

Enactment and Enforcement of Anti-corruption Law in Jammu & Kashmir

Mohd Yasin Wani¹, Ajaz Afzal Lone² Ashfaq Hamid Dar³

1. Corresponding Author: Assistant Professor, School of Law, University of Kashmir, Hazratbal, Jammu and Kashmir
2. Research Scholar, Faculty of Law, Aligarh Muslim University, Aligarh-202001(U.P./India) email: aalone101@myamu.ac.in
3. Research Scholar, School of Law, University of Kashmir, Hazratbal, Jammu and Kashmir

Abstract

Corruption, characterized as the abuse of entrusted power for personal gain, has far-reaching and damaging effects on societies. Moreover, corruption undermines the rule of law, resulting in human rights violations, market distortions, diminished quality of life, and the proliferation of organized crime, terrorism, and other threats to human security. Corruption is a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential. This research paper thoroughly investigates the extensive impacts of corruption, including the erosion of trust, impeded economic development, exacerbated inequality, poverty, and social divisions. It also aims to identify and examine various factors that contribute to corruption. These factors encompass gluttony, opportunistic circumstances, and temptations arising from party finances and patronage, fear of losing power, and the necessity for additional funds to uphold certain standards. Additionally, the paper provides a comprehensive analysis of the legal framework addressing corruption in India, shedding light on existing measures and their effectiveness. Furthermore, it proposes specific measures to tackle corruption and mitigate its adverse consequences within the Indian context.

Key Words: Corruption, Violations, Enactment, legislation, UToJ&K

Introduction

Corruption basically is the misuse of entrusted power for personal gain. It undermines trust, stifles economic development, and exacerbates inequality, poverty, and social division. Corruption is a pernicious plague that has a wide range of damaging impacts on societies. It erodes the rule of law, leads to human rights violations, distorts markets, erodes quality of life, and allows organized crime, terrorism and other dangers to human security to thrive. Corruption not only affects government but also democracy and country. Gluttony, circumstances, chances, and other temptations, such as party finances, money for patronage, fear of losing power, a need for additional funds to maintain standards, etc., are among the main reasons of corruption. In an economy that is growing due to fast industrialization and as community becomes more acquisitive, a clash of ideals eventually arises. People are more susceptible to corruption when the traditional idea of values judging individuals by who they are rather than what they have crumbles. In addition to this, the widening gap between real earnings

and possibilities to make quick money and the rising cost of living support dishonest behavior among businesspeople and public officials. Also, the accumulation of wealth is accepted in Indian society and is regarded as a sign of intelligence. Consumption, the desire for an ostentatious lifestyle, harmful societal customs like dowries, and the pressure to pay for college are additional causes. Corruption can be seen on many different levels. It may exist at all levels of government, in business and bureaucracy, and it may also be the cause of the criminalization of politics. The majority of political parties make winning elections their exclusive focus, and rising election costs are frequently cited as a major factor in political corruption. Also, politicians are a product of the same consumerist culture that produces an expensive and opulent lifestyle. Scams and scandals have been widely reported in the media during the past few years. Various steps at international and national level have been taken to fight corruption. The United Nations Convention against Corruption is a comprehensive international instrument intended to combat the scourge of corruption around the world. As stated in the preamble to the Convention, corruption is a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential. It also threatens the stability and security of societies, the institutions and values of democracy, ethical values and justice, sustainable development and the rule of law. The Convention has elevated the fight against corruption to a universal ideal and aim. As of July 24, 2015, 176 State Parties had ratified it.

