

## Conceptualizing Corruption: A Sri Lankan Perspective

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### **Abstract**

*The main objective of the article is to conceptualize the corruption based Sri Lankan perspective. It also aims to examine the mechanisms exist in Sri Lanka in order to curb corruption and bribery. Secondary data is took significant component in this study. Corruption goes along with the meaning of dishonesty, treachery and untruthful, so the exact meaning is difficult to depict as it varies from the different perspectives. There is a growing worldwide concern over corruption. A consensus has now been reached that corruption is universal. Sri Lanka is also very worried about this problem and it in substantial agreement that corruption is a major constraint that is hindering its economic, political and social development. Sri Lanka has a comprehensive legislative framework to combat bribery and corruption, and it is a signatory to numerous international conventions. It has found that according to 2010 and 2013 Corruption Perception Index of Transparency International public sector corruption in Sri Lanka is somewhat less compare to other south Asian countries except Bhutan.*

**Key Words:** Corruption, Bribery, Corruption Perceptions Index, Transparency and Accountability

### **Introduction**

Corruption has many faces. It is diverse both in contents and in form. As we imagine human right and their essential condition within the political organization of the society thus we need to identify corrupt practices within the framework of the state and measure its impact on the value and objectives we stand for. Corruption is not a new phenomenon. Two thousand years ago, Kautilya, the prime minister of an Indian kingdom, had already written a book, Arthashastra, discussing it (Vito Tanzi 1998, p.559). Public life in today's in most of the countries is dominated with concerns about corruption and the inability of public sector to tackle it effectively. The corruption essentially undermines the credibility and effectiveness of the Public sector. Corruption is both pervasive and significant around the world. In some developing countries it probably amounts to a large fraction of the Gross National Product. Corruption is also common in the developed countries (Andrei Shleifer and Robert W. Vishny 1999, p.599). Corruption is found in both rich and poor countries, developing and developed countries. Meaning corruption is a world phenomenon found in all societies. But in developing countries, practices recognized as corrupt have had a much more debilitating effect than in developed countries. In many such societies, corruption exacts heavy economic costs, distorts the operation of free markets, slows down economic development, and destroys the ability of institutions and bureaucracies to deliver the services that society may expect (Paatii et al 1999, p.1). Corruption is not a new phenomenon in Sri Lanka. Thus many attempts have been made in order to curb corruption in Sri Lanka.

## Defining Corruption

The word "corruption" comes from the Latin verb "corruptus" (to break) and it literally means broken object. Conceptually, corruption is a form of behavior, which departs from ethics, morality, tradition, law and civic virtue. The Transparency International, view of corruption as the use of one's public position for illegitimate private gains. Abuse of power and personal gain, however, can occur in both the public and private domains and often in collusion with individuals from both sectors. The definition of 'corruption' and 'corrupt practices' are varies from country to country. The World Bank used the most popular and simplest definition of corruption. It defines the Corruption as 'the abuse of public power for private benefit'. From this definition it should not be concluded that corruption cannot exist within private sector activities. Especially in large private enterprises, corruption clearly does exist. It also exists in private activities regulated by the government. Sometimes, the abuse of public power is not necessarily for one's private benefit but for the benefit of one's party, class, tribe, friends, family, and so on (Vito Tanzi 1998, p.564).

Myint et. al. (2000) indicated the following as components of potential corruption: Bribery, - Extortion, Fraud, Embezzlement, Nepotism, Cronyism, Appropriation of public assets and property for private use and Influence peddling. According to -Kofi Annan, corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish" (UNDP 2008, p.1).

Corruption may also be found in the political context, where donations are made to political parties and politicians so that, upon assumption of power, favorable decisions and actions may be taken for the benefit of the contributors (Paatii at al 1999, p.2). Corruption is behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behavior as bribery (use of a reward to pervert the judgment of a person in a position of trust); nepotism; and misappropriation (illegal appropriation of public resources for private-regarding uses) (Nye 2002, p.284).

In terms of types of corruption, we might think of abuse of public office in two basic ways: bribery in various forms and at various levels (money, property, or some "good" is given or extorted in exchange for a publicly controlled good), and political transactions (duties are violated to exchange a public good for a resource that benefits the public official's power or influence). The two ends may be served in the same transaction, or there might be separate acts and different motives (John Bailey 2006, p.5).

