

The State of Corruption and Anti-Corruption in Nepal at a Glimpse

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Corruption is one of the serious problems faced by nation-states today. It is producing unwanted sway over the political system, development activities, economy and social order. Corruption manifests in various forms including fraud, embezzlement and extortion, destructions of property, abuse of public authority, nepotism, favoritism and private use of public property. Nepal is among the most corrupt countries around the world where many forms of corruption exist. Similarly, anti-corruption law has been in existence in Nepal for a long time. The first National Code (Muluki Ain) was enacted in 1854. In 1863 new national codes were issued which contained chapter on anti-bribery. This law provided a legal mandate to readdress public officials' cases of bribes but not Rana rulers. In 1954, the Corruption Prevention Act, 1954 was formulated for the first time in Nepal. After that many anti-corruption initiations are being conducted by government, non-government, private and community level. However, anti-corruption movements are not working effectively in Nepal. This article tries to identify the main obstacles of anti-corruption movement in Nepal.

[**Keywords** : Corruption, Anti-Corruption, Anti-corruption movement, Nepal]

1. Introduction

It seems that all government institutions are bearing the burnt of corruption in Nepal. Cases of corruption hitting newspaper headlines these days indicate how

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corruption is taking place from central to local levels. The corruption perception index published by Transparency International shows that Nepal is one of the highly corrupt countries in the world. For controlling the events of corruption, various anti-corruption activities are being conducted at various levels.

This article has attempted to discuss about the corruption and anti-corruption in Nepal. It tries to explore the anti-corruption initiations and also identify the major obstacles of these initiations in Nepal. The article is divided into four sub-chapters. First is the introduction, second one is conceptualizing corruption, third is the state of anti-corruption in Nepal : A glimpse, and finally, obstacles of anti-corruption movement in Nepal.

2. Conceptualizing Corruption

The word “Corruption” has a complex intellectual history (Bukanovsky, 2006; Teachout, 2014) and there are many comments on its meaning. Corruption is a universal problem. There are no any countries around the world that are not affected by corruption. Many countries are highly corrupt while few countries may be less corrupt.

Generally corruption is defined as “the abuse of entrusted power for private gain”. However, it is not easy to define corruption within a single line of sentence. The task of definition is not made easier by the fact that corruption, by its very nature, is inseparable from questions of public morality and morality in general. The Oxford English Dictionary identifies broadly the three different meanings of the corruption. First, it refers to the process of physical decay, disintegration and decomposition with associated unwholesomeness and putrefaction. Second, the terminology of corruption is used to signify moral deterioration and decay; a loss of innocence or decline from a condition of purity. Third is the perversion or destruction of integrity in the discharge of public duties by bribery or favor; the use or existence of corrupt practices, especially in a state of public corporation (Oxford Dictionary, 2005).

Different scholars and institutions define corruption in various ways. The World Bank (1997 : 102) defines corruption as “the abuse of public power for private gain”. Similarly, Nye (1978 : 565) define ‘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. According to the Senturia (1931; vol IV) corruption is the misuse of public power for private profit. Nas et.al. (1986 : 108) also define corruption in similar way. According to them, a corrupt act is any illegitimate use of public power or authority for private benefit. Andreski (1968 : 92) defines quite differently. According to him it is the practices of using the power of office for making private gain in breach of laws and regulations nominally in force. Similarly, Huntington (2009 : 59) said that

'corruption is behavior of public officials which deviates from accepted norms in order to serve private ends'.

Heidenheimer explains three types of corruption. These are public office-centered, market-centered and public interest-centered. Public office-centered corruption is the violation of the public trust placed in the official. Market-centered corruption means the situation in which the official sees the position as an authority to maximize personal gain by dispensing public benefits and public interest-centered definition of corruption is the violation of the common interest in favor of special interest that provide direct or indirect to government officials (1970 : 3-9).

We can classify corruption as political, grand and petty in general way. Political corruption is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth. Similarly, grand corruption means committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good and petty corruption refers to everyday abuse of entrusted power by low and mid level public officials in their interactions with general people, who often are trying to access basic goods or services in the public places like, custom offices, land revenue office, police departments, hospitals, transpiration offices and other institutions.

