

## **Public corruption: The role of laws and regulations across four diverse countries**

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### **ABSTRACT**

This paper will provide definitions of corruption and the applicable laws and regulations in each of the four subject countries Sweden, the United States, India and Pakistan. It will then compare and contrast the various definitions and regulations in each country noting any commonalities among them. Finally, the paper will conclude with a brief discussion of future research analyzing other causes which give rise to corruption in these countries, such as culture, religion and historical perspectives.

Keywords: public corruption, laws and regulations, transparency index, diverse countries

*“Corruption, embezzlement, fraud, these are all characteristics which exist everywhere. It is regrettably the way human nature functions, whether we like it or not. What successful economies do is keep it to a minimum.”*

Alan Greenspan

The following is a sampling of corruption cases against public officials:

- In April 2014, Hewlett Packard agreed to plead guilty to bribery charges involving its Russian, Polish, and Mexican subsidiaries.
- Former Virginia governor, Bob McDonnell, was sentenced to two years in prison after being convicted in September 2014, for trading favors in return for loans, vacations and gifts from a wealthy friend trying to promote his vitamin business.
- A former Midwestern governor is serving prison time for a corruption conviction in soliciting money for the Senate seat held by President Obama. His predecessor is also in prison.
- New York Assembly Speaker Sheldon Silver, one of the state's most powerful Democrats for more than two decades, was arrested after a lengthy federal corruption investigation, the FBI said.
- Dean Skelos, New York state's most powerful Republican official, is to face charges that he used the power of his office to make deals that would earn tens of thousands of dollars for his son. The charges include extortion and soliciting bribes.

## INTRODUCTION

To state that the literature on the subject of corruption is extensive would be a gross understatement. (It would be like saying that Vladimir Putin is just another Russian). Overwhelming might be a better description. Writers, experts and academics have found numerous ways of categorizing different forms of corruption. For example, there is private corruption (think Bernie Madoff) versus public corruption, grand versus petty corruption. (For an example of a corruption model, see Appendix I and Appendix II). However for purposes of this paper, we will focus on the more general and widely held description of public corruption, that is, a focus on an abuse of entrusted power for personal gain. In other words, what will be primarily discussed is bribery.

This article addresses the following question: given the obvious fact that some countries are more corrupt than others, do the laws and regulations of countries affect the amount of corruption? The following four countries were chosen for this examination: the United States; Sweden; India and Pakistan. While on the surface the selection of these countries may appear to be arbitrary, these countries were selected because they exhibit differences in socio-economic accomplishments, cultures and religions. Most importantly, they have been placed near the top, middle and bottom of the Corruption Perceptions Index (Transparency International, 2015). The Corruption Perceptions Index ranks countries based on the perception of public sector corruption. This index is not based on the number of the reported bribes or the number of prosecutions brought to the courts. The rank is based on the average score of 12 sub-indices developed by independent institutions (ibid).

The United States is still the largest economy in the world and is supposedly “a country of laws.” It is somewhat in the middle of the Corruption Perceptions Index (rank 17 out of 175). Sweden has a low corruption perception according to Transparency International (rank 4 out of 175) and is considered a “western industrialized country.” In addition, it has a homogeneous

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population, which may or may not figure into its low corruption perception. Both India and Pakistan have high corruption perception (rank 85 and 126 respectively out of 175), are considered developing countries, but also have a history of English law heritage because of Britain's colonization of India. Further, these countries represent three major religions (Christianity, Islam, and Hinduism).

This paper will provide definitions of corruption and the applicable laws and regulations in each of the four subject countries. It will then compare and contrast the various definitions and regulations noting any commonalities among them. Finally, the paper will conclude with a brief discussion of future research analyzing other causes which give rise to corruption in these countries, such as culture, religion and historical perspectives.

