Introduction

The human rights have usually been understood to be rights relating to life, liberty, equality and dignity. Human rights are universal legal guarantees protecting human beings against actions and omissions that interfere with human dignity and fundamental freedoms of individuals. Human rights in India have been given a strong constitutional underpinning and have developed through revolutionary judicial involvement. Under section 2(d) of the Protection of Human Rights Act, 1993, the human rights have defined as 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. However, corruption attacks the fundamental values of human dignity and political equality of the people. There is an imperative call for devising a new fundamental human right to corruption free service. The development of a fundamental human right to a corruption free society will be observed initially from an international perspective so as to elevate the violation of this right to the status of an international crime. This would provide a comparative basis to elevate the right to corruption free service to the status of a fundamental right within the frame work of the Indian constitution. Mr. P.C. Alexander believes that paying bribes is the negation of the right of the citizen. Hence citizen needs to be more aware of his right. Lack of transparency in public dealings also opens the door to corruption.

Corruption spreads favoritism, imbalance and foregone conclusions. Corruption prevents the full realization of economic, social and cultural rights. Corruption pilots the breach of several civil and political rights. Corruption has for many, became a matter of habit, ranging from grand corruption involving persons

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in high places to retail corruption touching the everyday life of common people\textsuperscript{3}. Whatever may be the outward appearance of corruption one blotch is sure that it ensures the defiance of human rights for development. The state also fails to fulfill its duties toward the public at large, because a corrupt state loses its authority and ability to govern for the common good. Corruption concerns poor intolerably. As the corruption generates essential unfairness in the poor's access to justice and to other development services the required result of good governance cannot be visualized. Corruption strikes at the roots of good governance. It is an obstruction to quicker development. It dilutes, if not negates, the efforts of social inclusion. It is a dent on the international image of a country and degrades the government before its own countrymen. In the words of Kofi Annan, “Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the equality of life, and allows organized crime, terrorism and other threats to human security to flourish”\textsuperscript{4}.

Corruption can be put in plain words as an act done with intent to gain some advantage inconsistent with official duty and the rights of others. It includes bribery but, an act may be corruptly done, though the advantage to be derived from it is not offered by another.\textsuperscript{5} It is the misuse of public power, office or authority for private gain through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement\textsuperscript{6}. Corruption is identified with any person or institutions who misuse the power and discretion conferred on the same. Ordinary citizens face unnecessary problems in their routine interactions with governmental

\textsuperscript{3} Available at \url{http://www.loksatta.org/cms/documents/advocacy/corruption.pdf} accessed on 25/7/2012.
\textsuperscript{4} “Corruption is a Violation of Human Right”-Justice K.G.Balakrishnan, Chief Justice of India, delivered this keynote address at the National Summit organized by the Foundation for Restoration of National Values on November 18, 2008 at the India Habitat Centre, New Delhi.
\textsuperscript{5} Lectric Law Library Lexicon available at: \url{www.lectlaw.com/def/c314.htm}.
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agencies. Practices such as the acceptance of favors or misappropriation of public funds have actually come to be described as perks of holding public office and employment\textsuperscript{7}. U.N. Secretary General, Ban-Ki-Moon said on the occasion of International Anti-Corruption Day on 9 December, 2009 that it is the world’s vulnerable who suffer “first and worst” by corruption such as the theft of public money or foreign aid for private gain. The result, he says, is fewer resources to fund the building of infrastructure such as schools, hospitals and roads. Mr. Ban notes, however, that corruption “is not some impersonal force” but the result of personal decisions, most often motivated by greed.\textsuperscript{8} The anti-social activity conferring improper benefits country to legal and moral norms is a global phenomenon.

The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have acquired larger authority as more and more nations have appreciated the significance of these human rights as instruments for good governance. Honesty in governance is a sine qua non for an efficient system of governance and for socio-economic development. A significant prerequisite for the guarantee of goodness in governance is the absence of corruption and enjoyment of fundamental human rights\textsuperscript{9}. On the linkages between corruption and respect for human rights Kofi- Annan mentioned in his ‘In larger freedom’ report, “we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without the respect for human rights”\textsuperscript{10}.

\textsuperscript{7} “Corruption is a Violation of Human Rights”–Justice K.G.Balakrishnan, \textit{supra} note, 4.
\textsuperscript{8} Available at http://www.unode.org/unode/en/corruption/index.html
\textsuperscript{10} “Corruption, Poverty and Development” by Patrick Keuleers regional advisor, democratic governance group, UNDP Regional Centre for Asia and the Pacific, Bangkok available at: Http://oecd.org/dataceled/62/54/35593188.path.
Corruption rebuffs citizens the fundamental economic and social rights guaranteed to them by the Universal Declaration of Human Rights (UDHR). With the existence of a wide ranging international legal command on human rights, states are under the responsibility to promote, protect and respect the human rights of their people. It is a well-timed twist of fate that International Anti-Corruption Day,\(^{11}\) is observed a day before the International Human Rights day\(^{12}\), because corruption is a human rights concern. In the discourse of international law, the prevalence of corruption is now considered to be a violation of basic human rights\(^{13}\). The concern of corruption as a violator of human rights is one of the important factors having deportation from the development. Good governance is not possible unless it is free from corruption. Corruption is seen to be one of the major drains on the resources of a country. No country can afford to close its eyes to this malaise.

In the context of the human rights implications of corruption, there is a need to examine the right to access to justice and its linkages with corruption. At the core of the notion of access to justice lies the right of an individual to have access, and the obligations of the government to provide it\(^{14}\). A society that fails to recognize and effectively implement access to justice cannot establish the rule of law. Access to justice, like the rule of law is not merely a matter of form without substance. Just as the enactment of any law does not by itself satisfy the requirement of the rule of law the more existence of any means for seeking justice does not actively ensure access to justice. Access to justice depends on, among other things, the availability suitability, efficiency, and convenience of the forum, and the capacity- economic, social physical or otherwise- of the person seeking

\(^{11}\) The first International Anti-Corruption Day was observed on 9\(^{th}\) December, 2004.
\(^{12}\) 10\(^{th}\) December, the Day of Universal Declaration of Human Rights, 1948.
\(^{13}\) Supra note 4.
\(^{14}\) C. Raj Kumar, Corruption and Human Rights in India: Comparative Perspectives on Transparency and Good Governance, (Oxford University Press, New Delhi, 2011) at 7, para 2.
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access to justice\textsuperscript{15}. What needs to be recognized is that the fundamental problem of empowering the citizenry in the fight against corruption which has been largely neglected in India. Understanding the linkage between corruption and access to justice involves recognizing that certain acts of corruption are human rights violations\textsuperscript{16}. Thus, what is significant about the recognition of corruption as a human rights violation needs to be examined closely. One may ask that as numerous human rights violations, take place in India every day, even if corruption were recognized as a human rights violation, how it would help in the larger fight against corruption\textsuperscript{17}. Thus, the central question becomes, to what extent does the recognition of corruption as a violation of human rights helps in the fight against corruption? Human rights violations have assumed great significance and receive attention in societies around the world. With reference to the enforcement of economic and social rights, Audrey Chapman has argued that “a violation approach” is more feasible precisely because it does not depend on the availability and public release of extensive and appropriate statistical data or on major improvements in states statistical system. The monitoring of human rights is not an academic exercise it is intended to ameliorate human suffering resulting from violations international human rights standards\textsuperscript{18}. The mere recognition of human rights violations followed by actions that will help in the enforcement of human rights could itself be an effective tool in the fight against corruption. Corruption needs to be recognized not only as a violation of specific human rights, but also as an issue that undermines the ability of the governments to create conditions for the fulfillment of all human rights. Under this paradigm, the focus of efforts to eliminate corruption would be on the people who are affected by the acts of corruption\textsuperscript{19}. In a background note for the UN Conference on Anti-

\textsuperscript{15} Ibid.
\textsuperscript{16} Ibid.
\textsuperscript{17} Id., at 8.
\textsuperscript{19} C. Raj Kumar, supra note 14, at 8.
Corruption Measures, Good Governance and Human Rights held in Warsaw during 8-9 November, 2006 it was observed:

The corrupt management of public resources compromises the government ability to deliver an array of services, including health, educational and welfare services, which are essential for the realization of economic, social and cultural rights. Also the prevalence of corruption creates discrimination in access to public services in favor of those able to influence the authorities to act in their personal interest, including by offering bribes. Importantly, corruption in the rule of law system weakens the very accountability structures which are responsible for protecting human rights and contributes to a culture of impunity since illegal actions are not punished and laws are not consistently upheld.\textsuperscript{20}

India’s major menace in public life is corruption. When our nation became free from British imperialism we made a tryst with destiny to wipe every tear from every eye by the elimination of poverty and eradication of corruption. But during the last several years of independence corruption in our public life has mounted. Long ago, Britain, an imperial power and India, as one of its largest colonies, are of the victims of corrupt administration. When the British trampled over India and every British ruler amassed wealth by corruption, it provoked independence by statutory enactment. The notoriously exploitative Warren Hastings who was impeached for corruption demonstrated how public power not accountable to even the great office of Viceroy led to impeachment and produced eloquent speeches by men like Edmund Burke who in his address of the impeachment of Warren Hastings orated\textsuperscript{21}:

“I impeach him in the name of the people of India, whose rights he has trodden under foot, and whose country he has turned into a desert. Lastly, in the

\textsuperscript{20} UN Office of the High Commissioner for H R (OHCHR), Background note for UN Conference on Anti-Corruption Measures, Good Governance and Human Rights. Warsaw, November, 2006.

\textsuperscript{21} C. Raj Kumar, supra note 14 at. xxi.
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name of human nature itself, in the name of both sexes, in the name of every age, in the name of every rank, I impeach the common enemy and oppressor of all”!

So when India became free, Jawaharlal Nehru in his historic tryst with destiny speech stated\(^22\):

“Long years ago we made a tryst with destiny and now the time comes when we shall redeem our pledge not wholly or in full measure but very substantially. The service of India means the service of the millions who suffer, it means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye”.

The millions of poverty stricken people of India were condemned to suffering because their imperial masters robbed India of its wealth. Despite this disastrous experience of corruption by the British rulers in India, free India did not have a clean administration Indians, instead, were in the words of Winston Churchill, rogues, rascals and freebooters. During the last several years of swaraj, corruption has been ubiquitous and universal. One of the inevitable consequences of corruption is terrorism, communalism, and the suppression of human rights\(^23\).

The greatest menace to the human rights of the Indian people is not the lack of constitutional grandeur with dignity and divinity enshrined in the paramount parchment. In the abandonment of integrity, fraternity, unity and humanity, the greatest challenge of the statesmen of India is to make its politics straight and beyond pollution. If, we the people of India are to be true to its cultural heritage, we must struggle to win swaraj and jettison corruption\(^24\). Our contribution is great

\(^23\) C. Raj Kumar, *supra* note 14 at, xxi.
\(^24\) *Id.*, at xxii.
but our administrators have betrayed our supreme cultural past. What was the sublime value-system in the words of Max Mueller\textsuperscript{25}?

“If we were to look over the whole world to find out the country most richly endowed with all the wealth, power, and beauty that nature can bestow in some parts a very paradise on earth, I should point to India. If I were asked under what sky the human mind has most fully developed some of its choicest gifts, has most deeply pondered over the greatest problems of life and has found solutions of some of them, which will deserve the attention even of those who have studied Plato and Kant, I should point to India. And If I were to ask myself from what literature we here in Europe, we who have been nurtured almost exclusively on the thoughts of Greeks and Romans and of one Semitic race the Jewish, may draw the corrective which is most wanted in order to make our inner life more perfect, more comprehensive, more universal, in fact more truly human a life not for this life only, but a transfigured and eternal life, again I should point to India”.

**Corruption and its relationship with human rights**

Human rights are fundamental rights relating to life, liberty, dignity, and equality. Over the years, human rights law has undergone a dramatic expansion, constantly evolving the legal and institutional mechanisms to enforce the rule of law, ensuring transparency in governance, promoting accountability and most of all fostering a sense of human dignity.\textsuperscript{26} Both the domestic and international human rights frame works are under challenge due to the social expectations generated by the language of human rights documents and their unfulfilled promises, and gap between the rhetoric of human rights and the reality of their enforcement. It is in this context that there is a need to examine the relationship

\textsuperscript{25} Id., para 2.

\textsuperscript{26} International Council on Human Rights Policy (ICHRP) and Transparency International (TI) , Corruption and Human Rights : Making the Connection (2009).
between corruption and human rights. Corruption has a pervasive impact on all institutions that are working towards the protection and promotion of human rights. In fact, it can be argued that the elimination of corruption in a number of sectors of governance can significantly strengthen the enforcement of human rights. For example, the police, in most countries, are known to have power relating to arrest and other forms of law enforcement power. We also know that the human rights framework places a lot of emphasis on the law enforcement machinery being held accountable and making certain that no human rights violations are committed in the course of enforcing the law. A case in point is the evolution of freedom from torture and other related rights that have emerged out of the human rights movement to make the police and other law enforcement machinery accountable. Now, if the police department or related departments in a country are corrupt, then the basic framework for human rights and law enforcement, including the principle of equality and non-discrimination is violated.

