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CONTENTS

Sr. No.	TITLE & NAME OF THE AUTHOR (S)	Page No.
1.	ROLE OF FOREIGN INSTITUTIONAL INVESTORS IN INDIA: AN INVESTIGATION <i>MRUNAL CHETANBHAI JOSHI & DR. JAYESH N. DESAI</i>	1
2.	COMPARATIVE ANALYSIS OF HUMAN RESOURCE ACCOUNTING PRACTICE IN ONGC & HPCL: OIL & NATURAL GAS CORPORATION LIMITED AND HINDUSTAN PETROLEUM CORPORATION LIMITED <i>DR. SAMIR M. VOHRA</i>	6
3.	HUMAN RIGHTS BASED APPROACH TO COMBAT CORRUPTION <i>DR. NIRUPAMA</i>	9
4.	BANKING ON SOCIAL MEDIA: RISK OR OPPORTUNITY FOR THE INDIAN PUBLIC SECTOR BANKS? <i>SRIHARI SUBUDHI</i>	12
5.	THE DEATH OF LEADERSHIP IN MANAGEMENT <i>P.UMA SANKAR & DR. P. ASOKAN</i>	16
6.	STUDY OF OPTION PRICE DEVIATION USING BLACK SCHOLES OPTION PRICING MODEL FOR EQUITY OPTIONS IN INDIA <i>DR. KAPIL ARORA & MANISH SHARMA</i>	18
7.	AUDITOR INDUSTRY SPECIALIZATION, AUDIT EXPERIENCE, TENURE AND AUDIT OPINION <i>LI-JEN HE & YI-FENG WANG</i>	24
8.	COMPARATIVE STUDY OF WORKING CAPITAL MANAGEMENT (WITH THE REFERANCE OF CIPLA & AUROBINDO PHARMA) <i>AMALESH PATRA</i>	34
9.	GOODS AND SERVICES TAX: A CRITICAL ANALYSIS <i>DR. MEHAK MEHANDIRATTA</i>	41
10.	GROWTH OF MALL CULTURE IN INDIA <i>SANDEEP YADAV</i>	46
11.	CONSUMER BEHAVIOUR AND DECISION MAKING STYLES OF SHOPPING MALLS: A STUDY WITH REFERENCE TO SELECTED SHOPPING MALLS IN CHENNAI CITY <i>DR. R. JAYANTHI</i>	49
12.	A STUDY ON THE TEACHER EFFECTIVENESS OF SCHOOL TEACHERS IN RELATION TO JOB INVOLVEMENT <i>DR. T. SIVASAKTHI RAJAMMAL</i>	52
13.	IMPACT OF HARYANA GRAMIN BANK LOAN SCHEMES ON THE BENEFICIARIES <i>SANTOSH & BIMLA LANGYAN</i>	63
14.	PROJECT APPROACH IN TEACHING BUDGETING SUBJECT TO STUDENT ENTREPRENEURIAL PROFILE IN CIPUTRA UNIVERSITY, SURABAYA, INDONESIA <i>LUCKY CAHYANA SUBADI S.PD, MM & DR. IR. LILIANA DEWI, M.M.</i>	66
15.	MAKE IN INDIA: TRANSLATING VISION INTO REALITY <i>RAJANIKANTA KHUNTIA</i>	69
16.	PROBLEMS WITH MICROINSURANCE IN INDIA IN 2015 <i>SONAM KUMARI GUPTA</i>	73
17.	A STUDY OF PERCEPTION OF STUDENTS TOWARD THE SEMESTER SYSTEM AND THE ANNUAL SYSTEM OF EXAMINATION <i>NISHAT QURESHI & SHRUTI AWASTHI</i>	76
18.	EVOLVING THE CONCEPT OF TEACHING INTELLIGENCE <i>S. AROCKIYASAMY</i>	82
19.	VALUE OF TMT SOCIAL CAPITAL IN AN INDIAN ENTREPRENEURIAL FIRM: A CASE STUDY <i>YESHA DUA</i>	92
20.	A STUDY OF THE ADJUSTMENT PROBLEMS BETWEEN SC, ST AND GENERAL CASTE HINDU STUDENTS <i>TRIBHUWAN KR. BHARTIYA</i>	97
	REQUEST FOR FEEDBACK & DISCLAIMER	101