Section 70 of Bribery Act No 11 of 1954 (as amended by Act No. 20 of 1994) defines the offence of corruption as follows:

"Any public servant who, with intent, to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favour or advantage on himself or any person, or with knowledge, that any wrongful or unlawful loss will be caused to any person or to the Government, or that any wrongful or unlawful benefit, favour or advantage will be conferred on any person-

- a. does, or forbears to do, any act, which he is empowered to do by virtue of his office as a public servant
- b. induces any other public servant to perform, or refrain from performing, any act, which such other public servant is empowered to do by virtue of his office as a public servant ;
- c. uses any information coming to his knowledge by virtue of his office as a public servant ;
- d. participates in the making of any decision by virtue of his office as a public servant ;

- e. induces any other person, by the use, whether directly or indirectly, of his office as such public servant to perform, or refrain from performing, any act, shall be guilty of the offence of corruption.”

As conceptual overviews of corruption have rightly pointed out, there are different categories of corruption, even though there are typically considerable overlaps among them. One category of corruption is organized, in relatively centralized ways, by combinations of such elements as an autocratic ruler, his / her family and cronies, and one or more groups of oligarchs. Such corruption typically targets the de facto control of financial institutions, natural resources, and other specific sectors of the economy.

Corruption results from the presence of a number of factors. These include: rapid economic and social change, strong kinship and ethnic ties, new institutions, overlapping and sometimes conflicting views about what is proper public behavior, governmental monopoly over economic activities, political softness, widespread poverty and socio-economic inequalities, ignorance, lack of knowledge about individual entitlements, communal bound, ambivalence towards legitimacy of governmental organizations, asymmetric relationship favoring those in control of state power, economic shortage in which public officials assume extraordinary control over scarce goods and services, greed, patronage and systematic maladministration (Khan 2009, p.232). In addition to that, lack of political will at the highest levels of government, a weak institutional framework, a lack of capacity and skills within institutions, political interference in the investigation and prosecution of cases of bribery and corruption, lack of a strong public consciousness on the issue, lack of civil society organizations working on the issue, and low salaries for public servants are some of main reasons for rampant of bribery and corruption in Sri Lanka (USAID 2007, p.1).

The 2010 Corruption Perceptions Index (CPI) measures the degree to which public sector corruption is perceived to exist in 178 countries around the world. The 2010 CPI shows that nearly three quarters of the 178 countries in the index score below five, on a scale from 10 (very clean) to 0 (highly corrupt) (Transparency International. 2010, p.2). Therefore it is clear that none of the country in the world without facing problem related to corruption.

### **Anti-Corruption Mechanism in Sri Lanka**

Corruption is not a new phenomenon in Sri Lanka. Thus bribery and corruption are of great concern in Sri Lanka. Sri Lanka's legal framework to fight bribery and corruption is well developed. The country is a signatory to relevant international conventions (Jayawardena Kishali 2010 cited in Transparency International 2010, p.45). Sri Lanka has taken important steps in the struggle against corruption that has been a major barrier to achieve it development goal and efficient service delivery. Sri Lanka has a comprehensive legislative framework to combat bribery and corruption, and it is a signatory to numerous international conventions.

A sound Anti-Corruption policy is one of the most important components of good governance. Curbing corruption in public sectors has always been a challenge to good governance predating recorded history. All the religions, new and old, have very detailed and strict jurisdictions against corruption.

Sri Lanka's bribery offences are in the Penal Code and the Bribery Act. When the Penal Code was enacted and introduced in Sri Lanka some sections relating to Bribery (sections 158, 159, 160 and 161) were embedded in the Code. The laws existed in Sri Lanka since the enactment of the Penal Code in 1983 that made solicitation and the acceptance of a gratification by a public servant a

punishable offence. The relevant provisions still remain, but the Bribery Act enacted in 1954 with later amendments is a comprehensive and an effective piece of legislation dealing with bribery and corruption offences (Ameer Ismail, p.26).

Section 158 Penal Code covers passive bribery, while active bribery is considered abetting an official to commit passive bribery under Section 100. The Bribery Act Section 19 also provides general offences of active and passive bribery of public servants. In addition, the Bribery Act contains 13 additional bribery offences, each dealing with particular officials or situations.

Section 158 of the Penal Code states that 'Whoever, being or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person with the Government of the Republic, or with any public servant as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both'.