Torture is a tool that is regularly adopted by the police and law enforcement officials in many developing countries including India for the purposes of investigation of crimes, and in extreme cases with a view to fulfilling an illegal order by certain powerful interests. The relationship between torture and corruption is interesting. The ability of people to pay bribes and engage in acts of corruption can facilitate the torture of individuals who are accused of crimes. Paying of bribes by the accused may actually prevent them from being tortured by the police and other law enforcement officials. Similarly, if the accused persons are not in a position to pay bribes, then the chance of torture being committed

27 Ibid.
against them is indeed higher. More ever, the law enforcement machinery as a pervasive system of corruption among law enforcement officials would make the potential victims of crimes and abuse of power feel threatened conversely, the perpetrators of crimes would feel emboldened they know that since the police are corrupt, they can always escape the clutches of the law and the justice system by paying bribes or other forms of illegal gratification. The victims would feel threatened, as they know that since the system is corrupt, they have little or no recourse to law and that the justice system will not be able to respond to their victimization. In fact, the plight of poor victims is much worse as they do not have the capacity to pay bribes.\textsuperscript{31}

Thus, the cycle of a corrupt system of governance would have little incentive to protect the human rights of the people. The focus of this system would then be to enforce the law in a discriminatory manner where the people who give bribes are given favored treatment.\textsuperscript{32} This linkage between the existence of corruption and the lack of enforcement of human rights can be examined with regards to all human rights, civil, political, economic, social and cultural.

**Corruption and its implications for the rule of law**

Protecting the rule of law is essential for progress and development in all societies. Most countries, including countries in Asia, have laws against corruption. However, there is a threshold problem that the countries in Asia face, concerning the protection of rule of law. The laws relating to corruption are violated like many other laws, and the enforcement machinery is too weak to pursue action against the violators. The relationship of the rule of law to corruption can be understood in three stages\textsuperscript{33}.

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\textsuperscript{31} UN Development Programme, “The Impact of Corruption on the Human Rights Based Approach to Development” (2004)  
\textsuperscript{32} Sunil Sondhi, supra note 29.  
\textsuperscript{33} C. Raj Kumar, supra note 14 at 31.
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Firstly, there is wide disregard for the law and its instrumentalities, and consequently, a lack of respect for law. This includes a lack of respect for laws relating to corruption.

Secondly, corruption is used as a method to violate laws, break rules and regulations, abuse powers, and also exercise discretion in a wrongful manner. In all these aspects the regulatory framework of the state apparatus is made dysfunctional due to institutionalized corruption across all departments of the government.

Thirdly, laws, legal institutions and enforcement mechanisms are manipulated by way of corruption in a manner by which corruption became a tool for promoting lack of respect for the rule of law. In this context, many violations and violators overcome legal scrutiny of law enforcement by paying bribes and engaging in other forms of corrupt behavior. This has created a situation where the rule of law is replaced by the rule of powerful people, be it politicians bureaucrats, business persons, or other powerful interest groups who are able to manipulate the law enforcement machinery through corruption. Even when anti-corruption cases came before the courts, there is a strong element of non legal and political factors in play that undermine the neutrality of the criminal justice system and all the legal and judicial processes related to fighting corruption. The rule of law is protected only when there is a fairly predictable legal system that responds to needs and problems in a fair, non-discriminatory and effective manner and when there is access to justice. The problem of law enforcement, including anti-corruption law, attacks at the very basis of democracy and the time has came to tackle it in a systematic manner in countries in the Asia–Pacific region. While there is no single solution, it is important to recognize that initiatives should

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primarily be intended to inculcate a respect for law among the citizenry.\textsuperscript{36} This means that all legal, institutional, judicial and constitutional measures to ensure the rule of law should be oriented towards imparting a respect for law on the basis of the belief that it will be enforced equally and fairly. In India, corruption has huge implications for the protection of rule of law. As corrupt acts are primarily violations of law, they have serious implications for the protection of the rule of law. The rule of law is based upon the belief that a society should be built around people conducting their activities in a lawful and predictable manner, the government acting on the basis of law, and rules and regulations being made and their enforcement being performed in a non-discriminatory fair and reasonable manner. Corruption of the kind that prevails in countries in the Asia-Pacific region threatens the rule of law fabric prevailing in society. Laws are constantly violated creating a vicious cycle of bribery and influence peddling that has resulted in a cynical public attitude towards law enforcement. It is useful to understand the jurisprudential foundations of the rule of law in order to be able to relate them to the issue of corruption. The International Commission of Jurists defines the rule of law as the principles, institutions and procedures, not always identical but broadly similar, which the experience and traditions of lawyers in different countries of the world often themselves having varying political structure and economic backgrounds, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man.\textsuperscript{37}

Summarizing the various conceptions of the rule of law given by the modern theorists, a scholar, Hernandez Truyol has observed that there are three characteristics central to a cogent notion of the rule of law:\textsuperscript{38}

1. The absence of arbitrary power on the part of the government.

\textsuperscript{36} C. Ray Kumar, Rule of Law and Legal Education, The Hindu, 4 July, 2006
\textsuperscript{37} International Commission of Jurists, “The Dynamic Aspects of Rule of Law in the Modern Age” (1965)
\textsuperscript{38} C.Raj Kumar, \textit{supra} note 14 at 34.
2. The administration of ordinary law by ordinary tribunals and.

3. The existence of a general rule of constitutional equality resulting from the ordinary law of the land.

With these characteristics, the rule of law serves three purposes:

i) It protects against anarchy.

ii) It allows persons to rely on laws and plan their lives in a way by which they can predict what consequences will flow from their actions and

iii) It protects against arbitrary and capricious actions of the government. It is useful to see how corruption affects the fulfillment of the rule of law and thereby undermines law and justice.

The following are the specific circumstances generated due to bribery and other forms of corruption, thereby negatively impacting the rule of law:

a. Arbitrary decision-making process violates the rule of law

The state and its instrumentalities which are entrusted with responsibility of distributing resources in a fair and non–discriminatory manner, often conduct their activities in an arbitrary manner\(^{39}\). This arbitrariness is further promoted by irrelevant criteria infused into the decision-making process on account of corruption. This violates the rule of law and leads to the Indian citizenry losing

faith in the administrative system. Thus arbitrariness on account of corruption has become institutionalized in India.

This means that decisions are taken in a fair manner only as an exception. The impact of it on citizenry is profound, as people do not have faith in the criminal justice, or the civil justice systems. An example of an area of governance where arbitrariness in decision-making leads to corruption is government procurement. A number of countries in Asia have taken steps to address this. In recent years, South Korea has taken on a number of initiatives to reform the government procurement process. It may be noted that government procurement in Korea is worth USD 83 billion a year. The regulatory framework includes the Act on Contracts, to which the state is a party, the Enforcement Decree of the Act on Contracts to which the state is a party, and the Government Procurement Act.

b. Discrimination in administration undermines the rule of law

One of the important consequences of corruption is widespread discrimination. Power holders exercise their discretion to discriminate against people with bribe-givers receiving favorable treatment and the people who do not give bribes being unfairly victimized. Discrimination in administration due to bribery and other forms of corruption promotes a sense of frustration and helplessness among the victimized as there are no effective mechanisms for redress. Inevitably, the victims of this discrimination tend to be the poor, whose capacity to give bribes is far less than that of the middle or upper classes.

c. Abuse of discretionary powers violates the rule of law

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40 Ibid.
41 OECD, “Fighting Corruption and Promoting Integrity in Public Procurement” as cited in C Raj Kumar, supra note 14.
42 Kumar, Corruption and Human Rights, as quoted in C. Raj Kumar, supra note 14 at 36.
43 Ibid.
Corruption takes place on account of abuse of the discretionary power vested with the government in decision making. Notwithstanding the fact that economic reforms have removed some of the traditional rules relating to the exercise of the discretion by government officials, there are still a number of areas in which the government remains the sole authority for exercising discretion. While privatization is not only answer to removing corruption, it is important to infuse enforceable mechanisms of transparency and account -ability that will promote fair, non discriminatory and reasonable exercise of discretion.44

Discretionary power for government officials becomes a fertile ground for abuse and thus, corruption becomes a norm.45 In many countries in Asia, where a significant section of the populace is ignorant of its rights and is also impoverished it is important to ensure that abuses of discretion do not take place. Even if corrective mechanisms in the form of institutions and anti-corruption agencies are in place and are effective, it is important to create accountable structures for the administrators, particularly when they have discretionary power. Further, as far as possible, these discretionary powers should be limited and in due course made on the basis of objective and determinable criteria so that opportunities for bribery and other forms of corruption are reduced if not altogether eliminated.46

d. Unpredictability in law enforcement affects the rule of law

Institutionalized corruption in many countries in Asia has created a lot of uncertainly and unpredictability in the enforcement of anti- corruption laws. Further, due to the lack of independence of anti-corruption institutions, the level of uncertainty when it comes to cases relating to investigation, prosecution and

conviction of people who are charged on grounds relating to corruption, is high\textsuperscript{47}. This has affected the rule of law as the basis for criminal justice, as it has been replaced by other extraneous factors like the political importance of the particular anti-corruption case to the government in power and the availability of manpower, expertise and experience of the investigating authority in investigating the particular case. Inefficiency and ineffectiveness of the criminal justice system has infused unpredictability in corruption cases, which ought to be investigated with a sense of professionalism, integrity, and fairness. Much of this has been due to the lack of institutional autonomy and the haphazard manner in which different agencies deal with corruption cases. Jan Quah has observed that the low risk of detection and punishment of acts of corruption in Asia is one of the major causes for rampant corruption.\textsuperscript{48} To substantiate this point, he has compared the prosecution rates in Hong Kong and the Philippines. Thus, a civil servant committing a corrupt offence in Hong Kong was 35 times more likely to detected and punished than his counterpart in the Philippines\textsuperscript{49}.

Establishing a rule of law society became essential for ensuring low level of corruption in governance. The need for a political will in the form of commitment of the leaders of a particular state or government becomes essential for the eradication of corruption. In this regard, Jon Quah has further observed that success occurs where three conditions are met. First, comprehensive anti-corruption legislation is enacted; secondly, an independent anti-corruption agency is provided with sufficient personnel and resources; and thirdly, the independent agency fairly enforces the anti-corruption laws.\textsuperscript{50} The success of Singapore and Hong Kong in substantially eliminating corruption is a useful case in point for

\textsuperscript{49} Ibid.
\textsuperscript{50} Ibid
many countries in Asia to examine the need for ensuring independent institutions that fight corruption.\textsuperscript{51}

**Corruption and its impact on human rights**

Corruption is a crime which attracts criminal law sanctions under domestic statutes is undisputed.\textsuperscript{52} Efforts to fight corruption should, therefore, necessarily include the strengthening of criminal law mechanisms, including the law enforcement machinery and, in general, the effectiveness of the criminal justice system.\textsuperscript{53} But experiences in developing countries have demonstrated that corruption, besides being a crime, which needs to be punished through principle of criminal law. Have other consequences for governance as well. One of the most serious consequences of corruption for governance is its impact on the promotion and protection of human rights.\textsuperscript{54}

The first step in developing a theoretical framework for recognizing corruption as a human rights issue is to examine the different types of human rights that are affected through corruption.\textsuperscript{55} The right to equality is one of the fundamental rights that is protected both within domestic and international legal framework. Articles 26 of the ICCPR states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.\textsuperscript{56} The Constitution of India, Sri Lanka, Bangladesh, and Pakistan have

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  \item \textsuperscript{52} C. Raj Kumar, “Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia” 16(49) Michigan, Stanford Journal of International Law (2008) at 475.
  \item \textsuperscript{53} Ibid.
  \item \textsuperscript{54} Ibid.
  \item \textsuperscript{55} C. Raj Kumar, supra note 14 at 42.
  \item \textsuperscript{56} International Covenant on Civil and Political Rights, 1966, Article 26.
  \item \textsuperscript{57} The Constitution of India, Article 14 reads: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.
  \item \textsuperscript{58} Sri Lanka Constitution, Article 12(1) reads: “All persons are equal before the law and are entitled to the equal protection of the law”.
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similar provisions that protect the right to equality of their people. Corruption violates the right to equality as the people who pay bribes are given favored treatment. Furthermore, people who are unable or unwilling to give bribes are discriminated against. Thus, there is violation of the right to equality, both substantive and procedural. In fact the problem of corruption is so pervasive that it affects both civil and political rights as well as economic, social and cultural rights in a significant manner, be it the right to freedom from torture, right to a fair trial, right to food, or right to health. Corruption in government departments violates the human rights of people who are entitled to these services. While it is important to recognize that the mere recognition of corruption as a human rights violation will not necessarily immediately reduce the incidents of corruption. But using the human rights approach has certain benefits that would lead to the eventual elimination of corruption. Human rights approaches help in exposing violation and empower victims and others to resist future human rights violations and to seek redress for those that have taken place in the past. This notion of empowerment is deeply embedded in the human rights approach to combating corruption. The form of corruption that is prevalent in developing countries has affected every governance mechanism and institutions in place, making mockery of democracy and the rule of law. In this social and political context, there is an urgent need to examine the problem of corruption from prospective not strictly limited to the criminal law approach, which pursues corruption as just another serious crime. There are numerous advantages of recognizing corruption as a human rights violation in India.