Legal Measures in India

In India the Prevention of Corruption Act 1988 is the principal legislation that provides for penalties in relation to corruption by public servants and for those who aid and abet corrupt officials. The Act empowers the Central Government to designate Judges to investigate and try offences punishable under the Act, as well as a conspiracy to commit or attempt to commit the offences stated in the Act. Offenders face a wide array of penalties under the Act, ranging from six months to seven years in prison. The Act was recently amended to require business companies to have compliance measures to prevent its employees from engaging in any act of corruption or bribery. Additionally, there are other pieces of legislation that deal with the issue of corruption. These include the Indian Penal Code enacted in (1860), the Prevention of Money Laundering Act (2002), the Right to Information Act (2005), the Central Vigilance Commission Act, the Foreign Contribution Regulation Act (FCRA), 2010, the Act's primary goals are to forbid foreign transactions and regulate foreign donations made to the nation by a list of designated individuals, including judges, government employees, employees of the government, members of state legislatures, members of parliament, and political organizations.

In addition to these laws, various State Lokayukta Acts have also been promulgated to check corruption. The most endearing feature of the Lokpal and Lokayuktas is that all civil servants in Group A, B, C, and D are covered by it, with a few notable exceptions such as international relations, atomic and space exploration, public order, etc. The Lokpal and Lokayuktas are empowered to investigate complaints made against corruption in public functionaries.

Anti-Corruption Laws in Union Territory of J&K

With the enactment of Jammu and Kashmir Re-organisation Act, 2019, The Jammu and Kashmir Prevention of Corruption Act, Samvat 2006, has been replaced with the Prevention of Corruption Act, 1988 in the Union Territory.

Highlights of the Act

- A maximum sentence of seven years imprisonment or fine or both has been provided for those who provide or offer any unjust benefit to another person in an effort to persuade or reward a public worker for performing a public duty improperly (Section 7).
- For accepting or obtaining, or agreeing to accept, or attempting to obtain, any gratification whatsoever as a motive or reward for inducing, by corrupt or illegal means, an imprisonment for a term not less than three years, but not exceeding seven years, and fine has been provided. (Section 8)
- Similarly, imprisonment for a term not be less than three years, but which may extend to seven years, and also fine has been provided for an any individual who receives, or agrees to receive, or attempts to receive, from any person, for himself or for another person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence. (Section 9)
- The Act also provides punishment for abetting the offence. Accordingly. whoever, being a public official, abets the offence, whether or not the offence is committed as a result of the abetment, will be penalised with imprisonment for a time which must not be less than six months but which may extend to five years, and shall also be subject to fine. (Section 10)
- Dishonest or fraudulent misappropriation or conversion of entrusted property has also been made offence under the Act. The misappropriation may be either for own use or for use by someone else. (Section 15)
- A provision to safeguard persons who have been coerced to pay a bribe has also been added by the 2018 amendment in case the incident is reported to law enforcement within 7 days.
- In any corruption case against a public servant, the factor of “undue advantage” will have to be established. Under the Act, “undue advantage” has been defined as any gratification, other than legal remuneration thereby implying that undue advantage includes non-monetary gifts and favors as well.
- A detailed procedure for the attachment and forfeiture of a corruption-accused public servant’s property has also been provided under the Act.
- Time limit for completing trial in cases pertaining to the exchange of bribes and corruption is two years. Even with justifiable delays, the trial cannot last more than four years.