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HUMAN RIGHTS BASED APPROACH TO COMBAT CORRUPTION

**DR. NIRUPAMA
PRINCIPAL
DURGAPUR INSTITUTE OF LEGAL STUDIES
DURGAPUR**

ABSTRACT

Corruption is the social evil epidemic disease that kills the development of the country. It is not that the modern milieu is infected with this cancerous germ but it had been from the ancient era. The right to development is adopted by the United Nation and given the status of human rights, so the State is obliged to protect these inalienable, indivisible rights of the people. Due to the corruption not only the development of the State is effected but the civil, political and economic rights of individual is violated and specifically of the vulnerable and marginalised group of the society. In order to combat with corruption, it is important to interlink with the human right as each corner of the human life is damaged. The most important programme of United Nation Development Program (UNDP) is the Millennium Development Goal that was targeted to be achieved by 2015, but it is only half filled and half empty glass and this happened due to corruption.

KEYWORDS

human rights, corruption.

INTRODUCTION

Since the antiquity corruption is the insidious social evil which is of epidemic in nature and is spreading not only in India but in the whole World. Corruption thrives on human weakness which promotes illegality, unethicalism, subjectivity, inequity, injustice, waste, inefficiency and inconsistency in administrative conduct and behaviour.¹ It is a fact that this cancerous problem is not of the modern days only, as it had been infected from the day back to the ancient period. Kautilya a sagacious minister of the Chandragupta Maurya Court in his Arthashastra reflected the corruption in the society and proposed number of measures to combat with the man-made evil. As Salman Rushdie stated that

“There are two things in Indian history –one is the incredible optimism and potential of the place and the other is the betrayal of that potential – foe example, corruption. These two strands intertwine through the whole of Indian history, and may not be just Indian history.”

It is a universal problem which is endemic as well as enemy within a State. It is permeated in the developed and developing countries, political, economic and social sphere and threatened the prospects of development and prosperity. The former UN Secretary-General Kofi Anan in the forward to the United Nation Convention against Corruption (UNCAC) stated:

“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes, the quality of life and allows organised crime, terrorism and other threats to human security to flourish. Corruption hurts the poor disproportionately by diverting funds intended for development; undermine a government’s ability to provide basic services and discouraging foreign and investment.”²

As the United Nations Secretary-General, Ban Ki-moon expressed corruption as a barrier to achieving universally accepted development goals and in his message to mark the 2013 International Anti-Corruption Day stated that:

“To achieve an equitable, inclusive and more prosperous future for all, we must foster a culture of integrity, transparency, accountability and good governance.” It is very difficult to give the specific definition of corruption as it touches each and every sphere of life. The corruption is an act where for personal gain the public power is utilised is universally accepted. This epidemic problem has long been regarded as of administrative nature, but it has grown as an economic problem as it made commercial transaction more expensive. Recently it had been related with the social institutions that threaten the social fabric, due to which the individual suffers of its consequences.³ It affects the poor vulnerable group of the society the most as corruption creates fundamental inequalities to access justice and to development services. In 1986, the United Nations declared that right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.⁴ It is definite that corruption has a pervasive and troublesome impact on the poor which is the barrier in the enjoyment of the right to development. According to the Former World Bank President, James Wolfensohn,

“Corruption is one of the greatest inhibiting forces to equitable development and to combating of poverty. For many, it constitutes the difference between life and death.”⁵

Thus it is anti-poor, anti-development, anti-growth, anti-investment and inequitable. The former Chief justice of India opined:

“The real cost of corruption are difficult to measure since they involve the loss of opportunities for business and investment as well as the diversion of man-power, when it may be usefully employed elsewhere. In some instances corruption poses a threat to national security as well as law and order.”⁶

As corruption is one of the obstacles to peace, security, stability, democracy and human rights globally. The Supreme Court of India in State of Madhya Pradesh v. Shri Ram Singh⁷ observed that,

“Corruption in a civilized society is like cancer, which is not detected in time is sure to maligns the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social orders, being not only anti-people, but also aimed and targeted at them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence shaking of the socio-economic political system in an otherwise healthy, wealthy, effective and vibrating society.”