59 Bangladesh Constitution, Article 27 reads: “All citizens are equal before law and are entitled to equal protection of law”
60 Pakistan Constitution Article 25 (1) reads: “All citizens are equal before law and are entitled to equal protection of law”.
61 Kumar, “Corruption, Development and Good Governance” at 519 as cited in C. Raj Kumar, supra note 14 at 43.
62 Ibid.
63 Ibid.
64 Ibid.
1. The moment when the crime of corruption is recognized as the human rights violation, it creates a type of social political and moral response that is not generated by crime notwithstanding seriousness of act.

2. The human rights of the people are typically protected under the constitution or other domestic legislations and would invite serious constitutional scrutiny by courts and other institutions.

3. The recognition of corruption as a human rights violation, besides inviting international attention, would also possibly bring into focus the violations of provisions of the international human rights treaties that have been ratified by many countries.

4. Finally, the response to human rights violations is based upon efforts to empower individuals and institutions so that there is proper redress for victims of the violations and that there is resistance to any such future occurrence.

Corruption and its effect upon international human rights framework

The global human rights movement has attempted to evolve new meanings and understanding to what constitutes human rights and how they can be promoted and protected. The gamut of civil, political, economic, social, and cultural rights under the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) have only reinforced the international community's desire to provide a normative framework for the protection of rights of the people. The human rights frameworks in the ICCPR and the ICESCR are very useful for developing corruption prevention strategies particularly with regard to the protection of the rule of law and the right to equality and non-discrimination. These corruption prevention strategies would rest on the

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65 Ibid.
66 C.Raj Kumar, Supra note 14 at 47.
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premise that the human rights framework should provide a right to corruption free service based on the principle of freedom from corruption\textsuperscript{67}.

Article 1 of the ICCPR emphatically observes: “All people have the right of self determination and to freely pursue their economic, social and cultural development”\textsuperscript{68}. Corruption clearly interferes in people’s efforts to fulfill their economic self-determination. It also stifles the pursuit of economic, social and cultural development\textsuperscript{69}. The fact the corruption interferes in the free progress of people to realize their rights as mentioned in the ICCPR is a good starting point for the integration of the human rights framework in the development of corruption prevention and elimination strategies. Article 26 of the ICCPR guarantees equality before the law and equal protection of laws, thus prohibiting any form of discrimination. The nature of official corruption is such that it clearly discriminates against people and favors bribe givers over those who do not give bribes. These bribe–givers receive undue favored status and are able to sue against the resources of the state, which they may not otherwise be entitled to. Corruption also does not allow for the development of equality before the law as it is fundamentally at odds with the principle of equal treatment\textsuperscript{70}. Corruption clearly divides society on the basis of unfair and illegal considerations, culminating in gross disrespect for law and moral degradation. In anti-corruption initiatives that have examined the problem from a public policy standpoint, there is very little emphasis on the discriminatory aspects of corruption. But in practical terms, it is natural outcome of most corrupt transactions. Individual corruption in day to day government functioning has reached such alarming proportions in developing

\textsuperscript{67} Ibid.
\textsuperscript{68} International Covenant on Civil and Political Rights, 1966 Article1.
\textsuperscript{69} Kumar, supra note 61 at 46.
\textsuperscript{70} Ibid.
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countries like India that corruption is institutionalized within the governance system\textsuperscript{71}.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), like the ICCPR, refers to the principle of equality and non-discrimination in the exercise of economic, social and cultural rights. The committee on economic, social and cultural rights, in one of its General Comments\textsuperscript{72} has referred to the legal obligation undertaken by state parties to the ICESR. The non-discrimination aspect in Article 2 of the ICESR requires that states undertake to guarantee that the relevant rights will be exercised without discrimination\textsuperscript{73}. It may be argued that states ought to take steps to ensure that there is no discrimination practiced against citizens in their efforts to exercise their rights to work, food, health, education, and other rights mentioned in the ICESR. Corruption in exercise of the above-mentioned rights emerges as a clear violation of this obligation. It is apparent that numerous development-oriented activities of states have been affected by corruption. Economic and social rights are eroded due to the corrupt transfer of public wealth to a few power holders. This creates a situation of further deprivation and impoverishment\textsuperscript{74}. Article 2(1) of the ICESCR obligates states parties to take steps for the realization of the rights\textsuperscript{75}. It is obvious that the steps taken should include too the removal of impediments in the realization of economic and social rights. As the corruption is one of the biggest obstacles, the states have a core obligation to take efforts against it. The ICESR has also pointed that all appropriate means, including the adoption of legislative measures must be taken to fulfill the legal obligations of member states under this covenant. The need for promoting transparency and accountability has been noted

\textsuperscript{71} Ibid.

\textsuperscript{72} Committee on Economic, Social and Cultural Rights “General Comment 3: The Nature of the State Parties Obligations” (Article 2, para 1 of the Covenant), UN Document, E/199/23 (14 December, 1999) (ICESCR General Comment 3) as cited in C. Raj Kumar, supra note 14.

\textsuperscript{73} International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Article 2 (2).

\textsuperscript{74} Amartya Sen, Development as Freedom (Oxford University Press, Oxford, 1999).

\textsuperscript{75} International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Article 2 (1).
as an important requirement for corruption free- governance. The Indian experience has demonstrated that the recognition of the right to information in India is an important step in ensuring this. Numerous factors played a part in the passage of the Right to Information Act, 2005, that recognized this right, such as the existing sound international human rights framework that provided for the right to information. India is a party to the ICCPR and Article 19 of the ICCPR protects the freedom to seek, receive and impart information. It is notable that during the first session of the UN General Assembly in 1946, it adopted Resolution 59(1), which stated that freedom of information is a fundamental right and the touchstone of all the freedoms to which the UN is consecrated. The consequences of corruption on development are immense as the national and international funds that are allocated for development may be siphoned off due to corruption. Developing countries like India are provided with loans by other nations and multilateral lending institutions for various development related activities. This has resulted in social expectation generated with the countries for development related work. Yet this pursuit of development work is constantly disrupted as the funds are misused due to corruption thereby delaying, and on numerous occasions deterring the development process.

**Corruption and its relationship with specific human rights**

Corruption creates major obstacles to access to justice. To understand this relationship, it is necessary to know the determinants of access to justices which are as follows:

**a. Availability of the legal and institutional framework**

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78 C.Raj Kumar, supra note 14 at 49.
It is necessary to establish the legal and institutional framework for ensuring access to justice. In India, the judiciary is one of the most important institutions directly involved in ensuring access to justice\(^79\). There are also quasi-judicial institutions that perform certain judicial functions. If these institutions are themselves corrupt or not in a position to adequately respond to corruption, then the fundamental fabric of access to justice is undermined\(^80\). The existence of that are free from corruption is necessary for ensuring access to justice. Government ought to take steps to create such legal and institutional mechanisms\(^81\). The efficiency of the government and its functioning will depend upon its ability to translate sound policies into well executed ones\(^82\). It is also important that the legal and institutional mechanisms that are established work effectively and not result in duplication. The biggest challenge that needs to be addressed is the ability to develop internal mechanisms oversight and superintendence within the institutions of government so that transparency and accountability are maintained\(^83\).

b. Awareness of institutions and processes

The availability of institutions that work to ensure access to justice needs to be supplemented by awareness of these institutions and process\(^84\). In India, and other developing countries, due to illiteracy, lack of awareness and poverty, the few people know of the existence of institutions and processes designed to ensure access to justice. If corruption prevails in these institutions, there is very little incentive for the officials to reach out to the people who may be in need of access.

\(^{80}\) C. Raj Kumar, supra note 14 at 50.
\(^{81}\) Ibid.
\(^{82}\) Sunil Sondhi, supra note 29.
to justice. Furthermore, the people themselves may not have the confidence and the trust that is necessary to approach the institutions, especially if the institutions have acquired notoriety for corruption. Instilling among the people of a country faith and trust in the institutions and process that work to ensure access to justice is as important as the task of stabilizing these institutions. Corruption undermines confidence in the integrity and impartiality of the process of gaining access to justice. In the countries like India where corruption is deep and pervasive and people have little faith in the criminal justice system or in the anti-corruption institutions, a lot of effort needs to be put into empowering the citizenry to fight against corruption. Notwithstanding the best of intentions to fight corruption, it will not be effective if the people of the society do not come forward with necessary information and are not sufficiently discouraged to pay bribes to get their work done. This is indeed a complex problem and can be addressed only by a multi-pronged response. Civil society empowerment and education of the people is the central to this approach to fighting corruption.

c. Access to institutions and processes

Awareness of the existence of institutions and processes that ensure access to justice may not be sufficient if the people do not have the ability financial or otherwise, to seek access to these institutions. It is in this context that the state and its instrumentalities have an important role to play in empowering victims and providing them with mechanisms to seek access to justice through the institutions and processes that have been established for this purpose. However, corruption inhibits this accessibility as well. Special interests and extraneous factors may come in to play in a corrupt legal system, rendering the people most deserving of

86 Kumar, “Corruption in Japan” as quoted in C. Raj Kumar, supra note, 14 at 51.
legal aid and other programmers, unable to receive their benefits\textsuperscript{88}. Even if the institutions and processes for ensuring the access to justice are established and functioning effectively, corruption undermines the integrity of the process. If corruption prevails in the decision making process, those who will receive legal aid or legal support from the state will be adversely affected, as will the poor, who are not able to pay bribes. Thus the effectiveness of the institutions and processes for ensuring access to justice should not only be seen from the standpoint of those dispensing justice, but also from the standpoint of the actual beneficiaries of these processes.

**Corruption and its relationship to development**

Human rights and human development are inextricably connected.\textsuperscript{89} It may be argued that an integral approach to human rights and human development is essential for all progress. Fighting corruption is indeed central to achieving both human rights and human development\textsuperscript{90}. But this integration needs to be supplemented with policy changes at all levels of decision making in the government in order for it to be effective. The integration of human rights and human development policies rests upon an examination of the similarities and differences between these two conceptions\textsuperscript{91}. They are ideologically close enough to derive motivation and concern for each other, thus promoting compatibility and mutual understanding\textsuperscript{92}. From an enforcement strategy standpoint they are different enough to be able to supplement each other\textsuperscript{93}. Thus, an integrated

\textsuperscript{88}“Corrupt Legal System Blocks Justice for All” Jakarta Post, 11 July, 1999.


\textsuperscript{90}Manabi Majumdar, “Human Development and Human Rights through the Prism of Gender” 4 International Development Ethics Association Newsletters (200).


\textsuperscript{93}Ibid.
approach of these two conceptions can result in significant improvements to human society, thereby facilitating in numerous ways the advancement of dignity, well being, and freedom of individuals in general. The UNDP’s Human development Report 2000 has correctly observed that any useful conception of human development cannot ignore the importance of political liberties and democratic freedoms.

If development is human right, all matters that affect the fulfillment of this right constitute inhibiting factors that affect the achievement of development. Corruption is a strong inhibiting factor for development. Countries like India take steps to achieve human development by making provisions in the form of financial resources to fulfill the rights to education, food and health, by taking concrete steps to establish schools and other educational institutions, by creating job opportunities and other avenues that will ensure the accessibility of food to people, and by establishing hospitals and other health care facilities that will provide access to health care to the people. All these steps are intended to contribute to better standards of living and realizing a higher degree of development. But corruption undermines these efforts. It is important to recognize that all acts of human rights violations are not necessarily due to corruption and that corruption is rights violation. To understand what acts of corruption constitute human rights violations, there is a need to understand the impact of corruption on development. It is not possible to understand the relationship between corruption and development without recognizing that access to justice is the central link between policies that promote governance on the one hand and policies that ensure development on the other. It is in this context that we need to develop our

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94 Ibid.
95 Ibid.
97 Sunil Sondhi, supra note 29.
understanding of the meaning of corruption and its consequences for access to justice and development.