## HISTORY AND DEFINITIONS

No discussion of a subject is worthwhile without some history in order to place the subject matter into context. Corruption, while a topical subject, not just in the U. S., but internationally as well, has been in existence for centuries, possibly even before recorded history. Referring to a time before Noah, just before the flood, the Bible in Genesis 6:11 states, "The earth also was corrupt [in decay, ruined] before God." The ancient Greek philosophers, Plato and Aristotle recognized the concept in their writings with Aristotle describing tyranny "as a corrupt form of monarchy" (Friedrich, 2002). During the heyday of the Roman Empire, "the Roman Republic ... had its trials of corruption, and men like Cicero ... addressed themselves to the task of unearthing and bringing to trial extreme cases of corruption ... " (ibid). In the Middle Ages, corruption was also prevalent in England, France and Italy. Names such as Machiavelli and Sir Francis Bacon, who accepted bribes to favor certain parties before the court, are often mentioned in the same breath (ibid).

There are several derivations of the word "corruption." One author states that the Latin word "*corruptionem*" means "decay" (Meritt, 1954). Another author states that the word corruption comes from the Latin word "*corrunpere*," which means "to lead astray" and "offer a bribe" (Leijonhufuud, 2009).

The Merriam-Webster dictionary defines corruption as "dishonest or illegal behavior especially by powerful people such as government people." Similarly, the Oxford dictionary defines the term as "dishonest or fraudulent conduct by those in power, typically involving bribery." The World Bank has a succinct, and perhaps the most contemporary, definition: "the abuse of public office for private gain" (The World Bank, 1997). Transparency International also defines the term as "the abuse of entrusted power for private gain" (Transparency International, 2015).

Not surprisingly in a country of laws and with politicians eager to adopt ever more laws, there are other definitions for corruption contained in U.S. statutes and case law. Case in point, In *Nixon v Shrink Missouri Government*, Justice Souter of the United States Supreme Court used these words:

"Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns."

The Foreign Corrupt Practices Act of 1977 (FCPA), one of the primary anti-corruption laws in the U.S., makes it illegal “for companies ... to influence anyone with any personal payments or rewards.” The anti-bribery provisions of the FCPA make it “unlawful for a U.S. person, ... to make a payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person” (15 U.S.C. sec.78 dd-1, 2015). Likewise, Chapter III of India’s Prevention of Corruption Act of 1988 states that “corruption involves a whole range of activities from bribery, influence peddling, patronage or favor, nepotism, cronyism, electoral fraud, embezzlement, kickbacks to officials ...” Section 161 of the Pakistan Penal Code defines misconduct as “obtaining of any gratification as a motive for doing or forbearing to do any official act,” in other words “misuse of entrusted power for private benefit” (Javaid, 2010).

Finally, and interestingly, Sweden does not use the word “corruption” in its statutory regulations (Leijonhufvud, 2009). At present, there is no definition to be found of what is considered to be corrupt. Sweden seems to have adopted the Transparency International definition that “corruption is the abuse of entrusted power for private gain” (Transparency International, 2015).

## COMMONALITY

In analyzing the laws of these countries, there are many obvious notions common to each country’s description of corruption, namely: dishonesty, bribery, abuse of entrusted power by officials in power, private gain. All these countries recognize that bribery has two components: the giving of the bribe and the acceptance of the bribe. Each of these countries have in their own way captured the essence, the central elements, of this vice, giving the Greenspan quote above universal validity. But merely recognizing the corruption problem is only the first step in the long journey of rectifying, or at least minimizing, its impact on societies and their economies. Not unlike an individual with an alcohol or drug addiction who, after first acknowledging a problem, must now take concrete steps towards meaningful rehabilitation.

## U.S. ANTI-CORRUPTION LAWS

While there are many state laws which address corruption, this paper will focus exclusively on federal law.

As mentioned, one of the significant anti-corruption laws in the U.S. is the FCPA. However, this law pertains only to bribery of foreign officials, thereby making it somewhat limited in terms of curbing corruption domestically.

Section 201 of the U.S. Code, proscribes bribery of domestic (U.S.) public officials. Section 201 applies when a person or entity (i) gives, offers or promises anything of value, with corrupt intent, to someone acting for, or on behalf of the United States in order to influence an official act; (ii) influences a public official to commit, collude in, or allow any fraud; or (iii) induces a public official to do, or omit to do, any act in violation of their lawful duty (Bribery of public officials and witnesses, 18 U.S.C. §201, 2012). For bribery to be unlawful, there must be specific intent to give or receive something of value in return for the official act or omitting the official act. Section 201 proscribes both sides of the bribery transaction, i.e. both the act of providing or promising a bribe, and the receipt or solicitation of a bribe.