Penal Code Section 19 defines a —public servant by enumerating twelve categories of officials:

The said section states that,

A person –

- (a) who offers any gratification to a public servant as an inducement or a reward for that public servant's performing or abstaining from performing any official act, or expediting, delaying, hindering or preventing the performance of any official act whether by that public servant or by any other public servant, or assisting, favouring, hindering or delaying any person in the transaction of any business with the Government, or
- (b) who, being a public servant, solicits or accepts any gratification as an inducement or a reward for his performing or abstaining from performing any official act or for such expediting, delaying, hindering, preventing, assisting or favouring as is referred to in paragraph (a) of this section, or
- (c) who, being a public servant solicits or accepts any gratification,

shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees:

Provided, however, that it shall not be an offence for a public servant to solicit or accept any gratification which he is authorized by law or the terms of his employment to receive;

Provided further that section 35 of the Medical Ordinance shall not entitle a medical practitioner who is a public servant to solicit or accept any gratification.

The Penal Code and the Bribery Act take a different approach by referring mainly to persons holding specific offices or titles. The Bribery and Corruption law applied mostly to public Servants. The Public Servant is Interpreted in the Bribery Law by an amendment to Section 90 of the Bribery law at section 16 of the Act no. 20 of 1994 and includes Minister of the Cabinet of Ministers, a minister appointed under Article 45 of the Constitution, Speaker, Deputy Speaker, Chairman of Committees, a Deputy Minister, the Governor of a province, a Minister of the Board of Ministers of a Province, a Member of Parliament, Every Officer or Employee of the State or any Chairman, Director, Governor, Member or Other Employee whether in receipt of remuneration or not of a provincial Council, local Authority or of a Schedule institution etc.

Declaration of Assets And Liabilities Act No. 1 of 1975 compels certain categories of persons to make periodic declarations of their assets and liabilities in and outside Sri Lanka to provide for

reference to be made to such declarations by appropriate authorities and for investigations to be conducted upon the receipt of any communications against a person to whom the law applies.

The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) was established by Act No. 19 of 1994 to provide the establishment of a Permanent Commission to Investigate Allegations of Bribery or Corruption and to direct the institution of prosecutions for offences under the Bribery Act and the Declaration of Assets and Liabilities Law, No. 1 of 1975. The first permanent Commission to Investigate Allegations of Bribery or Corruption (CIABOC) was commenced its activities from 15th December 1994. The Commission consist of three members, two of whom shall be retired Judges of the Supreme Court or of the Court of Appeal, and the third member, a person with wide experience relating to the investigation of crime and law enforcement. The Commissioners were appointed for a fixed term of five years. It was empowered to investigate and direct the prosecution of allegation of bribery or corruption against any person who has committed such acts by virtue of his holding an office or employment or by reason of evidence of recent acquisition of wealth or property or any recent financial or business dealings or incurring expenditure on a scale not commensurate with the known sources of wealth or income of such person.

Functions of the CIABOC include harnessing public co-operation for the prevention of bribery and corruption, and instituting legal action and prosecuting persons in appropriate Courts. The Act empowers it to search bank accounts and to examine business and private documents to unravel deliberately convoluted transactions and identify hidden corrupt assets. It is empowered to arrest, detain and grant bail, detain suspects without warrant, and seize travel documents or restrain a suspect's property through a court order. Where an investigation discloses to the Commission any offence by any person under the Bribery Act or under the Declaration of Assets and Liabilities Law, a prosecution is initiated either in the Magistrates' Court or in the High Court with the sanction of the Commissioners ([www.icac.org.hk](http://www.icac.org.hk)).

A Public Servant Soliciting or Accepting an illegal gratification would be punished under the Bribery Law after Trial in either the Magistrate's Court or the High Court. It is important to note that, persons other than Public Servants are also liable to be punished under the Bribery Law for offering an illegal gratification to a Public Servant for an official act of that Public Servant.

The Minister of Justice by Special Gazette notification under the Judicature Act has made provision for All Bribery or Corruption cases under the Bribery Law to be tried in Colombo. Therefore all Bribery or corruption trials are conducted either at the Magistrate's Court or the High Court of Colombo depending on the value of the gratification. After investigation are completed under the Bribery law, if the commission is satisfied that an offence has been committed under the Bribery law and consisting of either Soliciting, Accepting or Offering of an illegal gratification by a Public Servant or Other in the respective instance, the Commission directs the Director general to institute proceedings against such person, either in the High Court or the Magistrate's Court under the Bribery Law. On the Direction of the Commission the Director General institutes proceedings under his hand by way of a Plaint in the Magistrate's Court and on an Indictment in the High Court. It should be noted that all prosecutions in the High Court are conducted by the Attorney-General on Indictment, but Act no, 19 of 1994 specifically provides for the Bribery Commission to Prosecute in the High Court on an Indictment under the Hand of the Director General.



