

**PREVENTIVE MEASURES FOR CORRUPTION AND
INTERNATIONAL/REGIONAL COOPERATION**

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1. What is Corruption:

- The misuse of public power, office or authority for private benefit – through bribery, extortion, influencing peddling, nepotism, fraud, speed money or embezzlement.
- The misuse of money or favors for personal gain, abuse of official authority or influence in exchange for money or favours and violation of the public interest to acquire personal advantages.

2. Definition of Corruption :

According to the Report of the Common Wealth Expert Group on Good Governance and the Elimination of Corruption, in the book Fighting Corruption – promoting Good Governance, produced by the Common Wealth Secretariat 2000, Corruption is generally defined as the abuse of public office for private gain.

This definition has been engaged because of the widened scope of corruption to cover the abuse of all offices of trust for private gain, whether in the public or private sectors. Corruption manifest itself in various ways and it is useful to distinguish between Personal Corruption and Political Corruption. A further distinction can be made between individual corruption and organizational/ institutional corruption. In general, corruptions are made on criminal or unlawful conduct by Government Organizations.

The article written by Joseph Nye “Corruption and Political Development”: A Cost-Benefit Analysis, American political science review, Vol 61, No2, June 1967, defines corruption as a behavior deviates from the normal duties of a public role because of private – regarding (family, close private clique), pecuniary or status gain, or violates rules against the exercise of private-regarding influence.

3. General Description of Corruption - Rent-seeking or Rent-giving

There is a consensus on many issues relating to rent seeking and rent giving behavior. Corruption threatens people and their governments. It makes societies unfair. It is argued that bribery is a negotiated rent, as the beginning of all illegalities and tyranny. There is no more powerful engine of injustice and cruelty, for bribery destroys both faith and state. The serious consequence of corruption thus is not only State Capture but also Mind

Capture. Rent-seeking behavior occupies the human mind and removes it from useful task.

Corruption is universal. It is present in developed and developing countries, in the bureaus of public or private sectors, and in nonprofit or charitable organizations. Shift from governance to management only changes its residence.

4.Common Forms of Corruption:

Bribery:

Bribery is probably the most common form of Corruption. In simple practical terms, it is a payment (in money or any kind) given or taken in a corrupt relationship in order to unduly influence an action or decision. The payment can be made for any inducement money, valuables, company shares, inside information, sexual favours, employment and for many other effects.

further, the payments may be done directly or indirectly to the person /group of persons being bribed. The payments also may be passed through a third party such as friends, relatives, indirect, business holders or political parties.

In generally, these bribes are made with the objective of obtaining Administrative or Political influence. Public Sector bribery could target officers who have authority to make decision. On the other hand, bribery take place in terms of taking an action affecting others and as an option for influencing for better out come. In view of this situation, not only Politicians, Regulators, judges but also the leaders of organizations are potential intention in bribery in the Public Sector.

The United Nations Anti-Corruption Toolkit illustrates following examples of bribery.

*** Influence peddling:**

This involves public officers through their status since the general public do not have the same. Accordingly, they may use their status to influence on decision making.

*** Offering or Receiving Improper Gifts, Gratuities, Favours or Commissions:**

Public officers in some countries commonly accepted tips or gratuities in exchange for the services they provided to the customers. How ever, their customers are general public who have committed for their salaries and therefore the public officers are obligated to serve the public free of charge.

*** Bribery to Avoid Liability for Taxes or Other Costs:**

The officers working at the revenue collection organizations such as Tax Department, Customs Department are susceptible to bribery. They may be requested to reduce the tax amount to be paid or eradicate the full tax.

*** Bribery in Support of Fraud:**

Officers work with payroll could be bribed to do abuses such as listing and paying non-existent employees.

*** Bribery to avoid Criminal Liability:**

Law enforcement officers, Prosecutors, Judges and some other officers may be bribed to ensure that criminal activities are not investigated or prosecuted.

5. An interface for Corrupt Practices:

Contracts and public works:

Awarding of contracts have two corrupt implications. One of them is that the contracts could be offered as a result of political party influence from the government which has come into the power to the contractor who is also part of the political system. The other one is that the contractor in order to get a contract will give a bribe, while at the same time the contract will be inflated to line the pockets of both the giver and receiver of the contract. In such an arrangement there is a lot of public money.

