

RELATIONSHIP OF CORRUPTION WITH HUMAN RIGHTS

***Divya Bansal**

Abstract

Corruption is a global phenomenon which every society faces though its degree of severity varies from country to country. Despite its long history, there is no single universally agreed upon definition of corruption. Moreover, its causes, forms and impacts are diverse and multi-faceted. Understanding corruption by itself is a complex undertaking. However, it is agreed that corruption is inimical to public administration, undermines democracy, degrades the moral fabrics of the society and violates human rights. The pain of corruption touches all the human family but it disproportionately affects the vulnerable sections of the society. It reinforces discrimination, exclusion and arbitrariness. Corruption is a universal problem undermining universal value- human rights. However, on the contrary, guarantying human rights in general and ensuring non-discrimination and participation in particular are useful preventive tools for corruption as they ultimately empower the society and create social accountability. It is argued that, the struggle to promote human rights and the campaign against corruption share a great deal of common ground. Both are struggling for the orderly and decent life of humans rooted in dignity and equality.

Key Words: Corruption. Human rights, Human Dignity

Introduction

Corruption has existed ever since antiquity as one of the worst and, at the same time, most widespread forms of behavior, which is inimical to the administration of public affairs.¹

Notwithstanding the long history and the apparent spread of the phenomenon of corruption in today's society, it seemed difficult to arrive at a common definition. However, it is a situation

where money, arbitrariness and discrimination talks. People are judged not by what they are but what they have and from whom they belong. It is one of the greatest challenges of the contemporary world ‘which undermines good government, fundamentally distorts public policy, leads to misallocation of resources, harms the private sector and private sector development, and particularly hurts the poor’.² It forces the private sector to engage in rent-seeking activities rather than competitive activities.³ Above all, corruption hurts more the most vulnerable sections of the society, such as women, children, minorities, indigenous peoples, migrant workers, persons with disabilities, those with HIV/AIDS, refugees, prisoners and those who are poor.⁴ Corruption is incompatible with the ideals of equality and justice. It diminishes human dignity and thereby prevents the realization of human rights and fundamental freedoms. Corruption is hampering the global movement for the realization of human rights.

1. Corruption

The term “corruption” comes from the Latin word *corruptio* which means “moral decay, wicked behavior, putridity or rottenness”.⁵ Defining the concept corruption is not as easy as one recognizes its occurrence. It varies from region to region and remains largely contextual. Usually corruption is defined as ‘an illegal act that involves the abuse of a public trust or office for some private benefit’, or ‘the misuse of public office for private gain.’⁶ Transparency International (TI) defines corruption as ‘misuse of entrusted power for private gain’⁷. Corruption may be defined as a misuse of entrusted power for private gain against the rights of others and giving officials undeserved benefit or advantage.

1.1 The Causes of Corruption

Available research reveals that the causes of corruption are diverse and depend on the different contextual environments. Corruption is rearing its ugly head in more and more severe ways due to the weakening of social values, with the broader public interest and social responsibility being subordinated to the enhancement of material status in the personal ethics of many.⁸ Besides, lack of transparency and accountability in the public integrity systems are contributing factors for corruption. As Human nature is imperfect, corruption will exist in all human endeavors. Selfishness and greed are the constituting elements of human imperfection which leads to corruption. Institutional causes of corruption include monopoly and wide discretionary powers for public officers, poor accountability, lack of effective and efficient enforcement of the law, absence of institutional mechanisms to deal with corruption, existence of a weak civil society, and the absence of press freedom. The political causes of corruption arise from the structure and functions of political institutions, and the acquisition and exercise of political power.

2. Human Rights

As a concept, human rights have been constantly evolving throughout human history. They have been intricately tied to laws, customs and religions throughout the ages. Their standards change with time according to human needs and interests.⁹ Any discussion about human rights should distinguish the philosophical, political and legal accounts. But a detail discussion of the philosophical, political and legal perspectives of human rights will not be made for the simple reason that it is out of the scope of the work. Instead, the most essential elements of the concept of human rights which give a bird's-eye view of the above perspectives will be made. By so doing the objective is to make a connection between human rights and corruption.