Table-1 : Corruption Offenses in Nepal

» Giving and taking graft (cash, goods, bribe or any kind of gain or benefit)
» Public servant accepting goods or services free of cost or at lower prices
» Public servant taking gift, present, award or donation
» Public servant taking commission, remuneration, brokerage fee, benefit or advantage (e.g. commissions on public contracts)
» Public servant under the duty of collecting revenues, causes revenue leakage, or helps or abets, or embezzles revenues
» Public servant getting illegal benefit or causing illegal loss with mal-intention (covers broad range, including specifics on construction sector)
» Public servant preparing false documents, translating false documents, tampering with government documents or causing damage to government or public documents (involves public harm for private gain)
» Disclosing the secrecy of question papers or altering results of a public examination
» Public servant engaging in illegal trade or business

» Falsely claiming to hold (or enjoying) any public servant position, power, capacity or facility
» Giving false particulars to get a public service job
» Public servant damaging or using public property for personal purposes
» Exerting pressure to commit any offence punishable under this Act
» Giving false information for an audit report of a public institution
» Illegally acquiring property - living beyond one's means
» Attempted corruption, or being an accomplice to corruption

Source : Anti-Corruption Act 2002, Section 2

3. State of Corruption and Anti-Corruption in Nepal

There are no sufficient data for measuring the problem of corruption in Nepal. Generally, the corruption perception index is used for analyzing the state and physiognomies of corruption in Nepal. Transparency International had been publishing the corruption perception index since early 1990s but it started publishing the data related to Nepal only since 2004. Except in 2013 and 2017, Nepal had scored less than 3 (see table-1). It was measured in 10 from 2004 to 2011 and in 100 from 2012 to 2017. Transparency International represents the country scoring less than 3 as the most corrupt state.

Table-2 : CPI rank of Nepal

Year	Rank	Score
2004	90	2.8
2005	117	2.5
2006	121	2.5
2007	131	2.5
2008	121	2.7
2009	143	2.3
2010	146	2.2
2011	154	2.2
2012	139	27
2013	116	31
2014	126	29
2015	130	27
2016	131	29
2017	122	31

Source : Transparency International

The global corruption barometer of Transparency International is also yet another global report that tries to shed light on magnitude of corruption in Nepal. Till the date, Nepal has been included in the global corruption barometer two times, in 2011 and 2013. According to the survey conducted in 2011, about 62.8 percent people alleged that the corruption has been increasing in Nepal (TI, 2011). This was increased to 72 percent in 2013. According to the global corruption barometer, the politicians of Nepal are the most corrupt around the world. In this, more than 90 percent of people alleged that politicians of Nepal are most corrupt. After this 85 percent was for public entities and officials, 80 percent for police and 79 percent for parliament. The other entities where people experience the events of corruption are revenue office, land revenue office, courts, and tax administration regulation offices (TI, 2013).

The corruption has been persisting in Nepal since long. From the historical period, the state and amount of corruption has been changing in various periods. During the Rana regime (1847-1951), corruption was limited to the Rana family only. There was no possibility of disclosing those events of corruption in this period. Later in unitary panchayat system (1960-1990 AD), it seems to be decentralized. At that time, people who were against the system were brought in their favor and the property of state was misused. Similarly, corruption seems to have been flourished in the multiparty constitutional system (1990-2006) (Ghimire, 2015). Further, in the democracy system (2006-2017) the corruption seems to have been more and more decentralized (Ghimire, 2017). The irregularities and corruption increased more in the transition period. The two and half decade long political instability, transition period and movement made the political system of the state very weak. The corruption in Nepal seem to have been institutionalized gradually (Upadhyaya and Ghimire, 2017).

The anti-corruption movements have been increasing with the rise of corruption. Before the political transformation of 1951, the anti-corruption had not been the agenda of any ruler. At that time, there was no difference between the national treasury and the personal account. The property of the nation was utilized personally (Ghimire, 2015). However, anti-corruption law has been in existence in Nepal for a long time. The first National Code (MulukiAin) was enacted in 1854. In 1863 new national codes were issued which contained a chapter about anti-bribery. This law provided a legal mandate to readdress public officials' bribing cases not Rana rulers. Nepal has formulated the Corruption Prevention Act for the first time in 1954. It enacted to prevent civil servants indulging in bribery. Department of Corruption prevention is also established under this Act. This Act was repelled by the enactment of prevention of corruption by civil servants and public authorities act in 1957. The act is broadened to include corruption by public authorities. Similarly, on the basis of this act, establishment of Special Police Department replaces the Department of Corruption Prevention.

In 1961, The Corruption control Act 1961 was promulgated with more extended definition for corruption from bribery to other acts like fraud, theft and

other misdemeanors. The Constitution of Nepal 1961 was amended for the second time in 1975. It made provision for the establishment of commission of Prevention of Abuse of Authority (CPAA) as a constitutional body and this Authority was established in 1977. It is empowered to investigate and prosecute the crimes of corruption committed by senior bureaucrats and public authorities.