6. Building Integrity in Public Institutions:

Pillars of the National Integrity System:

*** Legislature :**

The elected parliament could be at the forefront of the fight against corruption. An elected parliament has the legitimacy to hold the executive accountable. However, many countries, corrupt political elites often sustained by illicit political party financing and obscure practices in both public appointments and decision making processes are major obstacles in combating corruption.

*** Executive:**

The executive has main role to play for building, maintaining and respecting the state's National integrity system. The local and regional governments also have come under the focus of anti corruption strategists because the impact of the local and regional governments is more visible to the general public.

* Judiciary

An independent and impartial judiciary is essential for building honest, open and accountable government

* Civil Service:

Impartial and honest civil servants accomplish their tasks in an efficient and productive manner by providing benefits to the civil society. The civil service is the link between governors and governed in the form of formulating and implementing policies.

* Auditor General:

The Auditor General is responsible for auditing the revenue and the expenditure of the country and maintain the financial integrity.

* Ombudsman:

The Ombudsman is appointed for the purpose that independently of the Executive, receives and investigates complains on maladministration. The citizens are given an opportunity to obtain decisions affecting them reviewed by an independent body without any expense and also delays of court proceedings.

The appointment of the Ombudsman in Sri Lanka is made by the President. He is given authority to hold office during good behavior. He shall not hold any other office or receive any employment or engage in any occupation for reward outside the duties of his office.

He could receive petitions from the “Public Petition Committee” only. How ever, this provision was amended by Act No.26 of 1994 to enable any person to complain to the Ombudsman directly. He can investigate into any matter in respect of an infringement of a Fundamental Right or any other injustice by a Public Officer or Corporation Officer notwithstanding anything in any other law which provides that any decision, recommendation, act or omission shall not be called in question in any Court or other Tribunal.

7. Anti Corruption Agencies:

Establishing Anti corruption agencies can be gained more results with regard to reduction of corruption. How ever, the members must be examples screening their honesty and integrity.

In Sri Lanka, two main Anti Corruption Agencies have been established in addition to the Bribery Commission. One is “**Transparency International Sri Lanka**” and the other one is “**Clean Hands**”. While Transparency International Sri Lanka works for preventing corruption in both public and private sector the “Clean Hands” work for combating corruption in the public service.

*** Media:**

Availability of information is a prerequisite for the creation of an informed public , empowered to participate I public debate effectively and to accountable for those who govern. It is fundamental to democracy. A free and independent media is the principle tool of providing information to the general public.

In the Sri Lankan context, the freedom of media can be put in a higher level. There are independent TV channels as well as News Papers provide accurate and updated information to the citizens very fast.

*** International Actors:**

Fighting corruption, specially in countries that rely heavily in foreign aid, requires the active support of international donors and support institutions.

Sri Lanka was heavily affected by the disaster; Tsunami in December 2004. Foreign aid was received to recover the damages built in this accident.

How ever, Sri Lankan government developed mechanism to eliminate corruption in this case through the relationship with the international donors and governments

8. Anti Corruption and Related Laws:

*** 17th amendment to the Constitution**

By making 17th amendment to the Sri Lanka Constitution 7 Commissions were established with the following objectives.

- 1.To depoliticize certain vital departments and institutions which are under the control of the power of government.
2. To ensure the appointment of competent professionals and others with integrity to various Commissions on the basis of merit.
3. To ensure all citizens the Right to Equality and Non discrimination in appointments, and to public officers the same right in transfers, promotions and disciplinary control.

The seven Commissions established are;

1. The Election Commission
2. The Public Service Commission
3. The National Police Commission
4. The Human Rights Commission of Sri Lanka

5. The Permanent Commission to Investigate Allegations of Bribery or Corruption
6. The Finance Commission
7. The Delimitation Commission

*** Prevention of Money Laundering Act No.05 in 2006**

Money Laundering is the practice of engaging in specific financial transactions in order to hide the identity, source, and destination of money generated from unlawful activity as to the section 38 of the Act. The unlawful activities are those prohibited by several specified laws and which constitute offences under them like terrorism, bribery, exchange control offences, cyber crime, trafficking in persons, offences against children, offences under the Firearms and Explosives Ordinance etc. Any financial transaction which generates an asset or value as a result of such an unlawful act constitutes an offence under the Act.