Anti Corruption Bureau

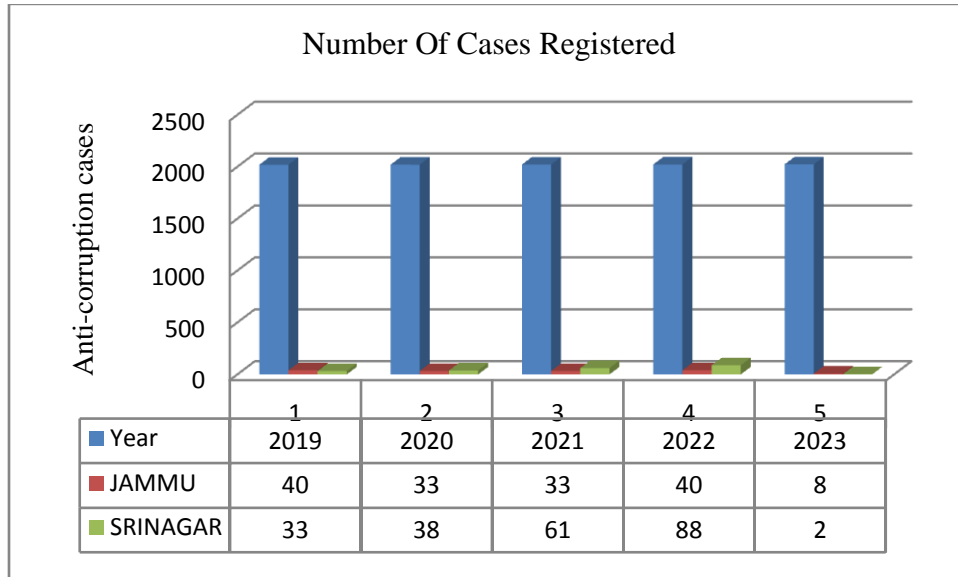
To look into all accusations of bribery and corruption, a separate entity dubbed the “Anti-Corruption Organization” was established in 1962. The Prevention of Corruption Laws (Amendment) Act of 1983 A.D., changed the name of the “Anti-Corruption Organization” to ‘State Vigilance Organization’. By making the necessary changes to the State Vigilance Commission Act/Prevention of Corruption Act, the nomenclature of Vigilance Organization Jammu & Kashmir has been rechristened as to Directorate of Anti-Corruption Bureau Jammu & Kashmir. *Vide* the Jammu and Kashmir Re-organisation (Adaptation of Central Laws) Order, 2020 (w.e.f. 18-3-2020), S.O. 1123(E), dated 18th March, 2020, published in The Gazette Of India, Extra., PART II-SEC. 3(ii), No. 1016, dated 18 March 2020, the Anti-Corruption Bureau in Union Territory of Jammu and Kashmir was setup. The Anti-Corruption Bureau has power to attach property when a seizure would be impractical under Section 17C.

Registering Complaint

A complaint regarding corruption can be made to Anti-Corruption Bureau. After a comprehensive inquiry, supervisory police and law officers review the evidence. The government sends the final investigative report for prosecution approval. In circumstances when the evidence obtained may not pass judicial examination, but is found enough on the preponderance of evidence, Regular Departmental Action is recommended against the public servant for wrongdoing under applicable service behaviour standards. The government has declared a “zero tolerance” policy on corruption and has provided a toll-free hotline, 1800 180 7152, for reporting instances of corruption. Additionally, in May 2022, the Lt. Governor launched the J&K Anti-Corruption Bureau’s Mobile App “**SatarkNagrik**”. The mobile application was launched with the goal of facilitating the smooth flow of information concerning corruption and allowing individuals to register their grievances with convenience and mobility. Anyone with a Smartphone can download the application. At the time of registering a grievance, a unique ID number will be assigned, which may subsequently be used to trace the progress of the grievance. The Jammu and Kashmir Anti-Corruption Bureau has been instrumental in reducing corruption as shown below:

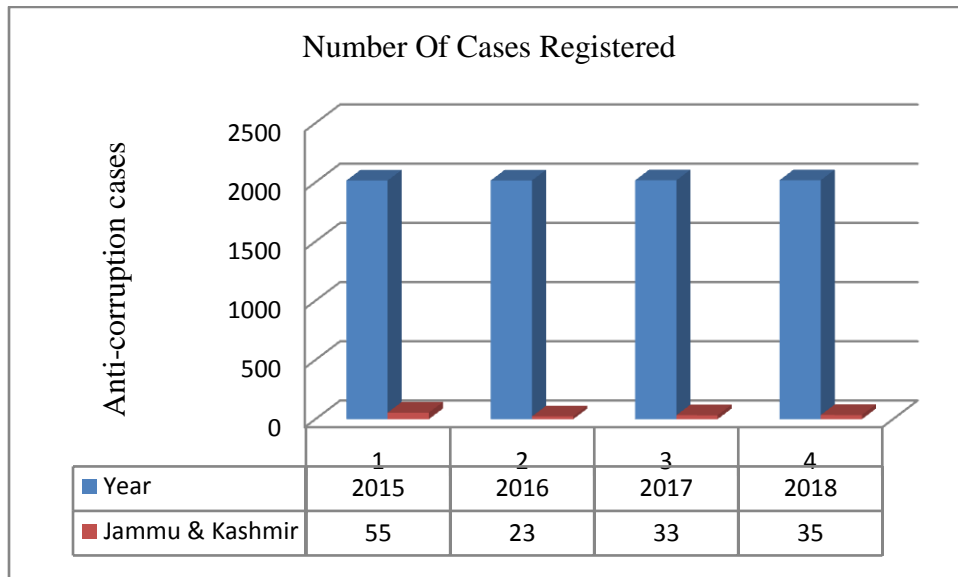
Year	Number of case registered. (Jammu)	Number of case registered. (Srinagar)
2019	40	33
2020	33	38
2021	33	61
2022	40	88
2023	08	02