CORRUPTION AS A THREAT TO HUMAN RIGHT

The United Nations have established this cancerous to society under the purview of human rights as from the “first generation” civil and political rights to “second generation” economic and social rights. The corruption hinders the human development as it reduces access to public services by diverting public resources for private gain. In 2009 UN Secretary –General stated that:

“When public money is stolen for private gain, it means fewer resources to build schools, hospitals, roads and water treatment facilities. When foreign aid is diverted into private bank accounts, major infrastructure projects come to halt. Corruption enables fake or substandard medicines to be dumped on the market, and hazardous waste to be dumped in landfill sites and in oceans. The vulnerable suffer first and worst.”⁸

¹ Ramesh K. Arora and Rajni Goyal, Indian Pulic administration: Institutions and Issues (New Delhi, Wishwa Prakashan,1996)

² Freedom from Official Corruption as a Human Right by Mathew Murray and Andrew Spalding, jan 2015

³ Corruption as a violation of Human Rights by Julio Bacio-Terracino published in SSRN Jan. 2008

⁴ Declaration on the Right to Development adopted by General Assembly resolution 41/128 of 4th Dec. 1986, Article 1

⁵ Wolfensohn’s “Challenging in asia: Case Studies and a Framework for Action” World Bank Publication 2003.

⁶ Balakrishna K.G. Chief Justice of India, paper presented National Seminar on “Fighting Crimes Related to Corruption “New Delhi on 13/10/2009,

⁷ AIR 2000 SC 870

⁸ Anti-corruption/ UNDP available at www.undp.org/content/undp/en/home/.../focus_anti-corruption.

The realization of the corruption as a threat on the fundamental rights of the people is not new as the French Declaration of 1789, the Right of Man and the Citizen brought awareness about their rights as it stipulated the "ignorance, oblivion or contempt" of human rights are the causes of the public misfortunes and governmental corruption.

Human rights are indivisible and interdependent, due to the corruption from grand corruption to petty corruption i.e corruption in the high level to the low level, the consequences is on all human rights- civil, political, economic, social and cultural, as well as the right to development. It not only leaves the negative impact on the enjoyment of human rights but also weakens democratic institutions. In countries where corruption is prevalent undermines the rule of law, weakens the accountability structure and import impunity in the society by illegal actions. The resolutions adopted by the Human Rights Council in the twenty-third session that corruption constitutes one of the obstacles to the effective promotion and protection of human rights as well as to the achievement of the Millennium Development Goals and other instrumentally agreed development goals.⁹

The prevalence of corruption discriminate in access to public services among the able group of society who fulfil the needs of the authorities by offering bribes and other those not able to influence. As a consequence of corruption it weakens the democratic institution where people are discouraged from the enjoyment of civil and political rights. In the country of the rule of law system, it weakens the accountability and transparency due to which the implementation of legal frameworks and protection of human rights are impeded.

In order to determine that corruption violates the human rights it is necessary to define as direct violations, indirect violations and remote violations by the corrupt practices. These three categories depend upon the cause of violation. To link between both it is first important to establish the scope and content of the human rights obligation, whether it is obligated by the domestic law, international law, treaty, custom or general principles. States have the three level of obligation in relation to human rights i.e. the obligation to respect, to protect and to fulfil the enjoyment of the rights of the population.

RELEVANCY TO LINK CORRUPTION WITH HUAMN RIGHTS

The connection between the human rights and corruption may help to minimise the corruption as the human right framework emphasise explicitly that vulnerable and marginalised section must be protected from abuses. The International Bill of Human rights and numerous other UN treaty bodies and UN special procedures stated that widespread of corruption obstruct the states to comply with their human rights obligations. The Committee on Economic, Social and Cultural Rights expressed that "states face problems of corruption which have negative effects on the full exercise of rights covered by the Covenant (ICESCR)"¹⁰. The obligation of the State is clearly elucidated in the International Covenant on Economic, Social and Cultural Rights –

"Each State Party in the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the right recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

With the help of the above stated obligation it is implicit that the corrupt act committed by the public officials or institution reduces the state's ability and resources which are important for the realization of human rights. The corruption deviates the public goods or resources for the welfare of the people to a few hands that brings the injustice and inequality in the society. It is believed that the human rights approach will give the anti-corruption movement a momentum and address all the major contemporary issues. Mark Kreutner, Dean and Executive Secretary of the International Anti-Corruption Academy in the 13th UN congress on Crime prevention and Criminal Justice stated that

"All the universal goals run the risk of being severely undermined by corruption. Corruption is the anti-thesis vis-a-vis human rights, the venom vis-a-vis the rule of law, the poison for prosperity and development and the reverse of equity and equality."