The effect of impediments to development

Corruption impedes development significantly in India. The development objectives of a country are inextricably linked to resources and the efficient and effective use thereof. If the resources that are supposed to be used for fulfilling development objectives are transferred and wasted due to corruption, it will inevitably impede development and delay progress. Empirical studies have also demonstrated the links between corruption and development. It has been observed, that a country can derive a very large development dividend from better governance. We estimate that a country that improves its governance from a relatively low level to an average level could almost triple the income per capita of its population in the long term, and similarly reduce infant mortality and illiteracy.98 The eight millennium development goals have a direct relationship with the need to ensure less corrupt governance. Corruption undermines the state’s capacity to achieve the MDGs. The 2006 Corruption Perception Index prepared by Transparency International reinforces the strong linkages between prevalent of corruption and the problem of poverty in poor countries. Despite a decade of progress in establishing anti-corruption laws and regulations, today’s results indicate that much remains to be done before we see meaningful improvements in the lives of the world’s poorest citizens99. It was noted, ‘a strong correlation between corruption and poverty is evident in the results of the CPI 2006. Almost three-quarters of the countries in the CPI score below five indicating that most countries in the world face serious perceived levels of domestic corruption100.

100 Ibid.
The right to development

Corruption has substantial negative consequences for development\textsuperscript{101}. The development of a country of a large measure depends upon the economic policies and social consequences of these policies. Corruption affects both these aspects in a number of ways\textsuperscript{102}. It affects economic growth, discourages foreign investment, and diverts resources meant for infrastructure, development, health and other public services such as education and anti-poverty programmes\textsuperscript{103}. In essence, corruption poses serious challenges for governances and a country cannot achieve the goals of development without taking steps to curb corrupt acts. The development process ought to be based upon principles of transparency in governance and accountability of the administration\textsuperscript{104}. Due to corruption, however, there is inefficiency and inequity is resource allocation. Our country is not able to sufficiently fulfill their MDGs and in that process is struggling to achieve social and economic development. In this context, there is a need to formulate integrated governance policies based on human rights and human development. This notion for developing to the rights is extremely relevant for our country and should be understood by evaluating the effectiveness of rights based approaches to development and how the right to development can be implemented\textsuperscript{105}.

Corruption, sovereignty and human rights

Corruption exists in most countries of the developing world including India. The human rights based approaches to understanding the problem of corruption recognize that corruption affects national sovereignty in way that

\textsuperscript{101} Kumar, “Corruption in Japan” supra note, 86.
\textsuperscript{102} Ibid.
\textsuperscript{103} Ibid.
\textsuperscript{104} Ibid.
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threaten human security, undermine human development and impinge on the fundamental rights and freedoms of the people. Globalization has resulted in states coming to grips with reality of opening up their countries to trade, investment, and other forms of social, economic, cultural and political influences. This has resulted in the emergence of powerful global actors in the form of multinational corporations and business enterprises that are at times economically more powerful than the nation states themselves. Thus the role of the state in assuming a leadership role in economic activities has diminished. If sovereignty is about states exercising power on the institutions of governance then the globalization has altered the parameters of this power. The intrusion of now domestic and international actors into the economic activities of nation states has added a new demotion to governance. Human rights have always based a formidable challenge to sovereignty. Contemporary international law recognizes that human rights violations committed by one state cannot be justified, even though the state commits such violations within its own borders. The development of international law and international human rights law has only strengthened the understanding that states cannot hide under the veil of sovereignty when they commit human rights violations. Even states that commit violations of human rights never argue that it is their sovereign right to commit such violations against their people, rather they rely on the denial of such violations having taken place at all. Corruption in the institution of the state, including the acts of corruption committed by politicians and bureaucrats, does not allow the state to exercise its sovereign powers properly or responsibly. In fact, corruption in the state and its institutions means that the state is not functioning to

106 Kumar, “Corruption, Development and Good Governance, supra note 61 at 529.
107 Ibid.
108 Ibid.
109 Ibid.
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capacity and that the law enforcement machinery is weak\textsuperscript{111}. There are five dimensions to how sovereignty is impacted by corruption\textsuperscript{112}.

\textbf{a. Security}

The goal of every sovereign state is to ensure national security for its people so that peace and stability prevail in society. Corruption has the potential to threaten this achievement of national security. Human security is put another dimension of sovereignty. It seeks to ensure that the people of a state are empowered to face a wide array of threats, including terrorism, weapons of deadly diseases such as AIDs and SARs, and other environmental disasters due to global warming and climate change\textsuperscript{113}. It is important to recognize the connections between corruption and sovereignty from both national and human security stand points so that all issues of public policy and governance a state is engaged in by way of its sovereign functions are pursued on the basis of transparency\textsuperscript{114}.

\textbf{b. Law Enforcement}

A sovereign state ought to ensure that laws are enforced in a non-discriminatory manner. Corruption does not allow this to happen. Hence, the criminalization of politics and politicization of crimes has become a common practice in India. Through such practices, the sovereign state becomes too weak to enforce the law and all institutions of governance suffer from a crisis of legitimacy as well as of autonomy and independence which are required to enforce the law, including that against corruption\textsuperscript{115}.

\textsuperscript{110} Ibid.
\textsuperscript{111} Ibid.
\textsuperscript{113} Kumar, “Corruption, Development and Good Governance” supra note 52 at 530.
\textsuperscript{114} Ibid.
\textsuperscript{115} Ibid.
c. Good Governance

A sovereign state ought to ensure the best practice of good governance. A corrupt state cannot ensure that its legal and political existence is duly supported by the governance process. The National Human Rights Commission can play an important role in ensuring such good governance. Thus, it is imperative that issues relating to corruption become an integral part of the mandates of the NHRC in India.\textsuperscript{116}

d. Development

The goal of any sovereign state is to ensure the social and economic development of its people. Contemporary international initiatives in the form of the MDGs underline this need effectively.\textsuperscript{117} The UN Declaration on the Right to Development also emphasizes this point. It is the responsibility of a number of players, the most important being the state itself, to ensure that the MDGs are achieved.\textsuperscript{118} The fulfillment of the MDGs is inextricably related to the state exercising its sovereign functions. However, it is seldom recognized that corruption plays a very important role in the state not fulfilling its functions.\textsuperscript{119} Often, the resources allocated from domestic sources and development aids from international sources are diverted in the form of corrupt transfer of wealth to a few persons who are governing the country.\textsuperscript{120} Thus, development aid becomes a source of huge internal conflict and improper use of resources, thereby undermining the sovereignty of the state. These actions delay and undercut the development process.\textsuperscript{121}

e. Human Rights

\textsuperscript{116} Ibid.
\textsuperscript{117} C. Raj Kumar, supra note, 14.
\textsuperscript{118} Ibid.
\textsuperscript{119} Ibid.
\textsuperscript{120} Ibid.
\textsuperscript{121} Kumar, “Corruption, Development and Good Governance” supra note 52.
The recognition of corruption as a serious human rights issue is based on the realization that the corruption of the state and its institutions hinders the full realization of civil, political, economic, and social rights, which are all related to the exercise of the right to development. Sovereignty as a fact of state responsibility demands that the state exercises its powers in a manner that ensures corruption free governance. This will ensure better protection and promotion of human rights. Further, the recognition of corruption as a factor that undermines the sovereign exercise of power means that our efforts to prevent and fight corruption lead to empowerment of the people. Empowered people will have a greater commitment to ensuring good governance and development. In a contemporary attempt to acknowledge this reality, the Right to Information Act, 2005 in India has the potential to empower the Indian populace.

Linkages between corruption and violations of human rights in India

It is necessary to the empowerment of the citizenry for combating corruption effectively in India. The human rights based approach of empowerment to citizenry recognizes the linkages between corruption, access to justice and development and also recognizes that corruption is a human rights violation. A lot of efforts have been made in India to combat corruption by promoting transparency in governance and the right to information but corruption continues to be a major obstacle preventing access to justice in our country, as it tends to negatively impact the poor more than those who can afford to pay bribe. The problem of corruption is inextricably connected to poverty and unemployment. It has been observed that systematized illegal mining primarily uses poor migrants for its workforce. The migrants get startup funds from local businessmen who then receive half. To ensure there are no governmental raids on illegal mines, the

122 Ibid.
123 Ibid.
124 Kumar, “Corruption Development and Good Governance” supra note 52, at 487.
businessman then must pay off local police and government officials. The impact of corruption on poor underscores the development and access to justice. Its consequences clearly reflect in the people's lack of faith in the legal system of a country. If institutionalized corruption is rampant across all departments of the government including the police, law enforcement machinery, judiciary and other bodies that are supposed to ensure access to justice there is a crisis in governance. The linkage among corruption, access to justice and human development as they in turn affect human rights may outline in the following heads, particularly in India.

**Governance paradigm**

The governance framework of a country is shaped by number of policies. Development is about creating and expanding opportunities for people. The development policies of countries are increasingly shaped by an understanding of the impact of these policies on the lives of the people. In fact, the very concept of human development brings the people to the centre of discussions relating to development. If the development needs of people are to be met, there is a need for the efficient and effective use of resources. Corruption of any kind undermines and negatively affects the efficient and effective use of resources. It creates bottlenecks for development and misplaces development priorities. Corruption is antithetical to development as it is based on factors that are personally favourable to the beneficiaries of the corrupt transactions, rather than the people who should actually be benefitted by development policies. Corruption manipulates development goals and distances the gap between the expectations of people from development and the actual consequences of development policies. Distressingly, when the effects of this phenomenon can be so broadly felt across the governance

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125 *Ibid* at 488.
126 C. Raj Kumar, *supra* note, 14 at 82.
127 *Ibid*.
128 *Ibid*.
spectrum, it is overtly indicative of much larger issues in governance as a whole.\textsuperscript{129}

\textbf{Institutional framework}

Governance policies of countries are formulated and implemented by various domestic institutions. It is important that these institutions duly recognize the linkages between corruption, human development and access to justice.\textsuperscript{130} Every institution functions on the basis of self-assigned priorities for achieving certain goals and objectives. Unfortunately, the development goals of a society cannot be achieved if the institutions involved in implementing development policies do not sufficiently understand the need for implementing measures aimed at corruption-free governance and access to justice.\textsuperscript{131} The existing institutional frameworks have created fairly independent structures for dealing with corruption, human development and access to justice. Corruption for example is dealt with in a reactionary manner and the criminal law and law enforcement model is the most commonly used approach for responding to corruption.\textsuperscript{132} Thus, it is primarily the police and law enforcement agencies that are involved in the fight against corruption. Development tasks are handled by various departments and ministries of governments that deal with policy formulation and implementation. Most of the time there is very little dialogue and coordination between institutions that deal with responding to corruption on the one hand and those institutions that are involved in implementing development policies on the other.\textsuperscript{133} The third leg of triangle, access to justice, is unfortunately kept outside this framework. Since the judiciary is the institution entrusted with the task of adjudication and providing justice the policies relating to access to justice are typically kept outside the

\textsuperscript{129} Id., at 83.
\textsuperscript{130} Ibid.
\textsuperscript{131} Ibid.
\textsuperscript{132} Ibid.
\textsuperscript{133} Id., at 84.
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Institutions dealing with development\textsuperscript{134}. The problem gets even more complicated due to the fact that access to justice has been recognized to be a nebulous concept with varying interpretations. Further it is important to understand the notion of access to justice from the point of view of its direct implications for corruption and development\textsuperscript{135}. This understanding is possible only if the existing institutional paradigm is challenged to provide a more inclusive framework that will take into account the linkages between corruption human development and access to justice\textsuperscript{136}.

**Effect of cultural values and corruption**

In the context of the cultural values debate, it is useful to examine whether the linkages between corruption, human development and access to justice in the Indian context have any cultural influences\textsuperscript{137}. In India, human rights have proceeded as a domestic discourse informed by the international ideas. The basic argument has been put forward by a few authoritarian political leaders that the human rights approaches of the west are unsuited to the Indian cultural and political conditions\textsuperscript{138}. In fact, the linking of corruption to cultural values needs an effective response that will recognize the importance of achieving access to justice for protecting human rights and ensuring human development\textsuperscript{139}. The Bangkok Declaration of 1993, a formal declaration by the Asian Regional Meeting of the World Conference on Human Rights, observed that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm, bearing in mind the significance of national and regional particularities and various historical, cultural and religious

\textsuperscript{134} Ibid.
\textsuperscript{135} Ibid.
\textsuperscript{136} Ibid.
\textsuperscript{137} C. Raj Kumar, supra note, 14 at 85.
\textsuperscript{138} Ibid.
\textsuperscript{139} Ibid.
The human rights framework does recognize the importance of national and regional peculiarities. The process of institutionalization of human rights in various countries and regions is expected to develop a local approach that would bear in mind the social, economic and political factors of the nation. But it is not acceptable for the human rights movement or the anti-corruption initiative to condone on the ground of culture. It is important to recognize that cultural values have become central to the discourse on corruption. The “cultural values” argument as challenge to the implementation of the constitutional democracy is exaggerated and fails to account for the richness of the cultural values discourse.