The Act prohibits money Laundering in Sri Lanka; provides the necessary measures to combat and prevent Money laundering; and provides for matters connected to it.

*** Financial Transactions Reporting Act No.6 in 2006**

The prime method of anti money laundering is the requirement of the financial intermediaries to know their customers –usually termed (Know your customer) requirements. With good knowledge of their customers, financial intermediaries will be able to identify suspicious behaviors such as false identities, unusual transactions, changing behavior that laundering may be occurring. The law is applicable to institutions engaged in finance business and those designated non-finance businesses defined in the Act

*** Electronic Transactions Act No.19 in 2007**

One of the objective of this Act is to promote public confidence in data messages, electronic documents, electronic records and other electronic communication.

*** Obstacles of Combating Corruption:**

1. Weak political will
2. Lack of information and awareness of the causes and consequences of corruption
3. Passivity and apathy of citizens and public officers
4. Ineffectiveness or disregard of existing law and mechanisms
5. Lack of transparency and accountability in government institutions

6. Lack of effective media and civil society, as well as lack of adequately protected space to undertake vigorous debate and discussion of corruption issues

9. Preventing Measures:

*** Disclosing the Assets of Public Officers:**

An effective way of preventing corruption is disclosing the assets of public officers, specially for senior officers. This method is transparent. Not only the senior officers but also the middle and junior managers in the public service in Sri Lanka must reveal their assets annually; to the 31st March.

How ever, these information is submitted in a sealed envelop and these records are kept with high security with out open. The specific record is open if case on bribery take place on the relevant officer. Therefore, the impact of implementing the disclosing method of the assets of public officers is not so much useful in preventing corruption of public officers.

*** Limiting Administrative Discretionary powers:**

The unchecked administrative discretion often open up for corruption. Therefore, following measures could be adopted to regulate administrative discretion.

1. The given broad discretion power could be narrowed by administrative instruction
2. When the discretion power is used, the justifications must be submitted
3. An Administrative tribunal should be established for appeals against the administrative decisions.

*** Decentralization of Authority:**

Monopoly is one reason for creating path for corruption in the public service. Accordingly, the authority of making decisions must be decentralized as much as possible. If a decision is made with the involvement of more than one or two officer, the trend to do corruption may be reduced. This way is also make transparent of the process of the decision.

In Sri Lankan public service, almost all decision are made with the involvement of more than one. The participatory approach is applied as much as possible in making decisions.

Further more, when the complex problems are to be solved committees are appointed to analyze and propose appropriate more solutions. Finally, analyzing the cost benefit as well as social justice then go for the best solution which cover human rights of the citizens.

*** Combating Corruption in Public Procurement:**

Transparency of Procurement Procedures:

1. The complexity or simplicity of the procedures depend on the value and nature of the goods or services being procured, but in all cases the essential elements are to be similar as follows
2. Describe clearly and fairly what is to be purchased
3. Publicize the opportunity for suppliers to make offers
4. Establish fair criteria for selection decision making
5. Receive offers/bids from responsible suppliers
6. Compare and determine which offer is best according to the predetermined rules for selection
7. Award the contract to the selected bidder with out requiring price reductions or changes.

The General Treasury in Sri Lanka has up graded the Tender Procedure and issued a comprehensive Guidelines to eliminate the corruption in this field.

*** Public Awareness:**

The citizens in Sri Lanka are being educated through massive awareness programmes on their rights for obtaining information and also right to obtain services from public service within the obligated time duration by the officers. In this manner, the citizens charters of many government organizations are displayed on the entrance of the organizations. Accordingly, the citizens are aware the exact day or time they receive the specific service.

*** The National Anti Corruption Conference:**

The National Anti Corruption Conference was held at the Colombo on 28th July 2007 to find mechanism for combating corruptions. In this Conference, decisions were taken to introduce or revamp the items of legislation with regard to combating corruption.

Further, protection of informers and witnesses were also discussed.

Organizing campaigns against corruption was also deeply emphasized in this occasion.

More over, preparation of National Action Plan for combating corruption was decided in the Conference.

