corruption

An International NGO, Transparency International (TI) suggests that approximately fifty billion dollars changes hands as corrupt payments every year in the form of lawful or unlawful political payment, bribery, extortion, kickbacks and illicit payments. Principal purposes of rampant corruption in international trade are: (1) to obtain or retain contract of service or purchase, (2) to ensure higher margin of profit, (3) to reduce political risk, (4) to avoid harassment, (5) to evade tax, (6) to avoid bureaucratic hurdle. The basic causes of corruption in the emerging market economy are: (1) the temporary economic and political instability, (2) corruption is less expensive in developing countries, (3) in developing countries bribe is an accepted price, due to low salaries, (4) ineffectiveness of law enforcement bodies, (6) slow judicial proceeding and lack of exemplary judicial precedent of punishment.

The possible consequences of corruption are: (1) it distorts the allocation of financial and human resources to inefficient uses, (2) it discourages small business, entrepreneurs and consumers even foreign investment, (3) it undermines the credibility and effectiveness of both elected and appointed government officials, (4) it undermines the countries ability, (5) it leads to the disruption of international trade relation, (6) it can accelerate the drug trade, even encourage the smuggling of biological, chemical or nuclear weapon's materials, (7) it can lead bigger deficit, cash of economy and destabilise government. The popular modes of corrupt payment includes: (1) cash, (2) negotiable instrument, (3) fix deposit, (4) over billing, (5) gift, (6) unsecured loan, (7) enter-

tainment expenditure, (8) contribution to political parties and charities, (9) purchasing or selling of properties in a very unreasonable higher or lower price, (10) providing scholarship, education and jobs to children and relatives of bribe receiver.

The international anti-corruption legal regime classifies corruption into two types, active corruption (bribe giving) and passive corruption (bribe receive). Accordingly the parties to a corrupt transaction are also of two types (1) Supply side, i.e. (a) Transnational Corporations (TNC's) (b) National Corporation (both public and private), (c) government officials, (2) Receive side, i.e. (a) government officials (legislator, bureaucrats, judicial and military), (b) employees of public sectors, (c) political parties, (d) candidates in election, (e) media (f) experts, consultants, agents and representatives to a government function.

International Law

There is no denying the fact that the corruption has become global in character and no single country can offer an effective fight against this nagging menace. The United Nations has pioneered the anti-corruption movement in international arena in 1975. Since then different international and regional organisations have taken initiatives in this regard. Both international customary law and multilateral treaty law measures are in the place to introduce rule of law and anti-corruption strategies in the international market place. These interalia includes a number of non-legal binding directive principles of UN General Assembly Resolutions, Economic and Social Council (ECOSOC) resolutions, World Bank (WB) and International Monetary Fund (IMF) guidelines, World Trade Organisations (WTO) proposals, Organisations of Economic Co-operation and Development (OECD) recommendations, European Union (EU) Protocols, International Chamber of Commerce (ICC) rule of conduct, findings of NGO's like Transparency International (TI) and three regionally enforceable treaties like Inter-American Convention Against Corruption - 1996, European Union Convention on the Fight Against Corruption involving officials of the European Commis-

sion or officials of member states of European Union- 1997, and the OECD Convention on "Combating Bribery of Foreign Public Official in International Commercial Transactions - 1997". Of course every country has its own domestic legislation to prosecute corruption and most of the national anti-corruption legislation have criminalised the taking of bribe by government officials and the present emerging international anti-corruption law regime reflects the same trend. It shows the existence of two basic requirements, i.e. psychological test and material test for the development of international customary anti-corruption law.

The United Nations General Assembly (UNGA) adopted a resolution on "Measures Against Corrupt Practices of Transnational and other Corporations". After this in 1976, in May 1979 the United Nations Economic and Social Council (ECOSOC) adopted a resolution 'Against Corrupt Practices', particularly to prohibit illicit payments to foreign officials. In November 1977, the ICC produced "ICC basic rules" which targets extortion, bribery and kickbacks as major factors for causing corruption.

On 12th December 1996, 16th December, 1996 and July 1997, the UNGA passed resolution on "Action Against Corruption" recommended a "code of product" for public officials of the members' states as tool to guide their efforts against corruption. It urged the states to criminalise international bribery and to deny tax deductibility on bribes, and recognised that corruption in public sector undermines the integrity of the state bureaucracy and weakens the social and economic policies. The UN's ECOSOC passed resolution on "Action Against Corruption" in July 1995 in which it expressed deep concern about the problem. In 1994 the UN's Commission on International Trade Law (UNCITRAL) adopted a model law on "procurement of goods, construction and services". In 1997 the World Bank has amended its procurement guidelines, loan conditions and standard building

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