2.1 Definition of Human Rights

In the international sphere, where diverse cultures are involved, where positivist underpinnings are shaky, and where implementation mechanisms are fragile, definition of human rights is crucial.¹⁰

Internet Encyclopedia of Philosophy defines human rights as basic moral guarantees that people in all countries and cultures allegedly have simply because they are people.¹¹ In other words, human rights are the rights a human being has simply because he is a human being. They are the basic entitlements or minimum standards to be met for humans to live with dignity.

When people today think or talk about human rights, they usually have in mind the sorts of rights found in the Universal Declaration of Human Rights (UDHR) and subsequent treaties. While they are right in holding this, however, human rights are also rights which automatically belong to a human person as a minimum guarantee for worthy human living though these rights are not recognized under positive law.

2.2 Basis of Human Rights

Many people tend to take the validity of human rights for granted. There are two major schools of thought regarding the philosophical foundations of human rights. These are the foundationalist and the anti-foundationalist schools of thought.¹²

The foundationalist argues that there are philosophical foundations for human rights. They base their argument on moral philosophy, religion and natural law. The aspiration to protect the

human dignity of all human beings is at the core of the concept of human rights.¹³ The idea that humans are free and equal is also used as a ground for the conception of human rights.

The anti-foundationalist on the other hand argue that human rights are contingent historical facts without philosophical foundation.¹⁴ Contemporary ideas like democracy and justice gives rise to the bases for human rights. They argue that human rights are responses to the gross atrocities happened to mankind.

The existing international human rights law regime basis it's foundation on human dignity and equality.¹⁵ It can be argued that the existing international human rights law regime seems to accommodate both schools of thought by recognizing human dignity and equality as foundations for human rights and also by referring to the impacts of gross human atrocities on the conscience of mankind.

2.3 Nature of Human Rights

Human rights are applicable to all people everywhere at all times regardless of race, sex, religion, ethnicity, political or other opinion, national or social origin. They are the birth rights of all human beings and thereby universal. However, there are arguments against the universality of human rights. Opponents of universality argue that human rights are culturally relative.¹⁶ Human rights are inalienable in the sense that they cannot be taken away; no one has the right to deprive another person of them for any reason.¹⁷ People still have human rights even when the laws of their countries do not recognize them.

Human rights are indivisible, interdependent and interrelated that they are equal in importance and equally essential for the respect and dignity of each person.

3. Corruption and Human Rights

There is a linkage between corruption and human rights. But a large part of the prevailing discourse on corruption tends to emphasize on its economic consequences, ignoring one of its most negative effects-the impact it has on human rights. International anti-corruption laws further emphasizes on the economic and political impact of corruption than the human rights impact.¹⁸

Under the human rights jurisprudence, it is States which are the principal duty bearers for human rights.

Corruption has a negative impact on human dignity for the simple reason that it hinders the proper fulfillment of human rights.¹⁹ Strengthening the enforcement of the international human rights law regime will have a supportive role for reducing corruption. Whenever human rights are guaranteed, there will be social empowerment and social accountability.²⁰ If weak human rights protection may create opportunities for corruption, policies that promote human rights may prevent corruption.

Corruption is a universal problem which every society faces and human rights are universal values which every society pledges to protect.

3.1 Corruption as a Violation of Human Rights

United Nations (UN) treaty bodies and special procedures have concluded that, where corruption is widespread, States cannot comply with their human rights obligations.²¹ Whenever there is widespread corruption, it can be said that, there will be a violation of human

rights. Corruption can be an indirect cause for the violation of human rights when it is a necessary condition for the violation of the right. In this case, corruption will be an essential factor contributing to a chain of events that eventually leads to violation of human rights. Hence, the right is violated by an act that derives from a corrupt act .