Source: Anti-corruption bureau, Jammu and Kashmir



Year	Total Number of Cases registered (Jammu and Kashmir)
2015	55
2016	23
2017	33
2018	35

Source: Anti-corruption bureau, Jammu and Kashmir



It is evident from the data that the Anti-Corruption Bureau has done satisfactory work. In 2015, 55 cases were registered, whilst 35 cases were registered in 2018. From data it is also clear that 2019, 2021 and 2022 are the most active years in terms of corruption cases. The data also shows

that in terms of corruption, Kashmir has surpassed Jammu in 2020, 2021, and 2022, while Jammu takes the lead in 2019 and 2023. Out of the total instances recorded, 1001 instances have been charge sheeted till date. Yet if corruption is to ever be eliminated from society, more needs to be done. Adequate implementation along with punishment to the guilty is the need of the hour, so as to ensure deterrence.

Conclusion

Corruption thrives because there are those having authority who benefit from the current system. Tacitus, in his book, *The Annals of Imperial Rome* famously writes, "The more corrupt the state, the more numerous the laws. People with less financial resources are doubly threatened by corruption since they are more likely to rely on public services, and have less disposable income to cover the costs of bribery, fraud, and the misuse of economic advantages. We can minimize corruption with the help of education and improved implementation of the Corruption Laws. Tough, zero-tolerance legislation that leaves no opportunity for the guilty to flee must be enacted. Each of us has to be sincere with ourselves and put out some effort. We can't stop corruption if we're not willing to be truthful. In this regard Lt Governor has rightly remarked that the most effective antidote to corruption is an active, involved and empowered citizenry.

References

1. THE PREVENTION OF CORRUPTION ACT, 2006 (1949 A. D.) (Act No. XIII of 2006.)
2. <https://thedispatch.blob.core.windows.net/thedispatchimages/2023/02/63f8b31175fb6-63f8b31175fb8The-Jammu-and-Kashmir-Prevention-of-Corruption-Act-1949.pdf.pdf>
3. Kulwant Singh, the Working of Jammu And Kashmir Prevention Of Corruption Act: An Empirical Study. *Journal of the Indian Law Institute* Vol. 29, No. 3 (July-September 1987), pp. 386-410
4. <https://legislative.gov.in/sites/default/files/A1988-49.pdf>
5. <https://www.orfonline.org/research/centre-must-step-end-corruption-kashmir/>
6. Alam, M. Shahid, "Some Economic Costs of Corruption in LDCs," *Journal of Development Studies* 27(1991).
7. All India Reporter (AIR). SC 870 "State of Madhya Pradesh v. Shri Ram Singh", April 2000.
8. Gill, S.S. *The Pathology of Corruption* (New Delhi: Harper Collins, 1998).
9. Guhan, S. and Samuel Paul, Eds. *Corruption in India: Agenda for Action* (New Delhi: Vision Books, 1997).
10. India. Committee on Prevention of Corruption. Report, 1964).
11. Kashyap, Subhash C., *Crime and Corruption to Good Governance* (New Delhi: Uppal, 1997).