## SWEDISH LAW

Chapter 10 of the Swedish Penal Code is entitled “On embezzlement, Other Acts of breach of trust and Bribery.” As amended in 2012, the law now regulates “trading in influence” and “negligent financing of bribery.”

Section 5(a) of Chapter 10 provides “An employee or a person performing an assignment, who receives, accepts a promise of or demands an improper reward for the execution of the employment or the assignment, shall be convicted of taking a bribe and sentenced to a fine or imprisonment for a maximum of two years....” Section 5(a) also provides that, “a person who receives, accepts a promise of or demands an improper reward on account of another person shall be convicted of taking a bribe in accordance with the first and second paragraph.”

Section 5(b) provides “A person who gives, promises or offers an improper reward in cases referred to in section 5(a) shall be convicted of giving a bribe and sentenced to a fine or imprisonment for a maximum of two years.”

Section 5(a) and section 5(b) constitute the principal cases of bribery, which constitute both the taking a bribe and giving a bribe. There are three key elements: (i) the persons involved (ii) that the reward must be given or accepted for the execution of an employment or an assignment and (iii) that the reward is considered to be improper.

The provisions on taking a bribe and giving a bribe are applicable both within the public and the private sector. They are also applicable for acts of bribery committed abroad or if the persons involved are foreign, provided that the acts of bribery are subject to the jurisdiction of Swedish courts. The Swedish rules do not make an exception for facilitating payments, nor is there any *de minimis* rule. Still, the fact that the reward has to be considered improper serves as a limitation to the scope of the provisions.

Section 5(d) provides “A person shall be convicted of trading in influence and sentenced to a fine or imprisonment for a maximum of two years if the person, in other cases than those referred to in sections 5(a) and 5(b),

1. receives, accepts a promise of or demands an improper reward in order to influence the decision or action of another person related to the exercise of public authority or to public procurement, or
2. gives, promises or offers someone an improper reward in order for that person to influence the decision or action of another person related to the exercise of public authority or to public procurement.”

The trading in influence provision in Section 5(d) constitutes a new offence, targeting situations that do not fall within the scope of the provisions on taking and giving a bribe. The applicability is limited to the public sector and the provision specifically targets decisions and acts in connection with the exercise of public authority and public procurement. The provision covers both the active and passive side of the criminalized act, i.e. the giving and/or the taking of a bribe. The improper reward is given to the recipient in order for that person to influence another person in his or her performance of duties. In other words, the recipient is trading in his or her influence (Utterstrom & Wassen, 2012).

Section 5(e) provides “A representative of a company, who provides money or other assets to a person who represents the company in a particular matter and thereby, through gross negligence, furthers giving a bribe, gross bribe giving or trading in influence in accordance with section 5(d)(2), shall be convicted of negligent financing of bribery... .”

According to established legal principles of Swedish law, only physical persons can be

held liable of a crime. The persons who can be held liable for negligent financing of bribery are representatives of the company, i.e. persons with a leading position. The principal may be a company, an organization, a business proprietor or a corporation. The middleman can be a physical person or a legal entity, representing the principal on the basis of a contract or a position, such as an agent, a distributor or a subsidiary (ibid).

## INDIAN LAWS

The primary anti-corruption law in India is the Prevention of Corruption Act, 1988. Section 7 provides:

“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 disfavor to any person or for rendering or attempting to render any service or disservice to any person, ... shall, be punishable with imprisonment ...”

Section 8 provides

“Whoever accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself *or for any other person*, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise....” This provision prohibits a “middleman” from soliciting bribes on behalf of another.

Section 9 provides

“Whoever accepts, or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render to attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise...”