There are times when corruption plays a remote role for the violation of human rights. It is a situation where corruption is one factor among others for the violation of human rights. When corruption during an electoral process raises concerns about the accuracy of the final result, social unrest and protests may occur. In such a case, the right to political participation may be violated directly, and repression of the social protests may also cause serious violation of human rights. Nonetheless, the electoral corruption would not necessarily be the only or determining causes of such riots or their repression. Many other factors might contribute and, to that extent, the corruption has a remote role to the violations after the social unrest and protests.

3.1.1 Civil and Political Rights

The principle of equality and non-discrimination are fundamental principles in human rights. The principle that every individual is equal before the law and has the right to be protected by law on an equal basis is affirmed in all the main human rights treaties.²² In general, corrupt practices commonly produce unequal and discriminatory outcomes with regard to human right. The right to an effective remedy is guaranteed by most international human rights instruments.²³ It asserts that, when a human rights violation occurs, a State has a duty to provide victims with an effective remedy. Failure to do so can create a climate of impunity, particularly when States intentionally or regularly deny remedies.²⁴ States are under an

obligation to provide accessible, effective and enforceable remedies to uphold civil and political rights. If there is corruption in the justice system, it is probable that some of these standards will not be respected. This may create the situation of impunity in addition to the violation of the right to an effective remedy.

3.1.2 Economic, Social and Cultural Rights

Corruption implies that the State is not taking steps in the right direction. When funds are stolen by corrupt officials, or when access to healthcare, education and housing is dependent on bribes, a state's resources are clearly not being used maximally to realize economic, social and cultural rights.²⁵ Corruption as a violation of the right to food, housing and health impacts socio-economic and cultural rights.

3.1.3 Environmental and Developmental Rights

All peoples have the right of self-determination, the right to freely dispose of their natural wealth and resources and thereby freely pursue their economic, social and cultural development.²⁶ At the same time they have a right to live in a clean environment.²⁷ A government that tolerates or actively engages in the corrupt transfer of ownership of national wealth to the benefit of some nationals, who occupy positions of power or influence in the society operates to deny the people, individually and collectively, their right to freely use, exploit and dispose of their natural wealth in a manner that advances their development.

3.2 Human Rights as a Preventive Tool for Corruption

As argued above, all forms of corruption tend either directly, indirectly or remotely to violate human rights. Conversely, wherever human rights are not protected, corruption is likely to flourish. In the absence of human rights like freedom of expression and assembly – or where access to information and education is restricted – it is extremely difficult to hold government officials to account, which allows corruption more room to spread freely.²⁸ Besides, where corruption is prevalent, it is hard to promote human rights. The discussion is based on the assumption that protection and promotion of human rights will enhance the effectiveness of anticorruption measures.

3.2.1 Guarantying Human Rights

Implementation of human rights can contribute for the prevention of corruption because human rights address abuses of power, and corruption is essentially an abuse of power. A human rights analysis throws light on the power relations in a society because it pays particular attention to discrimination, equity and the removal of economic, legal and political obstacles that prevent marginalized groups from enjoying their rights. As a result, a human rights analysis can contribute directly to the design and implementation of anti-corruption policies. If basic human rights are guaranteed, especially the rights to the basic necessities of life, then the incidence of corruption and related offences would be reduced.

3.2.2 Ensuring Non-Discrimination and Participation

Giving due effect to the enforcement of human rights in general no doubt will reduce the problem of corruption. But there are also some norms and principles of human rights which the anti-corruption campaign shares. These norms and principles are non-discrimination and

participation. The principle of non-discrimination is fundamental to human rights. Corruption distorts the allocation of public resources, which causes the administration of public services to become discriminatory and arbitrary. Second, corruption is often associated with discrimination based on race, color, sex, language, religion, political opinion, national or social origin or sexual orientation.