Thus, the cultural values argument is at best a weak critique of efforts at the international level to develop universal human rights mechanisms that are aimed at ensuring that constitutionalism and the rule of law are strengthened. The lack of human rights mechanism due to these misguided arguments has an the flip side, resulted in government having difficulties in responding to other social problems, including the need for fighting corruption, promoting transparency and accountability and more importantly fulfilling the aspirations of the people to actively participate in democratic governance. Thus in order to effectively combat corruption, the discussions relating to human rights and anti-corruption should move beyond the critique of the cultural values discourse. The experiences of successful models of institutionalization of human rights in other countries and regions of the world should dictate greater acceptability of such practices. There is no evidence to suggest that culture has anything to do with tolerance or intolerance of corruption. While cultural values may help in shaping the ethics of a

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140 Declaration of the Ministers and Representative of Asian States, 29th March to 2nd April, 1993.


142 C. Raj Kumar, supra note, 14 at 87.

143 Ibid.
society, which themselves evolve over many years. It is difficult to argue that culture alter the framework for determining the prevalence of corruption\textsuperscript{144}.

**Challenges to promoting human rights in India**

The potential obstacles to promoting human rights can be indentified such as the antipathy towards civil and political rights, which leads to an emphasis on the economic aspects of the rights to development. The paramount importance accorded to collective interests who have been used to justify broad derogation of human rights in the interest of public order and the general treatment of human rights.

The discourse on human rights should embrace the need for integrating development and governance perspectives so that human rights issues are recognized as essential factors for achieving development\textsuperscript{145}. This is true in the context of fighting corruption as it has a direct relationship with the strengthening of democratic institutions. The contemporary thinking on the relationship of civil and political rights with economic, social and cultural rights is based on the understanding that these rights are closely related and need to be protected and promoted together if their aims are to be fully achieved\textsuperscript{146}. There cannot be any compromise or derogation of any set of rights for achieving another set of rights. Arjun Sengupta, the UN Independent Expert on Right to Development has observed that, there is no more room for promoting for one set of rights as against another or putting of forward some rights, such as economic and social to be fulfilled prior to or in violation of civil and political right vice versa. All rights

\textsuperscript{144} Ibid.
\textsuperscript{146} C. Raj Kumar, supra note14 at 89.
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have to be fulfilled together and the violations of one would be as offensive as that of another.\footnote{147}

Human rights activism has to take seriously the role of non state actors whose work will have a significant impact on the institutionalization of human rights\footnote{148}. Non State actors have come to attain an important place in societies all over the world. The functions of these non state actors have had a profound effect on human rights both positively and negatively. There a number of non-state actors like the media, national and International non-government organizations (NGOs), multinational corporation (MNCs), multilateral institutions like the World Bank and IMF, and international development institutions like the UNDP\footnote{149}. While this list is by no means comprehensive, it provides idea of what we understand by the term-non state actors. It is the time that the non state actors recognized this role and began to understand that the developmentalization of human rights cannot take place effectively if not state actors are not involved\footnote{150}. Simultaneously, it is need to recognize the role played by MNCs in the development process\footnote{151}. Often, in the name of free trade, there is a trend to ignore the accountability of MNCs with regard to human rights\footnote{152}. International institutions like the World Bank and IMF should themselves be committed to human rights. The integration of rights and development for good governance needs to be supplemented by actions that provide support to such efforts\footnote{153}. The institutionalization of human rights can be developed by promoting the development of National Human Rights Institutions (NHRIs).

\footnote{148} Kumar, “Corruption, Development and Good Governance” supra note 52, at 512.
\footnote{149} Ibid.
\footnote{150} Ibid.
\footnote{151} Ibid.
\footnote{153} Balakrishnan Rajgopal, From Resistance to Renewal: The Third World Social Movements, and the Expansion of International Institutions, 41 Harvard International Law Journals (200) at 529.
The role of good governance

There is an unfounded misconception that good governance concerns only issues related to anti-corruption. While anti-corruption is a very important component of any strategy to achieve good governance. To empower the citizenry, there is a need to formulate human rights based approaches to anti-corruption initiatives. The UN Economic and Social Commission for Asia and the Pacific (UNESCAP) has observed that good governance has eight major characteristics, that are participation, rule of Law, transparency, responsiveness, consensus orientation, equity and inclusiveness, effectiveness and efficiency and accountability.

Mainstreaming human rights means enhancing the effectiveness of human rights programmes and integrating them with a broad range of activities including development governance and the administration of states. National institutions need to be established and governance policies formulated for the promotion of the right to good governance inevitably, the national institutions that already existed need to be reformed and re-oriented so that the governance imperative is fully appreciated. Courts will inevitably play an important role in this process. There has to be a concerted effort to recognize that the right to good governance is an important component of developmental zing rights. It is important for good governance to become an effective strategy for national growth and progress in a broader sense that anti-corruption efforts do not violate human rights. Moreover, the right to good governance needs to be institutionalized and for this purpose effective institutions like NHRIs and anti-corruption institutions have to be created.

154 C. Raj Kumar, supra note 14, at 91.
157 C. Raj Kumar, supra note 52.
158 Ibid.
with necessary checks and balances to provide for institutional accountability and oversight\textsuperscript{159}. The basic idea behind the right to good governance and the rights based approaches to development is to bring what was hitherto venue of political discussions into the day to day development activities\textsuperscript{160}. The impact it can have on creating a humane society based on the protection and promotion of civil, political, economic, social and cultural rights for all people without discrimination all with due regard to participation of the populace in decision making that affect their lives is truly profound\textsuperscript{161}. The rights based approach to development, which integrates human rights and human development to promote good governance, help forge deep social and economic partnerships between the government and the people based upon a shared sense of resources. The right to good governance as part of the right to development ensures that there is equal opportunity for all people to social progress and welfare\textsuperscript{162}.

**Need to formulate a fundamental right to corruption free-services in India**

There is no doubt that corruption affects the exercise of rights to each and every people in India. Rights are important political tools that are meant to empower people. The constitution of India has provided the fundamental rights and directive principles of state policy to ensure that the people are given the necessary legal and constitutional protections for the enforcement of their rights\textsuperscript{163}. Corruption undermines the implementation of constitutional rights in India. Therefore, it requires a response that is based on the principle of human rights accountability. This principle provides for not only recognizing the violation but also remedial measures to seek redress for violation\textsuperscript{164}. The constituent

\textsuperscript{159} C. Raj Kumar, *supra* note, 14 at 92.
\textsuperscript{160} *Ibid.*
\textsuperscript{161} *Ibid.*
\textsuperscript{162} *Ibid.*
\textsuperscript{163} *Id.*, at 103.
\textsuperscript{164} C. Raj Kumar, Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Rights to Corruption free service in India, 17 Colum. J. Asian pp. 31 65 (2006)
assembly debates in India have rich source from which we can understand the hopes and expectations of the political leaders of that time in creating a constitution that would pave way for a social revolution. The framers of the Indian Constitution\textsuperscript{165} provided for a comprehensive set of fundamental rights that could be enforced against the state.\textsuperscript{166} There were also certain rights that could be enforced against private individuals.\textsuperscript{167} It should be noted that the framers of the Indian constitution were themselves victims of gross human rights violations through the state instrumentalities of British rule, during which the law was used to justify various actions in violation of human dignity. The constitution provided a robust framework to ensure that fundamental rights were duly protected and that the government could withdraw individual freedoms only under specific circumstances.\textsuperscript{168} Even these circumstances were subject to judicial review and needed to be fair, just and reasonable in order to be upheld.\textsuperscript{169} In India, rights have been given the progressive and liberal interpretation to ensure that they provide a meaningful basis for good governance and freedom from exploitation. Experience has demonstrated that the concept of rights has been used by civil and political society to negotiate their claims within the scheme of democratic governance.\textsuperscript{170} These struggles and negotiations have not always been successful from the standpoint of a constitutional system that bases itself on liberty, equality, and dignity. Nevertheless, they have survived for more than half a century to ensure that India remains a constitutional democracy.\textsuperscript{171}


\textsuperscript{166} Ibid.

\textsuperscript{167} Ibid.

\textsuperscript{168} Kumar, “Corruption and Human Rights” at 65 cited in C.Raj Kumar, \textit{supra} note 14.

\textsuperscript{169} Mahendra P. Singh, \textit{Constitution of India}, \textit{supra} note 165.

\textsuperscript{170} Kumar, “Corruption and Human Rights” \textit{supra} note 168.

\textsuperscript{171} Ibid.
The question of corruption as a violation of human rights demands a constitutional response. In India, the system of constitutional governance and the processes of administration are tainted by corruption. Therefore, it is need to provide a constitutionally guaranteed fundamental right to corruption free service in India to its people. The Indian experience in recognizing constitutional rights, judicially enforcing those rights and empowering the citizenry has not been always encouraging.172 The public interest litigation173 movement in India has given same favourable signals to upholding rights through the constitution by means of an independent judiciary that is socially sensitive and activist.174 But all these developments have their limitations and have fallen short of the social expectations they generated when the process began.175 The fact that democracy itself is a tireless pursuit to ensure that the right and freedoms of individuals are duly protected and that individuals are offered legitimate channels to allow the free expression of frustration and disappointments gives hope that the governance system in India will improve.176 However, these hopes have been shattered numerous times in the recent past due to the widespread prevalence of institutionalized corruption as political morality and character are becoming pipe dreams and watchdogs are ineffective due to lack of operational independence and institutional autonomy.177 The Indian judiciary has responded more than once to ensure that the independence of investigative agencies is protected and that they are free from extraneous influences when handling investigations of corruption

172 Baxi, “The State and the Human Rights Movements in India” as quoted in C. Raj Kumar, supra note 14 at 105.
173 Anand, Public Interest Litigation as Aid to Protection of Human Rights as quoted in supra note 14 at 105.
174 Ibid.
175 C. Raj Kumar, supra note, 14 at 105.
176 Ibid.
177 Kumar, “Corruption and Human Rights” supra note 168.
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allegations and other grass abuses of power. But the interference of the court has drawn very swift and determined response from the executive because the power of supervision and control of the investigative agencies rest with the political executive. Thus, in terms of corruption in governance and integrity in administration, India is in a quagmire. There is no single solution to the problem of corruption in India. The constitutional response in the form of formulating a fundamental right to corruption free service would be an important starting point in taking the problem of corruption from the realm of public policy and criminal law enforcement to the central level of political discourse in India. The fundamental right to corruption free service in India would be a part of Chapter III of the Constitution of India. Former chief Vigilance Commissioner, N. Vittal has supported the evolution of such a right. He has observed that corruption totally distorts the machinery of government namely, the executive and makes a mockery of the human rights for good governance. This right is expected to empower the Indian citizenry and the people of India would be in position to rightfully claim that the governmental conduct to be free from corruption. If it is not happen; it will be a violation of their constitutionally recognized rights. In India the constitutional sanctity has acquired legitimacy in much deeply because the India has been functioning as a constitutional democracy since its independence. But corruption in all its forms such as political, administrative, bureaucratic and corporate is rampant and has steadily increased since the last several years. Despite it, the political system of India has by and large been stable. It is not good sign for Indian democracy. It is conceivable that shattered social expectations mal-administration and poor governance policies over a period of time would endanger

178 Ibid.
179 Ibid.
180 C. Raj Kumar, supra note 14 at 106.
181 N. Vittal, Corruption in India: The Road block to National Prosperity (Academic Foundation, New Delhi, 2003).
the rule of law and the social fabric of the nation.\textsuperscript{182} Corruption in India has affected development policies and the Indian citizenry has been deprived of their economic and social rights. The right to corruption free service would demand good governance, integrity and probity in administration from those in the power.\textsuperscript{183} To recognize the fundamental right to corruption free service in India, the following argument can be given\textsuperscript{184}:

1. It would be a landmark development from the standpoint of constitutional governance as it would be recognized by the lawmakers as an issue of foremost importance for ensuring good governance.
2. It would provide for obligations on the part of the political executive to ensure that they take positive steps for realizing this fundamental right.
3. Indian courts are well positioned to develop progressive jurisprudence relating to corruption free rights given the fact that there are numerous cases in the past particularly with reference to other fundamental rights in the constitution of India where courts have interpreted and developed rights.
4. The non-enforcement of the fundamental rights to a corruption free service has the potential to invite judicial scrutiny and the courts may recommend legal, administrative and institutional measures and reforms to ensure that freedom from corruption as provided in the Constitution of India is meaningfully realized. Lastly, it gives a powerful tool to national and international civil society movements to ensure that corruption at every level of governance in India is duly addressed and measures are taken to curb this menace.\textsuperscript{185}

\hspace{1cm}\textsuperscript{182} Baxi, “The State and the Human Rights in India” \textit{supra} note 172.
\textsuperscript{183} \textit{Ibid.}
\textsuperscript{184} C. Raj Kumar, \textit{supra} note 14 at 107.
\textsuperscript{185} Kumar, “Corruption and Human Rights” \textit{supra} note 168 at 68.
Role of National Human Rights Commission in India

   National Human Rights Commission has been setup as a statutory body under the Protection of Human Rights Act, 1993. The purpose of setting up to the commission is to strengthen the machinery for more effective enforcement of fundamental rights of the people. The statement of objects and reasons appended to the Bill made clear the purposes underlying the proposed enactment. Noting that India was a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights both of which were adopted by the United Nations General Assembly on 16th December 1966, and that the rights embodied in those covenants stood substantially protected by the Constitution of India. There had been growing concern in the country and abroad about issues relating to human rights. Having regards to this and to the changing social realities and emerging trends in the nature of crime and violence it has been considered essential to review the existing laws and procedures and the system of administration with a view to bringing about greater efficiency and transparency. The Act provides a mechanism for the better protection of human rights and for matters connected therewith or incidental thereto. Thus the National Human Rights Commission was established in order to provide an institutional framework for protecting human rights so as to create an independent body whose task is legislatively mandated to protect and promote human rights. But there are huge institutional challenges that the NHRC needs to confront. Human rights are a powerful discourse that immediately creates unparalleled social expectation and invites equally powerful civil society scrutiny from national and international actors. It is important that Human Rights Commission succeed in their efforts to promote and protect human rights. The legitimacy and credibility of Human Rights Commission rest on their ability to address the human rights problems in a society.

