

Programme- LL.M.-IIInd year (III sem.) (Criminal Group)

Course - Privileged Class Deviance

Course Code- LL.M-211

Sem- IIIrd sem.

Year- 2020-21

Unit- IIInd (part 3)

Topic- Official Deviance: Bureaucrat

Sub-Topic- Causes of Deviance, Deviance in Bureaucrat of India: Judicial Approach

Faculty- Parag Garg

E-mail- drparagad@gmail.com

Official Deviance: Bureaucrat

The government of India has three organs, the legislative, the executive, and the judiciary and the constitution provide separation of powers to each branch as they perform their functions independently. The executive branch consisting of ministers, bureaucrats, and the whole government machinery is expected to implement the laws framed by the legislative assemblies. The ultimate responsibility for running the administration rests with the elected representatives of the people which are the ministers. These ministers are accountable to the legislatures which are also elected by the people.

Ministers are at the top of the hierarchy of the executive branch. The popular case of corruption was the 2G spectrum scam which sent A. Raja, telecom minister to jail along with another DMK law-maker. Sukhram was another minister in the nineties in the same ministry to go to jail. Fodder scam in Bihar is another scandal for which Laloo Yadav is being tried. But such kinds of exposures and trials are rare in India, often only the smaller fishes get caught.

Causes of Deviance

The reasons behind the leading of corruption are many and complex. Some are given below:

1. Emergence of political elite who believes in interest-oriented rather than nation-oriented programs and policies.
2. Corruption is increasing in the society very rapidly because of the change in the value system and ethical qualities of men. The old ideals of morality, service and honesty are regarded as anachromatic.
3. Very low tolerance capability of people towards corruption. The fully lack of intense public outcry against corruption and the absence of strong public forum to oppose corruption gives freedom to corruption to reign over people.
4. Increasing population, widespread illiteracy and the poor economic infrastructure lead to endemic corruption in public life.
5. Low salaries of government officials compel them to resort to the road of corruption. Graduates from IIMs with no experience draw a far handsome salary than what government secretaries draw.
6. Complex procedures and laws alienate common people to ask for any help from government.

7. Corruption is always on at its high level in election days. Big industrialists fund politicians to meet high cost of election and ultimately to seek personal favour. Bribery to politicians buys influence, and bribery by politicians buys votes. In order to get elected, politicians bribe poor illiterate people, who are slogging for two times meal.

Deviance in Bureaucrat of India : Judicial Approach

While dealing with this issue the judiciary took even senior bureaucrats with heavy hands. In **A.Watiao v. State of Manipur, AIR 1996 SC 361** one senior IAS officer serving under Government of Manipur was party to a conspiracy in giving contract to the firm at an extremely exorbitant rate. The Special Judge, Manipur sentenced him to pay a fine of Rs. 10,000/- and to imprisonment till the rising of the court. The Guwahati High Court did not interfere with the order of the Special Judge on appeal. On further appeal, the Apex Court maintained the conviction of fine, but enhanced the sentence of imprisonment to six months. The Supreme Court held that awarding sentence of imprisonment till the rising of court is mockery of justice and that the lower court should have taken a serious view of the matter instead of soft dealing when corruption of a responsible Government Officer is involved.

In a landmark judgment of **Parkash Singh Badal v. State of Punjab, 2006 (10) SCR 197**, Supreme Court of India has expressed that if an accused is a public servant who has retired or ceased to be a public servant then to prosecute him no sanction in terms of Section 19(1) of the Act is necessary. Similarly, in **Subramaniam Swami v. Manmohan Singh, AIR 2007 SC 18**, it has been held by the court that when an offence is committed by a public servant and he resigns before cognizance is taken by the court, no prior sanction is needed. A. Raja, Union Tele-com Minister resigned from the post of Minister in 2G Spectrum Scam but continued to be a member of Parliament. It was held by the Court that no sanction is required under section 19 of the Prevention of Corruption Act 1988.

Similarly, in **K. Ponnuswamy v. State of Tamilnadu, AIR 2001 SC 2464** the accused was employed as Lecturer in Government Arts College earning a small salary. His wife had only small agricultural income. The financial condition of the family was such that the accused could not even re-pay his small debts. Later the accused was elected as M.L.A. and became Deputy Speaker of the Legislative Assembly and thereafter Minister of Education to the Government of Tamil Nadu. During the "check period" when the accused became a minister, he acquired in his name and in the names of members of his family pecuniary resources and property disproportionate to his known source of income. The Trial Court convicted the accused under Section 13(1) (e) read with Section 13(2) of the

Prevention of Corruption Act and family members of the accused were convicted under Section 109, I.P.C. and under Section 13(1) (e) read with Section 13(2) of the Prevention of Corruption Act. The Trial court, after convicting the accused directed confiscation of the pecuniary resources and properties to the extent of Rs. 77,49,337.37. On appeal, the High Court acquitted the family members of the accused, but confirmed the conviction of the accused person. The High Court maintained the order of confiscation in respect of the assets of the accused and his wife and daughter.

On further appeal, the Supreme Court affirmed the decision of the Trial Court and the High Court by holding that the prosecution has established by legal evidence that money was transferred by the accused to his wife and daughter through his nephew. Since it was not proved on behalf of the defense that the gifts were made by the nephew of the accused to the wife and daughter of the accused before the check period and after the check period, the Trial Court and the High Court were right in not believing the case of gifts made out of sudden burst of love and affection during the check period when the accused was minister.

Sources

1. <https://www.quora.com/What-are-the-Legal-professional-deviance>
2. <https://www.scribd.com/doc/11531903/Professional-Deviance>
3. www.cliffsnotes.com › deviance-crime-and-social-control
4. <http://www.livemint.com/Specials/gtKxByVZpA6u7QGcKKpKjP/Corruption-in-Judiciary.htm>
5. <http://www.sabhlokcitey.com/2010/01/corruption-in-the-indianjudiciary/>
6. https://sg.inflibnet.ac.in/bitstream/10603/258834/11/11_chapter%207.pdf
7. file:///C:/Users/MY%20DELL/Downloads/11_chapter%204%20(1).pdf
8. The Hindustan Times, 17th February 2002.
9. Subhash C. Kashyap, “The Citizens and Judicial Reform: Under Indian Polity, (2003),
10. N. V. Paranjape: Criminology, Penology Victimology, 2018
11. Ahmad Siddiqui: Criminology & Penology, 2011
12. understanding corruption and promoting transparency social issues in India
13. Restatement of Values of Judicial Life (Adopted by Full Bench of Supreme Court on May 7, 1997). http://www.judicialreforms.org/files/restatement_of_values_jud_life.pdf

This study material is compiled from different sources for education purpose and welfare of students only.