Participation is also at the heart of human rights discourse. It is constructed out of several key rights.²⁹ To participate effectively, people need to organize themselves freely (freedom of association), to communicate their opinions frankly (freedom of expression) and to inform themselves (right to access to information). Citizen's participation contributes in an essential way to political decision-making and the implementation of public policies.

3.2.3 Social Empowerment

Whenever human rights are guaranteed, the society will be empowered. This is because the ever increasing resources and alternatives are open to ordinary citizens.³⁰ In its classic postulation, social empowerment entails strengthening civil society in order to enhance its political and economic vitality, providing more orderly paths of access and rules of interaction between State and society, and balancing economic and political opportunities. Where it is successful, social empowerment will not totally eradicate corruption. It can, however, provide necessary support for institutional reforms, weaken the combinations of monopoly, discretion, and lack of accountability that make for systemic corruption, and help institutionalize reform for the long term by linking it to lasting interests contending in active political and social processes.

Conclusion

Corruption is a universal problem offending a universal value -human rights. Corruption *per se* is a violation of human rights. Preventing corruption plays a great role for the realization of human rights. At the same time, guarantying human rights in general and ensuring non-discrimination and participation in particular will reduce the incidents of corruption. Whenever these are done, there will be social empowerment which creates social accountability. The anti-corruption campaign and the human rights movement have something to share in common. Both are struggling for the orderly and decent life of humans rooted in dignity and equality. Thus, it is important to note that an integrated approach is required if it is said the interests of the society are respected. This is made by acknowledging that human rights can play a preventive role for corruption; and reducing the incidents of corruption will be a great lip forward for the enforcement of human rights. Such understanding opens the door to the existing human rights mechanisms on which to base further action against corruption, since corruption is a violation of human rights. Human rights monitoring mechanisms such as international and regional human rights commissions and courts, UN complaint mechanisms or national human rights systems will be useful to remedy corrupt practices. This brings the anti-corruption and human rights activists together for the fight against corruption and violations of human rights.

References

1. D. Fantaye (2004), '*Fighting Corruption and Embezzlement in Third World Countries*', 68 *Journals of Criminal Law*, 2004, 171

2. E. Reichert(2006) 'Human Rights: An Examination of Universalism and Cultural Relativism', *Journal of Comparative Social welfare*, Vol. 22, No. 1, 23-36.
3. J. Pope (2000), *Confronting Corruption: The Elements of a National Integrity System*, TI Source Book. .
4. M. Milic (2001), '*Endogenous Corruption in Privatized Companies*', Collegium, Budapest, available at, <http://www.cerge.cuni.cz/pdf/gdn/RRCI_17_paper_01.pdf>
5. R. Hope and C. Chikulo (2000), *Corruption and Development in Africa Lessons From Country Case Studies*,
6. S. Becker(1994) '*To Root Out Corruption, Boot Out Big Government*', *Business Week*, 31 January: 18.
7. Transparency International, '*Corruption and Human Rights: Making the Connection*', (International Council on Human Rights Policy, 2009).
8. Transparency International (2009), *The Anti-Corruption Plain Language Guide*, <http://www.transparency.org/content/download/45306/725785/file/TI_Plain_Language_Guide_280709.pdf>
9. Z. Ernada (2005) '*Challenges to the Modern Concept of Human Rights*', *Jurnal Sosial Politika*, Vol. 6, 1-12.
10. J. Shestack (1998) '*The Philosophic Foundation of Human Rights*', *Human Rights Quarterly* 20.2, 201-234,
11. Internet Encyclopedia of Philosophy, *Human Rights*, available at, <<http://www.iep.utm.edu/>>
12. W. Benedek (2006) *Understanding human rights, manual on human rights education, European Training and research center for human rights and democracy (ETC), Graz,2006*
<http://conventions.coe.int/Treaty/en/Reports/Html/173.htm>>