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National Human Rights Commission is relatively new and innovative institution, which is the product of initiatives started by United Nations.\textsuperscript{187} The international human rights laws have moved towards constitutionalization of human rights and shaped the development of Human Rights Commissions in various countries. The Human Rights Commissions performs a variety of functions. One of the important aspects to be noted in connection with HRCs and their attempts to secure human rights accountability is that they are not the panacea for all human rights problems that affect to the society.\textsuperscript{188} HRCs tend to be effective only under a given set of circumstances. It depends upon the level of funding functional in dependence and institutional autonomy etc.

**Need to expand the mandate of the NHRC**

The challenge of protecting a number of human rights in India is connected to ensuring corruption free governance. In this regard, it is proposed that the NHRC should play a definitive role in fighting corruption, particularly when acts of corruption are responsible for human rights violations.\textsuperscript{189} It is useful to mention the legal framework outlined in the protection of Human Rights Act, 1993 for determining the extent to which the NHRC can be evolved in the fight against corruption so as to protect human rights.\textsuperscript{190} The functions to be discharged by the commission are listed under section 12 of the Act. The following provisions need to be examined carefully. The commission shall perform all or any of the following function namely:

\begin{itemize}
  \item \textsuperscript{187} UN Secretary-General Report on National Institutions, note 56, at 2 cited in C.Raj Kumar, supra note 14 at 142.
  \item \textsuperscript{189} C. Raj Kumar, supra note 14 at 147.
  \item \textsuperscript{190} Ibid
\end{itemize}
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a) To inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of;
   i. violation of human rights or abetment thereof or;
   ii. negligence in the prevention of such violation, by a public servant.

b) To review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.

Thus, section 12 of the Act gives enough flexibility for the NHRC to determine what steps it ought to take for protection and promotion of human rights. Section 2(1) (d) of the Act defines human rights. The word “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenant and enforceable by the counts in India. Section 12 of the Act has provided for the NHRC to take cognizance of a complaint relating to human right if it is satisfied that there was negligence in the prevention of a human rights violation by a public servant. The negligence could have been due to corruption or other forms of illegal actions by public servants. Thus, the issues of corruption can legally come within the jurisdiction of the NHRC. In May 2006, the NHRC organized a conference on “Effects of Corruption on Good Governance and Human Rights” in New Delhi. This was the first time the Indian NHRC examined the issue of corruption from a human rights standpoint. The gravity of human rights violation resulting from corrupt practices is no less than that of custodial violence or any form of violations of civil, political, economic, social and cultural rights. Therefore, the most important question is that; how can the

191 Ibid
192 Ibid.
194 Ibid.
NHRC operationalize the right to corruption free governance with a view to protecting and promoting human rights in India? Human rights have traditionally been understood to be rights relating to life, liberty, equality and dignity which have been recognized in the definition of human rights in the Protection of Human Rights Act. The preamble to the Right to Information Act, 2005 notes the specific issue of corruption, that the democracy requires an informed citizen and transparency of information which are vital to its functioning and also to contain corruption and to held governments and their instrumentalities accountable to the governed. Further, the human rights in India have also been given a strong constitutional foundation and have developed through innovative judicial interventions. The good governance agenda includes protection and promotion of human rights and rule of law.

It is important that institutions like the NHRC provide a framework to the cases of corrupt acts of individuals and institutions that result in human rights violation. 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 corruptions. Further, the research division of NHRC may consider supporting studies on the human rights consequences of corruption as well as how far the human rights approach can help in ensuring corruption free governance. The importance of the institutionalization of human rights in India through the setting

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195 Ibid.
198 C. Raj Kumar, supra note 14 at 149.
199 Ibid.
200 Ibid.
201 Ibid.
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up of the National Human Rights Commission and states human rights commissions is that they have come to occupy a certain democratic space within the domestic political spectrum.\textsuperscript{202} However, the existence of democratic institution does not necessarily mean that human rights violations do not occur or that their incidence is reduced.\textsuperscript{203} 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 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 only recommendations, though they carry a lot of legitimacy and persuasiveness because of the composition of the commission.\textsuperscript{204}

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 function of the NHRC given in section 12 are wide enough to include corruption as a violation of human rights.\textsuperscript{205} The NHRC can also engage with the leading anti-corruption agencies. The anti-corruption agencies such as the Central Vigilance Commission (CVC), the Central Bureau of Investigation (CBI), and the Enforcement Directorate (ED) etc. would be truly empowered if institutions like the NHRC take cognizance of cases relating to corruption when it involves a human rights issue. This will bring the problem of corruption to the centre of the governance paradigm in India. This institutional engagement must be a facet of good governance in India. Further, if the NHRC has to take a proactive role in promoting good governance policies it has to

\textsuperscript{202} \textit{Ibid.}
\textsuperscript{203} \textit{Ibid.}
\textsuperscript{204} \textit{Ibid.}
\textsuperscript{205} \textit{Ibid.}
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understand the problem of corruption from a criminal law enforcement perspective. 206

Need to develop rights based approach against corruption

Having recognized 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. The rights based strategies are those strategies that rest on the conceptual foundation that social and economic goals do not remain mere policy objectives, but get transformed into rights that are vested in the citizenry thereby increasing incentives for public vigilance. It is useful to note that there are other national human rights institutions which have embarked successfully upon the responsibility of dealing with corruption. 207 The Fiji Human Rights Commission has recognized good governance to be an integral part of human rights protection. 208 It has defined good governance to be the process through which public institutions conduct public affairs, manage public resources and guarantee the realization of human rights. 209 To demonstrate the linkages between human rights and corruption, the Kenya National Commission on Human Rights has developed a framework by which its citizens are able to appreciate the impact of corruption on the ordinary lives of people. 210 It has published a two volume report on the topic titled “Living Large: Counting the Cost of Official Extravagance in Kenya” 211. The report has stated the wasteful use of public resources by public officers. The aim of it is to stir reform in the public

206 Ibid.
207 Ibid.
209 Ibid.
210 Ibid.
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sector by discouraging such waste and to empower citizens to demand value for their money.\textsuperscript{212} Ghana has established the Commission on Human Rights and Administrative Justice of Ghana in October, 1993. It is a combination of three institutions namely; a human rights institution, the ombudsman and an anti-corruption agency under one umbrella.\textsuperscript{213} The Commission on Human Rights and Administrative Justice of Ghana is empowered to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties. It is also empowered to investigate all instances of alleged or suspected corruption and the misappropriation of moneys by officials and to take appropriate steps, including reports resulting from such investigations to the Attorney General and the Auditor General.\textsuperscript{214} These powers empower the CHRAJ to deal with corruption in Ghana as it is widely recognized as a major cause for many human rights violations.\textsuperscript{215}

It is useful to refer to developments in the international human rights arena that can provide a framework for responding to human rights violations that take place due to corruption. In December, 1998 the Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment No.10 which deals with the role of NHRI\textsuperscript{s} in the protection of ESCRs.\textsuperscript{216} The CESCR recognized that it can be achieved by galvanizing the work of NHRI\textsuperscript{s} and there is need to give full

\begin{footnotesize}
\begin{enumerate}
\item[214] Ibid.
\end{enumerate}
\end{footnotesize}
attention to the Economic, Social and Cultural Rights in all activities of NHRI. The CESC also called upon states parties to the International Covenant on Economic, Social and Cultural Rights to ensure that the mandates accorded to all NHRI are expanded, if necessary, so that appropriate attention is given to Economic, Social and Cultural Rights. Thus, the National Human Rights Institutions are in position to take cognizance of corruption as a major impediment to the implementation of Economic, Social and Cultural Rights. The problem of corruption with regard to the enforcement of ESCR needs to be addressed by NHRI in response to the international human rights movement. The main problem with the NHRI is with the respect to enforcement of human rights which is directly related to their institutional status and powers granted under law that establishes these institutions. Corruption affects the enforcement of Economic, Social and Cultural Rights and becomes an important factor that undermines the effectiveness of NHRCs in fulfilling their mandate to promote and protect human rights.

If corruption is identified as an obstacle to the promotion and protection of any Economic, Social and Cultural Rights, it becomes necessary for the NHRC to take the necessary steps to address it. The Limburg Principles on the implementation of the international Covenant on Economic, Social and Cultural Rights declares that states parties shall use all appropriate means including legislative, administrative, judicial, economic, social and educational measures consistent with the nature of rights in order to fulfill their obligations under the Covenant. The National Human Rights Commission in India has not an express mandate to fight against corruption under the Protection of Human Rights Act,

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217 Ibid.

218 Ibid.


1993. But there is need to interpret its role and functions with regard to the effect of corruption upon human rights. It is essential for the NHRC in India to formulate various effective anti-corruption measures. In this way, its role in protecting human rights will help in eliminating corruption and promoting integrity and good governance in India. The recognition of the rights to corruption free governance by the NHRC has the potential to bring the problem of corruption to the fore from of the national and 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 India citizenry. This would require governance to be based upon the underlying ideals, goals, objectives, aspirations and values of the constitution which have been undermined by the corruption. All individuals and institutions within the government would be expected to take the necessary steps to fulfill these fundamental rights. The recognition of the right to corruption free governance will quickly empower the judiciary to bring forward the integration of the anti-corruption initiatives and human rights approach. Both these approaches are essential to increase the legitimacy of the state and to ensure the accountability in administration. The judiciary is best suited to maintain 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.

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222 Ibid.
223 Id., at 552.
224 Ibid.
The role of National Human Rights Commission against corruption in India

There is an urgent need for the NHRC to revamp its mandate in the light of huge institutionalization of corruption in India. Corruption has not left untouched any institution in India.\(^\text{225}\) It is a true fact of matter that all human rights are violated due to corruption. All matters of corruption have a close entanglement to violation of human rights. The Protection of Human Rights Act, 1993 in the opening paragraph notes that it is an Act to provide for the constitution of a National Human Rights Commission, the State Human Rights Commissions in the States, and the human rights courts for the better protection of human rights and for matters connected there with or incidental thereto. The NHRC must ensure that its investigations make due note of the fact that corruption is the root cause of potential violations of human rights.\(^\text{226}\) In this regard, the NHRC may have to work in co-operation with anti-corruption agencies like the Central Vigilance Commission.\(^\text{227}\) The purpose of the NHRC’s new initiatives should be to ensure the protection of human rights and promotion of corruption free administration as a sine qua non for good governance.\(^\text{228}\) The need for promoting transparency and accountability has been noted as an important requirement for corruption free governance. The Indian experience has demonstrated that the recognition of the right to information in India is an important step in ensuring corruption free service.\(^\text{229}\) Thus, the NHRC ought to be to be engaged in efforts to fight corruption with a view to strengthening the legal and institutional framework for protecting the human rights. The following are some specific aspects of

\(^{225}\) Norchi, The National Human Rights Commission of India as a Value Creating Institution at 127 cited in C. Raj Kumar supra note 14 at 158.

\(^{226}\) C. Raj Kumar, supra note 14.

\(^{227}\) Ibid.

\(^{228}\) Ibid.

\(^{229}\) Ibid.
institutional initiative that need to be taken by the NHRC for anti-corruption efforts to become part of its human rights agenda.\textsuperscript{230}

**To recognize the problem of corruption as human rights violation**

The NHRC has to recognize internally that there are number of human rights violations that take place in India due to institutionalized corruption. There is also need to recognize the ineffectiveness of the criminal justice system in dealing with corruption. There are number of provisions in the Protection of Human Rights Act, 1993 that sufficiently empower the NHRC to recognize the problem of corruption as a violation of human rights. This recognition by the NHRC will go a long way in providing a policy framework for all bodies working within the NHRC, including the research, law and investigative divisions that are engaged in the promotion and protection of human rights.