## PAKISTANI LAWS

While there are several laws relating to corruption, three significant laws are: The Penal Act of 1860; the Prevention of Corruption Act promulgated in 1947; and the National Accountability Ordinance of 1999 (NAO).

Chapter IX of the Penal Code entitled, OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS states in Section 161 that:

“Whoever, being or expecting to be a public servant, accepts or obtains, 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 Federal, or any Provincial Government or Legislature or with any public servant, as such, shall be punished with imprisonment.....”

The law further provides an offence by third party advocates who attempt to influence a public servant on behalf of another person (Sections 162 and 163). It should be noted that the language is identical to India’s Prevention of Corruption Act.

The first serious fight against corruption started in 1947 immediately after the creation of the Pakistani state. The first law passed by the constituent assembly of Pakistan was the Prevention of Corruption Act. This law was limited to public servants in its scope. The definition of the misconduct was adopted from Pakistan Penal Code (Section 161) cited above. A later amendment broadened the definition to include possession of pecuniary resources disproportionate to one’s known sources of income (Qureshi, 2013).

The Prevention of Corruption Act in Section 5 provides in relevant part:

“(1) Where in any trial of an offence punishable under Section 161 or Section 165 of the Pakistan Penal Code it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.”

“(d) if he, by corrupt or illegal means, or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage...”

The National Accountability Ordinance of 1999 (NAO) provides in relevant part:

“9(a) A holder of public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices –

- (i) if he accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration, as a motive or reward such as is specified in section 161 of the Pakistan Penal Code (Act XLV of 1860) for doing or for-bearing to do any official act, or for showing or for-bearing 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;
- (ii) if he accepts or obtains any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or likely to

be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his official functions or [from] any person whom he knows to be interested in or related to the person so concerned; or

[section 9(a) (iii) intentionally omitted]

(iv) if he by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse or dependents or any other person, any property, valuable thing, or pecuniary advantage;...”

### WHAT DOES IT ALL MEAN?

The purpose for describing anti-corruption laws in some detail is to analyze whether the laws in and of themselves may be a source of the large variation in corruption index ratings among the subject countries.

There are several elements common in each of the laws cited: improper influence of public officials, i.e. improperly soliciting public officials; receiving remuneration, receiving something of value; to do, or refrain from doing an official act. It seems apparent that all these laws are uniform in prohibiting certain acts of improperly influencing public officials. The governments of each country recognize public corruption in similar contexts. The question of whether the variances in the corruption index can be attributable merely to differences in laws can be answered in the negative. There is no evidence that the anti-corruption laws in and of themselves contribute to the variances in the corruption index. As a matter of fact, Pakistan, which has one of the highest corruption indices, has more anti-corruption laws than any of the other three countries. Conversely, Sweden, one of the least corrupt countries, as measured by the same index, has only one law.

While enforcement, or lack thereof, as a cause of corruption is beyond the scope of this article, it is interesting to compare the prosecution rates of corruption cases in the four countries as an indicator of corruption. It is difficult to correlate exactly the statistics among the four countries since record-keeping varies in each country. Moreover, the years that statistics are available do not match up perfectly. Therefore, in preparing Table 1, the authors selected prosecution statistics for the most recent available year for each country. The reader can then draw certain inferences based on those statistics. Also, the statistics only reflect prosecutions at the federal level. That is to say, in the U.S. for example, the various states prosecute corruption cases in their states under their respective corruption laws. The same can be said in India, where various states prosecute corruption cases.

When analyzing the prosecution statistics in Table 1, it is informative to consider each country's population. The World Bank provides the following population data as of 2014: Sweden, 9.7 million; U.S., 318.9 million; India, 1.3 billion; Pakistan, 185.0 million (The World Bank 2015). What is being suggested here is that the raw statistics in themselves do not tell the full story. For example, given the huge population of India, the number of cases prosecuted is small in relation to its population. Query whether the relatively small number of prosecutions is a significant indicator of India's high corruption index. The same analysis applies to the relative corruption indices of the other countries given their populations. In other words, Pakistan has a relatively small number of prosecutions, whereas Sweden and the U.S. have a relatively high numbers of corruption prosecutions compared to their size. It is hard to resist the conclusion that countries like Sweden have a lower corruption index because they tend to prosecute corruption cases more vigorously.

