

Ethics – A New Class of Offences

The criminal law relating to corruption is limited in scope. The prevention of Corruption Act, 1988, for instance, lists offences of corruption and the penalties from Sections 7 to 15. These offences broadly cover acceptance of illegal gratification as a motive or reward for doing or forbearing to do any official act, or favouring or disfavours any person; obtaining valuable thing without consideration or inadequate consideration; and criminal misconduct involving receiving gratification, misappropriation, obtaining any pecuniary advantage to any person without any public interest, or being in possession of pecuniary resources or property disproportionate to his known sources of income. Attempts to commit such offences and abetment are also listed as offences, in keeping with the principles usually applied in the criminal law of the land. The accent is thus on consideration, gratification of all kinds and pecuniary advantage.

However, experience of the past decades shows that such a definition of corrupt practices is somewhat restrictive, and a whole range of official conduct detrimental to public interest is not covered by strong penal provisions. In particular there are four types of official conduct which cause immense damage to public interest, which do not explicitly constitute violation of criminal law. The first and possibly the most important of these is gross perversion of the Constitution and democratic institutions, amounting to willful violation of the oath of office. High Constitutional functionaries have time and again been found to have indulged in such constitutional perversion out of partisan considerations or personal pique. In most such cases, there may be neither illegal consideration nor pecuniary advantage, nor any form of gratification involved. In some of those cases, the Supreme Court held individuals holding high office guilty of gross misconduct amounting to perversion of the Constitution. In such cases, except public opinion, political pressure and dictates of the conscience of the individual, there are no legal provisions to punish the perpetrators.

The second such class of offences is abuse of authority unduly favouring or harming someone, without any pecuniary consideration or gratification. In such cases, often partisan interests, nepotism and personal prejudices play a role, though no corruption is involved in the restrictive, 'legal' sense of the term. Nevertheless, the damage done by such willful acts or denial of one's due by criminal neglect have profound consequences to society, and undermine the very framework of ethical governance and rule of law. Again, except a possible, but rare, departmental action, no crime is committed in most such cases under the current definition of corruption.

Third, obstruction or perversion of justice by unduly influencing law enforcement agencies and prosecution is an extremely common occurrence in our country. Again in most such cases, partisan considerations, nepotism and prejudice, and not pecuniary gain or gratification, may be the motives. The resultant failure of

justice undermines public confidence in our justice system, and breeds anarchy and violence. It is such failure of justice which is creating a market demand for criminals in our society, and encouraging many citizens to take law into their own hands out of desperation. A whole industry of criminal gangs has come into being to provide rough and ready 'justice' through unlawful, and often violent and brutal means. In such cases, departmental action is insufficient to punish the guilty, nor is public opprobrium or resignation sufficient deterrents.

Finally, squandering public money for ostentatious official life style, expensive furnishings and vehicles, and unreasonably high official expenditure have become increasingly common. In all such cases, there is neither private pecuniary gain nor specific gain or loss to any citizen. There is also no misappropriation involved. The public exchequer at large suffers, and both public interest and citizens trust in government are seriously undermined.

All these four types of willful abuse of office are extremely common in our country at all levels, and need to be firmly curbed if we are to maintain high standards of ethical conduct and protect public interest. Otherwise, public servants – elected or appointed – will be seen not as custodians of the common interest and sentinels of democracy, but will be perceived as buccaneers and adventurers with limitless power and unrestrained opportunities for personal aggrandizement and pursuing private agendas while occupying public office.

Therefore, there is a need for classifying the following as offences under the Prevention of Corruption Act or any other appropriate legislation:

- Gross perversion of the Constitution and democratic institutions amounting to willful violation of oath of office.
- Abuse of authority unduly favouring or harming someone
- Obstruction of justice
- Squandering public money