**Investigation of human rights violation**

The investigative division of the NHRC, which examines allegations of human rights violation committed by police and other law enforcement machinery, ought to examine the issue of corruption as the cause of such violations.\textsuperscript{231} Such an investigation ought to take place independent of any complaint that has been lodged or otherwise of a possible act of corruption committed by the police or other law enforcement machinery. The nature of corruption like human rights violation is such that the victims face threats and feel too insecure to disclose the names of the perpetrators for fear of reprisal. The investigation of human rights violations should include in a substantial manner, investigation into acts of corruption that have taken place, if any. The investigation should also examine the role of corruption in obstructing the investigation of human rights violations.\textsuperscript{232}

\textsuperscript{230} Ibid.

\textsuperscript{231} Ibid.

\textsuperscript{232} Ibid.
The NHRC ought to bear in mind the inextricable connection between human rights violations and corruption leading to abuse of power in India. In the light of this, nexus, it will become essential for NHRC to seek the help and assistance of anti-corruption bodies and other investigative agencies such as the Central Vigilance Commission and the CBI in investigating matters relating to corruption and its impact on human rights. But, there is the lack of independence of these investigative agencies. Thus, it becomes essential for NHRC to closely monitor the any type of joint investigative process among the CVC, CBI and the investigative Division of the NHRC233

The role of research division of the NHRC against corruption

The NHRC should sponsor and conduct a number of theoretical and empirical studies relating to corruption and its impact on the promotion and protection of human rights. The protection of Human Rights Act, 1993, S. 12(g) provides that the NHRC has a major responsibility to undertake and promote research in the field of human rights. The research division of the NHRC has a more important responsibility to assume a leadership role in identifying researchers and practitioners in commissioning working papers for evolving policy documents on the question of corruption and human rights. There is also need to examine the practices of other national human rights institutions in dealing with the acts of corruption. Thus, the research division of NHRC would be able to develop a comparative understanding of the issues related to corruption and human rights. All this could provide useful guidance to the NHRC in formulating and evolving its own policies. The role of the research division of the NHRC becomes very critical in this regard. It needs to examine the history of a number of human rights violations through empirical evidence that can provide a clearer understanding of the linkages between corruption and human rights. The NHRC is concerned with the promotion and protection of Human rights. This role and

function of the NHRC can be performed effectively, if corruption is reduced. Thus it is the duty and responsibility of the NHRC to take steps to fight against corruption. It is the core responsibility of the NHRC for the protection and promotion of human rights. NHRC of India can make an immense contribution for the protection and promotion of human rights.\textsuperscript{234} NHRC of India has been suffering from structural problems and functional deficiencies. It has no proper and adequate mechanisms for protection and enforcement of human rights.\textsuperscript{235}

This transformation cannot happen without addressing the problem of corruption very effectively. In India, the corruption is the single most crucial problem that undermines governance and violates human rights. The main idea to establish the NHRC is to ensure that it remains vigilant over those who hold and exercise powers so that their conduct conforms to the national and international human rights norms. The work of the NHRC of India must constantly evolve and focus on those activities that result in the violation of human rights. If the NHRC of India understand its proper role and is able to function freely, bearing in mind the objectives for which it has been established, it will be able to fulfill social expectations of victims of human rights violations and society on account of corruption. At the same time, it should not compete with other democratic organs of State such as legislature, executive and judiciary. The NHRC of India should be a democratic institution with the capacity to link issues relating to human rights, corruption, development and good governance.

**Right to information as a tool against corruption in India**

The recent struggle to curb corruption in India at all levels of governmental decision-making has taken the form of efforts to promote transparency and enforce


accountability by promoting the right to information at the state and central levels. The good governance approach of administering states should ideally focus on the principles of transparency and accountability.\textsuperscript{236} It is important for decisions to be taken in a transparent manner and for decision-makers to be held accountable. This good governance form of accountability is broader than that of mere electoral accountability. While electing the ruled to office, democratic governance involves some form of accountability for ensuring respect for the rules, accountability of governance seeks to ensure that the people who are making decisions are involving the public in the process of making these decisions.\textsuperscript{237} India has been making efforts for promoting transparency and accountability in governance. The recognition of the right to information and the establishment of the Central Information Commission are important milestones in this regards. The CIC provides for an institutional framework that will ensure transparency and is wholly engaged in the implementation of the right to information. Governmental decisions acquire legitimacy if the people’s right to information is duly protected and they are in a position to enforce this right. This is possible only when decisions are made in a transparent manner. In order to ensure a corruption free society, it is necessary to empower the people so that they can resist the practices of official corruption. From the perspective of civil society activism, such resistance to corruption needs to start with the empowerment of the citizenry and this is possible through the full development of the right to information. For democratic governance to be meaningful, it is necessary that citizens must have access to information about what their government is doing and how decisions have been reached.\textsuperscript{238} It is very clear that the right to information is a powerful tool for formulating the right to corruption free governance. The right to

\textsuperscript{236} C. Raj Kumar, *supra* note 164.

\textsuperscript{237} Ibid.

information is the first step in checking governmental corruption as the people of India ought to be empowered by the availability of information on the decisions taken by the government that affect their lives. Commenting upon the relevance of the right to information for the control of corruption, Harsh Mander and Abha Joshi have observed that:

“The right to information is expected to improve the quality of decisions making by the public authorities in both policy and administrative matters by removing unnecessary secrecy surrounding the decision-making process. The cumulative impact on control of corruption and the arbitrary exercise of power of the availability of such information to the citizen would be momentous”.

The right to information movement initially started with the work of grassroots mass-based organization known as the Mazdoor Kisan Shakti Sangthan (MKSS) in the state of Rajasthan. Members of the Mazdoor Kisan Shakti Sangathan walked from village to village asking simple questions. Did the people know the amount of funds that were coming to their village for development? How was the money that came from different sources actually spent? Although these questions were simple but the poor and impoverished of India had never dared to ask. When this information was collected, the MKSS went to the government block office, which is the authority that administers development funding in about a hundred villages, with a request to provide detailed information on development expenditure. In response they were told that there was no government rule that would allow villagers to demand such information and receive it. This resulted in the MKSS launching a people's campaign in the state of Rajasthan. The aim of the campaign was to conduct numerous public hearings

239 Harsh Mander and Abha Joshi, supra note 39.
241 Ibid.
242 Ibid.
in which cases of corruption and misappropriation of public funds were shared with a lot of people.\textsuperscript{243} Aruna Roy has observed that the right to information in Rajasthan was aimed at ending the arbitrary use of power.\textsuperscript{244} The MKSS campaign had focused on demanding transparency of official records, social audit of government spending and redressal machinery for people who had not been given their due.\textsuperscript{245} The result of this powerful mass-based and grass-root civil society activism in the form of social struggle resulted in the State of Rajasthan as creating an environment in which corruption was less tolerated and accountability of the government official was enforced.\textsuperscript{246} The MKSS movement to seek the right to information came about due to large scale rampant embezzlement of public funds. The consequences of these corrupt actions were non-employment or under payment to the local workforce and non-existent or bad quality assets on the ground which were meant for education, housing or health facilities for the rural poor.\textsuperscript{247} The linkage between the human rights violations on account of institutionalized corruption and the lack of transparency and accountability in governance led the MKSS to establish a connection between the manipulation of official records and denial of life opportunities to the rural poor of India.\textsuperscript{248} This resulted in the movement to seek the right to access to official records as a part of the right to life and livelihood.\textsuperscript{249} This civil society activism was followed by a nationwide movement to seek national legislation on freedom of information which is inspired by work of MKSS in Rajasthan. The important links among lack of transparency, absence of accountability and institutionalization of corruption

\textsuperscript{243} Ibid.

\textsuperscript{244} Kalpna Sharma, “Right to Information Will Check Corruption” The Hindu, 24 February, 2002.

\textsuperscript{245} Ibid.

\textsuperscript{246} Ibid.

\textsuperscript{247} Ibid.

\textsuperscript{248} “Improving Accountability in Panchayati Raj” India Together, January 2003.

\textsuperscript{249} Ibid.
gave the social and political impetus to seek the formulation of the law on the right to information.\textsuperscript{250}

The relevance of the right to information in India is much more than merely allowing the free flow to information from the government to the public.\textsuperscript{251} It is about people exercising their right to seek necessary information from the government so that it and its representatives are held accountable to the public. The right to information ensures that governmental decisions are made in a transparent manner and that the people are informed of decisions that affect them. The right to know, receive and impart information has been recognized within the right to freedom of speech and expression under Act 19 (1) (a) of the Constitution of India.\textsuperscript{252} Specifically, the right to information has not been provided in the Constitution of India. It had read and interpreted by the Indian judiciary in Article 19 (1) (a) of the Constitution of India.\textsuperscript{253} The Constitution has a sound framework for protecting human rights in the form of the right to equal protection of laws and the right to equality before law, the right to freedom of speech and expression and the right to life and liberty. This is supported by the right to constitutional remedies provided in Article 32 \& 226, which is the right to approach to the High Courts and the Supreme Court through their writ jurisdiction for remedies in cases of violation of these rights. The right to information law has now been enacted in India and its states. The Freedom of Information Bill was passed by the Lok Sabha on 3 December, 2002 and by the Rajya Sabha on 16 December, 2002.\textsuperscript{254} Furthermore, seeking to ensure greater and more effective access to information,
the government of India resolved that the Freedom of Information Act, 2002 be made more progressive, participatory and meaningful.\(^{255}\) This was done after the proposal by the National Advisory Council suggested a number of changes. To facilitate these changes the government decided to repeal the Freedom of Information Act, 2002 and adopted a new legislation namely the Right to Information Act, 2005\(^{256}\). The preamble to the Act states that 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.\(^{257}\) The CIC is an institutional mechanism that is designed to implement the right to information. The relationship between the right to information and its ability to reduce corruption needs to be understood. Information Commissioner M.M. Ansari has observed\(^{258}\):

“Lack of transparency and accountability encourage the government officials to indulge in corrupt practices, which result in lower investments due to misuse or diversion of funds for private purposes. As a result, the government’s social spending yields no worthwhile benefits, because for instance the teachers do not teach, doctors and nurses do not attend health centers, ration card holders do not receive subsidized food grains and the promised jobs are not provided to the people”.

\(^{256}\) Act No. 22 of 2005. The Act was published in the Gazette of India (Extraordinary) Part II- Section I, on 21 June 2005 and the Act received the assent of the President on 15 June 2005.
\(^{257}\) The preamble to the Right to Information Act, 2005 reads: “An Act to provide for setting out the practical regime to right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commission and for matters connected herewith or incidental thereto”.
\(^{258}\) M.M. Ansari, Chief Information Commissioner (India), “Impact of Right to Information on Development: A Perspective on India’s Recent Experience’s” lecture delivered at UNESCO Headquarters, Paris on 15 May, 2008.
Such a situation leads crisis in governance. The most fundamental institutions of government become ineffective and do not deliver the goods and services. Such non delivery of services affects the citizens of India, particularly to the poor and vulnerable. It perpetuates poverty and harms the poor. It creates an environment of distrust between the people and the government, which impinges on the development and jeopardizes democratic governance. The right to information has been used successfully in a variety of areas.\(^\text{259}\) Fighting corruption is one area where a lot of work needs to be done. The nature of corrupt transactions is such that information concerning them may not be easily available. The CIC needs to assume a leadership role. The information relating to transactions have a vital role for both the investigation and prosecution of cases relating to corruption. Abhijeet Singh has observed; in the gathering of information relating to development works and detection of corruption therein, a powerful weapon is social audit. Social audit refers to collection of official data and comparing it with actual progress of work. For instance a social auditor may take the progress report or measurement book for a development work and compare it with the on ground construction, thus highlighting discrepancies, if any, between the official version and the actual facts.\(^\text{260}\)

**Division or classification of human rights**

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Right and the International Covenant on Economic, Social and Cultural Rights enumerate the various equal and inalienable rights of all members

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of the human family. The International Covenants classify these human rights and fundamental freedoms into two categories.\(^{261}\)

a. Civil and Political Rights.


Some authors classify human rights into three generations of human rights\(^{262}\). The first generation of human rights are civil and political rights, the second generation human rights are economic, social and cultural rights and the third generation rights are collective rights. However, unlike the first generation and second generation rights, the third generation collective rights till now do not have legal recognition.

**Civil and political rights**

Civil rights are the rights which restrict the powers of the government in respect of actions affecting the individual and his autonomy. Political rights are rights that confer an opportunity upon individuals to contribute to the determination of laws and participate in government.