The interdependence of both the agencies will surely be proved to be effective as this process amplify the transformative effect on the lives of the poor. The three principles that are central to both anti-corruption and human rights policies are participation, transparency and accountability. The citizen empowerment is a vital component of the effective anti-corruption strategies. Whether it is a fight against the violation of human rights or the corruption the empowerment of the public with the help of the three pillars of good governance i.e. participation, transparency and accountability is the effective weapon. Access to information is the key to the transparency and is the cornerstone of the anti-corruption strategies. Transparency will prevent corruption whether it is in section of public procurement, budgeting, public expenditure, finance, the judicial system or the conduct of private companies. Corruption impacts on the lives of the people and undermines the human rights by distorting the rules of allocation, inclusion and accountability which regulate the access to distribution of public resources. . The UNCAC underlines the importance of participation as it directs the States to promote the active participation of individuals and civil society, NGO's in the fight against corruption, prioritized the social accountability and this is possible with access to information

From the United Nations Development Programme (UNDP) angle dealing corruption not just as a crime but more than it as it is an impediment to its mandate of reducing poverty and promoting sustainable development. Anti-corruption is accepted as an essential ingredient in the national and global development agendas. In the 22nd session of the Human Rights Council the common principles to promote human rights based approach to end impunity of corruption are transparency, accountability, citizen participation, rule of law, freedom of expression, right to information, equality and non-discrimination, equity and fairness.

MEASURES AT INTERNATIONAL LEVEL

The United States of America was the first to put effort to combat corruption by law as the Watergate incident leads to the enactment of the Foreign Corrupt Practices Act (FCPA) in 1977 and Inter-American Convention against Corruption was the first international convention. The Organisation for Economic Cooperation and Development Conventions on Combating Bribery of Foreign Public Officials in International Business Transaction (OECD Corruption Convention) was adopted by the effort of United States with her trading partners at the OECD. The United Nation Convention against Transnational Organised Crime (UNTOC) also called the Palermo Convention, was adopted in 2000 by the General Assembly resolution 55/25 which contains provisions on corruption (Articles 8 and 9).

The United Nations Office on Drugs and Crimes (UNDCO) Global Programme against Corruption has acted as a catalyst helping countries to implement the United Nations Convention against Corruption (UNCAC). It is the first global legally binding international and national instrument adopted by the General Assembly in 31st Oct. 2003 by Resolution 58/4 with the objective to reaffirm the importance of core values of human being i.e. honesty and for the promotion of development with transparency and accountability. The Preamble of UNCAC declares the state parties to have concern "about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law." The preamble does not directly delineate how corruption affects the people's rights but it only refers to fairness, responsibility and equality before the law.

Human rights principles and institutions are to be adopted with the other anti-corruption strategies for success and sustainability. To give the effective mode to the anti-corruption agencies or legal frameworks the strong involvement of the civil activist or culture of integrity in State and open political system is required. It is explicit that the battle against the corruption is similar to human rights projects where independent judiciary, freedom of the press, freedom of expression, transparency in the political system and accountability are essential for both. A human rights approach to curb corruption provides awareness to challenge the institutions involved in corruption. The possibility is that the victims can have recourse through human rights mechanisms such as International Covenant on Civil and Political Rights (ICCPR), Convention on the Rights of the Child (CRC), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) against corruption and have redressal from the State. For anti-corruption advocacy the UN has developed two distinctive mechanisms: the treaty bodies and the special procedures. The treaty based mechanisms are committees created under the terms of International human rights treaties which are of four kinds: (a) a reporting procedure; (b) an inter-states procedure; (c) an inquiry procedure; and (d) a complaints procedure.¹¹

⁹ A/HRC/23/9 on 20 June 2013

¹⁰ E/C.12/1/ADD.91(CESCR, 2003, para12)

¹¹ Corruption and Huamn rights: making the Connection –2009 International Council on Human Rights Policy -transparency International, http://www.ichrp.org/files/reports/40/131_web.pdf

UNDP's global Programme on Anti-Corruption for Development Effectiveness (PACDE)(2008-2013) ended on 13 December 2013 and Global Anti-Corruption Initiative(GAIN) (2014-2017) on the ongoing path of PACDE with new strategic plan to integrate anti-corruption bottlenecks in service delivery to contribute to MDG acceleration and post-2015 development goals. The UN Secretary –General Ban-ki-Moon released a report 'The Road to Dignity by 2030' and recommended to move forward by replacing Millennium Development Goal(MDG) with the new set of Sustainable Development Goal(SDG's)and stated that: "We must maximise our commitment to public transparency, information sharing, participatory monitoring and open data."