At first glance, the relationship between the prosecution rate (i.e. number of number of prosecutions divided by the population) and the corruption rank appears to be illogical. This illogical relationship is caused by an invalid assumption, that is, the rate of the number of cases prosecuted relative to actual corruption cases is the same across the four subject countries. The more valid assumption is that in countries with low corruption indices, the parties involved in corruption are not able to stop the legal process once the case is discovered. On the other hand, in countries with high corruption indices, the whole system is corrupt, which means the parties involved in the corruption could have the power to override the established preventive rules.

One final observation: one of the six dimensions of Worldwide Governance Indicators is the Rule of Law. This dimension captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police and the courts, as well as the likelihood of crime and violence. Higher values correspond to better governance outcomes. Table 2 sets forth the various ranks of the four countries being discussed. Table 2 is particularly instructive since it reinforces the notion that countries with high corruption indices have a less favorable perception among citizens about the ability of their government to enforce corruption laws.

## CONCLUSION

Corruption, while a topical subject, not just in the U. S., but internationally as well, has been in existence for centuries, possibly even before recorded history. Referring to a time before Noah, just before the flood, the Bible in Genesis 6:11 states, "The earth also was corrupt [in decay, ruined] before God." It can be said that public corruption in many countries, especially the poverty stricken ones where multitudes live with hunger, unsanitary water and drainage systems that lead to devastating diseases, lack of education, crime, terrorism, and a plethora of other tragedies, is one of the primary causes of such misery. Public corruption is a vast topic. This paper just focuses on the existing laws and regulations in four countries (USA, Sweden, Pakistan, India) representing diversity on multiple dimensions to determine if these laws (or lack thereof) are primarily responsible for the varying levels of public corruption. We conclude that this does not appear to be the case. As a matter of fact, Pakistan, which has one of the highest corruption indices, has more anti-corruption laws than any of the other three countries. Conversely, Sweden, one of the least corrupt countries, as measured by the same index, has only one law.

The vast topic of public corruption lends itself to further research. If the authors' conclusion about existence of laws and regulations not being a primary contributor to public corruption is correct, then the obvious follow-up inquiry is, what are the determinants of varying levels of public corruption in different countries and societies? Further research should examine the role of culture, political organization, religion, effective regulatory enforcement, constraints on government powers, criminal justice, levels of education, socio-economic conditions, among a multiplicity of other factors to better understand the causes of public corruption.

**Table 1: Country by Country Prosecutions**

	Sweden (1) 2011	United States (2)	India(3) 2008-2011	Pakistan (4) 2014

		<b>2013</b>		
Cases Prosecuted	100	636	1,924*	197

Sources: Salén & Korsell (2013); The Transactional Records Access Clearinghouse (2014); Nayak (2014); and National Accountability Bureau (2014). \*According to statistics provided by the Ministry of Personnel, the Central Bureau of Investigation (CBI) registered 2,276 corruption cases during the years 2008-2011 (up to March 31). The CBI filed 1,924 cases during the same period. Information about rates of conviction is hard to come by.

**Table 2: Rule of Law**

	Sweden	U.S.	India	Pakistan
Percentile Rank	99.5%	85.2%	52.6%	20.9%

Source: The World Bank (2015)

**Appendix I: A topology of corruption based on actor categories**

		The purchaser	The provider
Petty corruption	Day-to-day corruption	Individual citizens	Individual providers of public services – health personnel, police
	Administrative malpractice	Individual economic actors - firms	Public control and licensing agencies
Grand corruption	Political state capture	Collective economic actors – interest organizations Individual economic actors	Politicians – individuals and political parties

Source: Pedersen and Johannsen (2008)

**Appendix II: Identification of the “provider” of corruption**

Grand corruption	Parliament
Grand corruption/Administrative malpractice	Ministers
Administrative malpractice	Top level officials/Intermediate level officials
“day-to-day” corruption	Lower level officials

Source: Pedersen and Johannsen (2008)

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