**Economic, social and cultural rights**

The economic, social and cultural rights have been considered as rights which require affirmative government action for their realization. It is also referred as second generation rights. These rights pertain to the well-being of the whole society. These rights are codified in the International Covenant on Economic, Social and Cultural Rights, 1966 and also in Article 23 to 29 of the UDHR, 1948.

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\(^{262}\) The division of human rights into three generations was initially proposed in 1979 by the Czech jurist Karel Vasak at the International Institute of Human Rights in Strasbourg, France.
Collective rights

Third generation or solidarity rights are the recently recognized category of human rights. This grouping has been distinguished from the other two categories of human rights in that its realization is predicted not only upon both the affirmative and negative duties of the state, but also upon the behavior of each individual. Rights in this category include self determination as well as a host of normative expressions whose status as human rights is controversial at present. Article 28 of the Universal Declaration of Human Rights proclaims that everyone is entitled to a social and international order in which the rights set forth in this declaration can be fully realized. This generation of human rights embraces six claimed rights. These include: the rights to political, economic, social and cultural self determination, the rights to economic and social development including the right to participate in and benefit from the common heritage of mankind, the right to peace, the right to healthy and sustainable environment, and the right to humanitarian disaster relief.

Link between corruption and human rights

The link between corruption and human rights is often clear but sometimes not so clear. Corruption directly violates human rights when a state acts or fails to act in a way that prevents individuals from having access to that right. For example, when an individual bribes a doctor to obtain medical treatment at a public hospital or bribes a teacher at a public school to obtain a place for his child at school, corruption infringes the right to health and education directly. Often, corruption may indirectly lead to human rights violation. If a public official allow the illegal importation of toxic waste from other countries in return for a bribe and the waste is placed in close to a residential area. The rights to life and health of resident of that place would be violated indirectly as the result of bribery. When a whistleblower is silenced by harassment, threats or imprisonment or killed, the right to liberty, freedom of expression, life and freedom from torture may all be
violated. Sometimes corruption play more remote role. When corruption during an electoral process raises concerns about the accuracy of the final result, social unrest and protest may occur and these may be repressed violently. In such a case, the right to political participation may be violated directly and repression of the social protests may also cause serious violations of human rights. When anti-corruption investigations and prosecutions not carried out in accordance with the human rights standards, it conflicts with the fundamental rights of privacy, due process, fair trial and so forth. Thus, corruption diminishes public trust and weakens the ability of the government to respect and protect human rights. In the widest sense, corruption obstructs national development and even this can be understood as an obstacle to the right of all peoples to freely pursue their economic, social and cultural development.\textsuperscript{263} If corruption is perceived as violation of human rights it will raise awareness among people on the consequences of corruption on individual interest and how detrimental a minor corrupt practice may be for victims and the population generally. This might engage large sectors of the citizenry into strong support in fighting corruption.

\textbf{Corruption and human rights interrelation}

Many human rights activist, lawyers, jurists and almost everyone with any sense of justice consider that the problem of corruption hits at the bone of the society and it is a serious threat for human rights.\textsuperscript{264} As the sun cannot be separated from sunshine, corruption cannot be detached from violation of human rights. Corruption as leading to human rights violation can be placed under following heads:

\textsuperscript{263} C. Raj Kumar, \textit{supra} note 164.
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a. Corruption as violation of the right to education

As an empowering right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. The right to receive education requires states to make various forms of education available and easily accessible to all.\(^{265}\) The education sector is not free from corruption. There are ample examples of blatant fraud and bribery in which education officials at all levels demand some from payoff for themselves, family or friends in return for their help in shaping the outcome of contracts, implementation efforts, distribution system etc.\(^{266}\)

b. Corruption as violation to right to health

The right to health has gained the recognition of many international and regional human rights instruments as well as domestic legislations.\(^{267}\) Corruption in health sector can take many forms, such as bribery of regulator and medical professionals, manipulation of information on drug trials, the diversion of medicines and supplies and corruption in procurement. Corruption in health sector undermines the doctor-patient relationship. The professional life of many doctors in India is deeply intertwined with marketing and entrepreneurial aspects of health care.\(^{268}\) A significant number of private hospitals have personal investment. This results in a certain loss of neutrality and complicity when market forces are at play.\(^{269}\) Hospitals put pressure on doctors to meet targets for patient admissions in return for an attachment.\(^{270}\)

\(^{265}\) Ibid.

\(^{266}\) Id., at 76.

\(^{267}\) The first notion of Right to Health under International Law is found in 1948 Universal Declaration of Human Rights which was unanimously proclaimed by the UN General Assembly as a common standard for all humanity.


\(^{269}\) Ibid.
c. Corruption as a violation of the right to fair trial and to an effective remedy

All individuals are entitled to equality before the courts and tribunals and have the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.\textsuperscript{271} The relationship between corruption and human rights is particularly relevant with regards to the right to a fair trial because, the corruption is widespread in the administration of justice in India. Experience shows that there are many ways in which corruption can affect the administration of justice and right to a fair trial. The most immediate way is through bribing judges to obtain a favourable judgment, to speed up procedures, or to obtain bail. Corruption affects the right to fair trial and administration of justice when corrupt acts take place at the stage of investigation to manipulate evidence in favour of one of the parties or at the level of prosecution if the prosecutor alters the fact of the case.

\textbf{d. Corruption as violation of the right of political participation}

Political participation can take many forms, the most notable of which is voting in elections, joining a political party, standing as a candidate in elections, joining a non-governmental advocacy group or participating in demonstration and to equal access to public services etc. Human Rights activism at the global arena has resulted in various strategic documents and instruments that ensure and promote these political participation rights.\textsuperscript{272} To bribe the voters in order to persuade them to vote or refrain from voting constitutes an interference with the

\textsuperscript{270} \textit{Ibid.}

\textsuperscript{271} The Right to Fair Trial is contained in Article 10 of Universal Declaration of Human Rights, (UDHR); Article 14 and 15 of International Covenant on Civil and Political Rights (ICCPR); Article 6 and 7 of European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); Article 8 and 9 of American Convention on Human Rights (ACHR) and Article 40 of Convention on the Rights of Child.

\textsuperscript{272} The Right to Political Participation has been recognized as human right under Article 21 of Universal Declaration of Human Rights; Article 25 of International Covenant on Civil and Political Rights and Article 3 of the first Protocol to the European Convention on Human Rights.
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integrity of an election and therefore directly violates the right to vote. Bribery in election process impedes the free expression of will of the electorate.

e. Corruption as a violation of the right to water

Access to safe water is a fundamental human need and a basic human right. Contaminated water jeopardizes both the physical and social health of all people. It has been argued that much of the lack of access to clean water and the increasing water pollution are not caused by lack of natural supply of water or by an engineering problem but by corruption. Corruption can have a detrimental effect on the quality of water. If a company bribes a public inspector to cover up the discharge of waste into water resources, the quality of water will suffer. Consequently, people utilizing that water for personal consumption will see their right to water of a good quality infringed upon.

f. Corruption as violation of right to food

Every human being has a right to be free from hunger and to have access to safe and nutritious food. The right to food has been accorded universal recognition as a human right. It is articulated in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and several other international instruments. The right to food also referred to as the right of everyone to be free from hunger. The right to adequate food guarantees all people the ability to feed themselves. It is defined as physical and economic access, at all times, to adequate food and means for its procurement. The core of the right to food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable


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within a given culture. Corruption can seriously undermine the realization of the right to food. The U.N. Special Rapporteur on the Right to food indentified corruption as one of the seven major economic obstacles that hinder or prevent to the realization of this right.274 In 1996, the declaration of the world food summit expressly mentioned corruption as one of the causes of food insecurity.

g. Corruption as a violation of the right to work

Every person has a right to earn his living by a freely chosen and accepted work. This right should not be understood as a right to obtain employment, but as a right of access to employment opportunities. An essential element of the right to work is that work must be freely chosen and accepted. In this sense, the right to work is complemented by the prohibition of slavery, servitude and forced and compulsory labor.275 There are, however, many cases of forced labor and in several of those cases corruption are somehow involved. Corruption can be linked to the restriction of the right to work if a labor inspector is bribed by an employer so that laws prohibiting forced labor are not enforced. Corruption as a necessary tool to sustain forced labor violates the right to work.

h. Corruption as a violation of right to adequate housing

The right to housing has been codified under Article 25 (1) of Universal Declaration of Human Rights, 1948 (UDHR); since that time, the right to adequate housing has been reaffirmed on numerous occasions. The right to adequate housing, a component of the right to an adequate standard of living is concerned with the measures required to ensure that everyone has housing which is safe, healthy and adequate. The Article 17(1) of International Covenant on Civil and

275 The right to work is specially recognized under Article 21 of UDHR, Article 6 of the International Covenant on Economic, Social and Cultural Right (ISCESCR); Article 8 of International Covenant on Civil and Political Right (ICCPR) and Article 15 of the African Charter on Human and People’s Rights (ACHR).
Political Rights, 1966 protects persons from arbitrary or unlawful interference with their homes. The right to adequate housing does not entail that the government has to build housing for the entire population or that housing must be provided free of charge to whoever requested for it. It is a right to access. It can be seriously undermined by corruption. If a company is interested in a piece of land to build a new commercial enterprise but the land is occupied by poor in an urban area, the company may resort to bribing to key official in order to be awarded a lease over land. This may result in the forced eviction of the inhabitants of the area.

i. Corruption as a violation of the right to development

The discourse on the right to development has evolved significantly, since it was proclaimed in the Declaration on the Right to Development in 1986. The declaration recognizes the right to development as a human right. The human right to development is a right to a particular process of development in which all human rights and fundamental freedoms can be carefully realized. The right to development stands violated through distortion of government expenditure. The large scale capital intensive projects preferred and approved by corrupt public officials provide more opportunities for corrupt behavior. The arbitrary allotment of natural resources violates the right to development. A CAG report of 2012 said that arbitrary allocations of coal blocks, during 2005-2009 had robbed the centre of potential revenue of 1.86 lack crore.\(^{276}\) Natural resources belong to the people and the allocation procedure should be transparent and non-arbitrary. In *Surain Singh v. State of Punjab*,\(^{277}\) the Supreme Court has observed that large scale corruption retards the nation-building activities and everyone has to suffer on that account. Corruption is corroding, like cancerous lymph nodes, the vital veins of

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\(^{276}\) The Hindustan Times, 25 September, 2014 at 13.

\(^{277}\) (2009) 4 SCC 331 at 333.
the body politic, social fabric of efficiency in the public service and demoralizing the honest officers. s

j. Judiciary: the rights based approach toward corruption in India

The Supreme Court of India has expanded the ambit and scope of public interest litigation through its number of judgments, orders and directions to unearth corruption and maintain probity and morality in the governance. In the *State of Maharashtra v Balakrishnan Dattatrya Kumbhar*, the Supreme Court observed that corruption is not only a punishable offence but it also undermines human rights, indirectly violating them and systematic corruption is a human rights violation itself as it leads to systematic economic crimes. In *Subramanian Swami v. Manmohan Singh*, the Supreme Court observed that today corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the rule of law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular and democratic republic. In the same case, A.K. Ganguly J. observed; it cannot be disputed that where corruption begins all rights end. 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. That is to say in a situation where two constructions are eminently reasonable, the court has to accept the one that seeks to eradicate corruption, to the not one which perpetuates it.

The probity in governance is a *sine qua non* for an efficient system of administration and for the development of a country an important requirement for ensuring probity in governance is the absence of corruption. The aforesaid

\[279\] (2012) 3 SSC 64 at 100.
judgment indicates the emerging judicial trend of looking at the corruption cases from a human rights perspective and underlines the casual link between cases of corruption in public offices and violation of human rights.

**Concluding Remarks**

The fight against corruption is central to the struggle for human rights. Corruption has always greased the wheels of exploitation and injustice prevalent in the world. The political actors abuse their powers and they focus on gain only for the few people at the great cost of majority. For quite some time the anti-corruption and human rights movements work in parallel rather than tackling these problems together. Linking anti-corruption and human rights frameworks in practice requires understanding how the cycle of corruption facilitates, perpetuates and institutionalizes human rights violations. The first report on the human rights and corruption by the International Council on Human Rights Policy (ICHRP) has provided and important conceptual basis for aligning the work of both movements. For example, the ability to promote and protect civil and political rights rests upon effectively combating political and judicial corruption. Transparency and access to information empower individuals to make informed decisions for exercising their voting rights, to monitoring how state expenditures are spent. At the same time, creating such openness limits opportunities for abuses by politicians, police and judges. When accountability mechanisms are weak or non-existent, it becomes too easy for violations to occur. Similar clear linkages can be established between corruption and economic, social, and cultural rights. Under such approach the institutional and constitutional reform and transformation of the current political arrangements that have thrived on corruption would become an integral aspect of the struggle for the protection and promotion of human rights.