Though there are laws and mechanism to curb corruption and bribery in Sri Lanka it is found that, the corruption is one of the major issues in Sri Lanka. The country was ranked 91<sup>nd</sup> out of 180 countries by the Transparency International (www.transparency.org). Sri Lanka's score has been at a low 3.1 or 3.2 since 2005, indicating high levels of corruption in the public sector (Transparency International Sri Lanka 2010, p.13). Table I indicates the Sri Lanka's rank in Corruption Perception Index of the Transparency International.

Table I

<b>Year</b>	<b>Score</b>	<b>Rank</b>	<b>Number of Countries</b>
2002	3.7	52	102
2003	3.4	66	133
2004	3.5	67	145
2005	3.2	78	158
2006	3.1	84	163
2007	3.2	94	179
2008	3.2	92	180
2009	3.1	97	180
2010	3.2	91	178

Source: Transparency International Sri Lanka., 2010. National Integrity System Assessment - Sri Lanka. p.40.

It was estimated that corruption in the public sector in Sri Lanka amounts to approximately one hundred billion rupees per annum by the Parliamentary Committee on Public Accounts. According to a June 2007 report of USAID, this figure represented 9 per cent of the Annual Gross Domestic Product of Sri Lanka in 2006. The financial, social and economic impact of corruption in Sri Lanka is vast and tragic (Kishali Pinto-Jayawardena. nd:para). The Corruption is estimated to cost Sri Lanka 2% of its annual growth. Other sources say that corruption costs Sri Lanka 2% of GDP every year (Business Anti-Corruption Portal, 2010 cited in Transparency International Sri Lanka 2010, p.39) Country Reports on Human Rights Practices for 2012 United States Department of State Bureau of Democracy, Human Rights and Labor noted that, *"there was an increase during the year 2012 in bribery and corruption complaints against public officials, particularly divisional secretariats, police personnel, and school principals. The Commission to Investigate Allegations of Bribery or Corruption appeared to be more active than previous years in investigating complaints and taking legal action against the accused. The bribery commission received 3,163 complaints against government officers during the year, a significant increase in complaints over previous years. Of the 147 investigations into the complaints, there were 95 arrests, and 77 cases remained before the courts at the end of 201"* (<http://www.state.gov/j/drl/rls/hrrpt/2012/sca/204411.htm>).

According to 2010 and 2013 Corruption Perception Index (CPI) of Transparency International public sector corruption in Sri Lanka is somewhat less compare to other south Asian countries such as India, Pakistan, Nepal, Bangladesh and Afghanistan (See table II). It does not mean that Sri Lanka do not face any problems related to public sector corruption. Because it is one of the problems in Sri Lanka thus it is ranked 91 in 2010 and 2013 by the Transparency International. There are countries such as Denmark, New Zealand, Finland, Sweden, Norway, Singapore, Switzerland, Netherlands, Australia, Canada, Luxembourg, Germany, Iceland, United Kingdom,

Barbados, Belgium, Hong Kong, Japan, United States, Uruguay, Ireland and Bahamas are considerably good in CPI (See table III).

Table No II

**Corruption Perception Index 2010 and 2013**

Country	2010			2013		
	Rank	Score	No of countries	Rank	Score	No of countries
<b>Sri Lanka</b>	91	3.2	178	91	37	177
<b>India</b>	87	3.3	178	94	36	177
<b>Bangladesh</b>	134	2.4	178	136	27	177
<b>Pakistan</b>	143	2.3	178	127	28	177
<b>Nepal</b>	146	2.2	178	116	31	177
<b>Afghanistan</b>	176	1.4	178	175	08	177
<b>Bhutan</b>	36	5.7	178	31	63	177

Source: Transparency International, 2010 and 2013.

Note:

- The 2010 CPI measures the degree to which public sector corruption is perceived to exist in 178 countries around the world.
- The Corruption Perceptions Index 2013, Transparency International ranked 177 countries and territories around the world on their perceived levels of public sector corruption.