State parties to the UNCAC acknowledged that corruption is a serious impediment in reducing poverty and achieving MDG, therefore pledged to take effective steps to prevent corruption.

Transparency International is a non-governmental organization founded in 1993 with the participation of Peter Eigen, a former regional director for the World Bank.¹² It state:-Transparency International is the global civil society organisation leading the fight against corruption. It brings people together in a powerful worldwide coalition to end the devastating impact of corruption on men, women and children around the world. TI's mission is to create towards a world free of corruption.

MEASURES AT NATIOANL LEVEL

It is very obvious in the present scenario that the human rights are violated every day and even if the corruption is recognised as a human rights violation can it be fruitful to fight against corruption. The right to corrupt free service is the agenda of the good governance that is to be achieved with mechanism of human rights or other legal tools. Without the elimination of corruption, the justice cannot be accessed which is the constitutionally recognised rights of Indian citizenry and this is possible only if we have corruption free governance. The former Vigilance Commissioner, N.Vittal observed that 'Corruption totally distorts the machinery of government namely, the executive and makes a mockery of the human right for good governance.'¹³

At the national level there are number of corruption laws ie. India Penal Code, 1860 penalise the public servant under sections 169 and 409; the Prevention of Corruption Act, 1988; The Benami Transactions (Prohibition) Act, 1988 that prohibits benami transactions. The Prevention of Money Laundering Act, 2002; the Right to Information Act, 2005, the Lokpal and Lokayuktas Act, 2013; the Whistle Blower Protection Act, 2011; the Comp [any Act, 2013. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 is to curb black money or undisclosed foreign assets and income and imposes tax and penalty on such income. The Law Commission submitted the Report No. 254 on the Prevention of Corruption (Amendment) Bill, 2013. As India ratified the UNCAC, international treaty against corruption it is necessitated to amend the Prevention of Corruption Act, 1988 that provide for classifying corruption as a heinous crime and enhance the imprisonment for both bribe-giver and bribe-taker. There are not only the legislation that put efforts in dealing corruption as a crime but not considering the problem that undermines the enforcement of human rights.

Only the Anti-corruption legal framework cannot make corruption free society but there is a need of a perfect and strong machinery to enforce and implement. Certain Anti-Corruption Agencies are with the effective role namely Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI) Anti-Corruption Bureau (ACB), Comptroller and Auditor General (CAG); the Enforcement Directorate etc. The days demand the revamp of the National Human Rights Commission (NHRC) to empower the struggle against the violation of fundamental rights due to corruption. If the human rights and the rule of law is affected then it is essential to develop the right to corruption free governance. It is should not be conceptual based but in reality effective one, so that the Indian citizen may live with corruption free environment. When the right to corruption free governance is recognised the judiciary will be empowered to integrate anti-corruption with the human rights. As the integration is established the social consciousness and awareness among the public will feed to raise the voice against corrupt activity. As Justice Ganguly

"Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our Preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption."¹⁴

CONCLUSION

The integration of anti-corruption and human rights movement outline the beneficial and challenging steps in both developing and developed countries. For the interface of violation of rights with corruption the mechanism could directly incorporate human rights theory through the tripartite typology (respect, protect, realise) or the 4A framework (availability, accessibility, acceptability and adaptability).¹⁵ The linkage of corruption and human rights is to elevate the corruption free service as a human right which is the exponential component of the good governance and rule of law. The right of corruption free service is missing in the Universal Declaration of Human Rights and the two international Covenants i.e. in the International Bill of Rights. With the anti-corruption measures i.e. prevention, criminalisation, asset recovery and international cooperation it is necessary to give response to the victims of corruption. The UNCAC has the single provision for the compensation of victims that covers only the bribery not for other corrupt acts. Right to corruption free service is rooted in human dignity and equality just as the right to life, security and privacy are. As the problem is such complex and multi-faceted that human rights based approach to fight against corruption will open the doors for the human rights monitoring mechanisms at international and regional level, civil society organisation and media to mobilise the public opinion on corruption. As the corruption violates the human rights so to give a judicial space for remedy it is important to recognise the corruption free service as a human right so that the vulnerable group of the society be empowered to know, claim and enjoy the human rights with dignity.

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