**Corruption Perception Index 2010 and 2013**

Country	2010			2013		
	Rank	Score	No. of countries	Rank	Score	No. of countries
Denmark	01	91	178	01	9.3	177
New Zealand	02	91	178	01	9.3	177
Finland	03	89	178	04	9.2	177
Sweden	04	89	178	04	9.2	177
Norway	05	86	178	10	8.6	177
Singapore	06	86	178	01	9.3	177
Switzerland	07	85	178	08	8.7	177
Netherlands	08	83	178	07	8.8	177
Australia	09	81	178	08	8.7	177
Canada	10	81	178	06	8.9	177
Luxembourg	11	80	178	11	8.5	177
Germany	12	78	178	15	7.9	177
United Kingdom	14	76	178	20	7.6	177
Belgium	15	75	178	22	7.1	177
Hong Kong	15	75	178	13	8.4	177
Japan	18	74	178	17	7.8	177
Unites States	19	73	178	22	7.1	177
Ireland	21	72	178	14	8.0	177

Source: Transparency International, 2010 and 2013.

It is important to say that, the Right to Information Act needs to be introduced in Sri Lanka as an urgent priority to ensure that the public can take informed and unfettered decisions. Indeed the objective of the Right to Information Act is to promote transparency and accountability within the government. Transparency means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement (UNESCO 2005). Free access to information is a key element in promoting transparency. Practice of Electronic Governance (E-governance) also can improve the transparency in the public sector. According to Holmes (2001) E-Governance as a term, may perhaps refer to the 'the use of information technology, in particular the Internet, to deliver public services in a much more suitable, customer oriented, cost-effective, and altogether various and better way. E-governance is a way for government to use the new technologies to provide citizen and businesses with more convenient access to government information and services, to improve the quality of their services and provide greater opportunities to participate in the democratic process (Vivek Gupta 2004:4). In November 2002, the Government of Sri Lanka, launched 'e-Sri Lanka' a national development initiative. The e-Sri Lanka program aims to improve the public services, uplift the quality of life of citizens, eradicate poverty, and achieve economic and social development (Kanishka 2010, p.287). E-governance has the potential for increasing government openness and transparency. It can also promote greater citizen access to information and services online and enhanced communication between citizens and government (Karen, et al 2010, p.2). E-governance eliminates the 'middleman.' The middleman is a central actor in the corruption transaction. Corruption is not simply a matter between donor and recipient; the middleman plays an important and sometimes crucial role (Amitabh, Shailendra and Gupta, nd, p.61). E-government can lead to centralizes data which can be used for improving audit and analysis. Unbiased sampling procedures can be applied for audit purposes. Integration of data across applications can provide improved intelligence. E-governance can make decisions traceable. As the possibility of exposure of wrong doing gets enhanced, the fear of consequent embarrassment can be a deterrent to corrupt practices (Ibid, p.2). Web publishing of Government information builds accountability by providing documentation to citizens to substantiate their complaints against corrupt practices. Additionally, the mass reach of internet can be used to disseminate information about corrupt officials.

## **Conclusion**

Corruption may be defined as behavior which deviates from the formal duties of a public role because of private, regarding pecuniary or status gains; or violates rules against exercise of certain types of private, regarding influence. As a point of departure, we would define corruption as misuse and abuse of public power for private gains. This power would include not only state power, but power vested in private organizations and enterprises that concern public interests. Corruption goes along with the meaning of dishonesty, treachery and untruthful, so the exact meaning is difficult to depict as it varies from the different perspectives. Corruption is a phenomenon that plagues many countries and, mostly, walks hand in hand with inefficient institutional structures, which reduce the effectiveness of public and private investment. Corruption is a phenomenon that plagues many countries and, mostly, walks hand in hand with inefficient institutional structures, which reduce the effectiveness of public and private investment. It can also be a burden on a nation's wealth and economic growth, by creating uncertainties regarding private and social rights. It fosters an anti-



democratic environment characterized by uncertainty, unpredictability and declining moral values and disrespect for constitutional institutions and authority (UNDP 2008, p.1).

Sri Lanka faces challenges related to corruption and bribery thus it has enacted acts and established mechanisms in order to curb corruption and bribery. In addition to that, it is necessarily important to Sri Lanka to develop a consensus across all sectors of society. Public should be aware about the issues and result of the corruption and bribery. Proper implementation of the existing laws is vital. In doing so meaningful political commitment and support is needed. Fostering fundamental ethical and moral values among the society as well as all sector of the service provider also needed. Promoting accountability and transparency in public sector, active engage of the public and civil society is essential in order to curb corruption in public sector of Sri Lanka.

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