The movement of 1991 abolished the unitary Panchayat system and restored the democracy in Nepal. After this, the Constitution of Nepal 1991 was promulgated after the restoration of multiparty democracy. This Constitution made provision for the establishment of the Commission for the Investigation of Abuse of Authority (CIAA).

In 1999, Government constituted a seven member Corruption Control Recommendation Committee under the Convenorship of Mr. Mahadev Yadhav. Many of its suggestions like the enactment of Corruption Control Act, amendment of CIAA Act, establishment of Supreme Court and National Vigilance Center and abolition of special police were implemented by the government. Similarly, Judicial Inquiry Commission on Property was established in 2002 to investigate on the disproportionate property of the public officials' post 1991. The commission asked 41,900 politicians and officials to submit their property details; 11,300 did not comply. Corruption Act 2002, CIAA Act were amended in 2002. Special Court Act, Impeachment Act and the Act related to organization and Regulation of Political Parties were enacted. Amendment of CIAA Act gave substantial power to CIAA to investigate on corruption cases. After that CIAA started taking actions on senior political leaders and bureaucrats. Special Police Department dissolved to avoid duplication of works with CIAA, National Vigilance Center (NVC) was established. Nepal signed OECD/ADB initiative on anti-corruption in Asia and Pacific and CIAA draws five year strategic plan and restructured its organization.

The Then Prime minister Surya Bahadur Thapa government brought out a thirteen point Action Plan to fight corruption in 2003. Nepal also signed UN Convention against Corruption on December 10, 2003. The special court sentenced former minister Chiranjivi Wagle a prison term of two years and a half with a fine of Rs. 27.2 million in August 2003. Similarly, CIAA filed cases against three former chiefs of police on corruption charges.

On 1 February 2005, the then King Gyanendra Shah dissolved the Deuba Government and formed a government, brought 21 point action programs, anti-corruption was enlisted as the top priority agenda. On February 16, the government formed a six member Royal Commission headed by the former secretary, Bhakta Bahadur Koirala. The commission was formed under Article 115 (7) of the constitution of Nepal 1991 related to emergency situation. With the termination of emergency period, commission was continued under Article 127 (Gautam, 2007). The commission was given a sweeping power to investigate and prosecute corruption cases. From March onward the commission started taking

actions amid public controversy over its constitutionality and possibility of taking politically motivated actions (Ghimire, 2015).

On July 26, the commission convicted former Prime Minister Sher Bahadur Deuba and minister Prakash Man Singh for a prison term of two years and a penalty of Rs 90 million each for corruption in the retendering of road construction of Melamchi Drinking Water Project (Gautam, 2007). In February 2006, Supreme Court gave verdict that Royal Commission for Corruption Control was unconstitutional. In April 2006, People's Movement against Royal Regime was successful in reinstating the dissolved House of Representatives. The parliamentary committees started investigating the largesse distributed by the Royal Regime and the property of the King and his family members.

The government of Nepal adopted first National Anti-Corruption Strategy in 2008 with agency wise Action plan in 2010. The Government of Nepal also enacted the Right to information Act, 2007 and Good Governance Act, 2008. The Right to Information Act has become a very powerful mechanism and tool for promoting accountability and transparency in the emerging democracy. Similarly Good Governance Act has numerous provisions to improve public service delivery, institutionalize the social accountability tools like citizen charter, social audit, public hearing, public audit etc.

Similarly on 24 February 2011, Nepal ratified the United Nations Convention against Corruption (UNCAC), and the government adopted the second National Anti-Corruption Strategy in 2012 to address the UNCAC obligations (Koirala et al., 2015).

Former minister Chiranjivi Wagle is probably the first top-notch politician after 1990s who got penalized for corruption. Wagle is also the first former minister to be convicted of corruption in Mar 16, 2011. Supreme Court fined the ex-minister Chiranjivi Wagle with Rs. 20.3 million and an 18 months jail sentence. On 31 August 2012, Khum Bahadur Khadka was convicted with several counts of corruption, slapping him one-and-half year jail sentence along with a penalty of Rs.9.47 million. Similarly, in 2002 the CIAA filed a corruption case against the former Minister Jaya Prakash Prasad Gupta. The Supreme Court on 21 February 2012 found Gupta guilty for having "accumulated money and property from unknown sources while holding public offices in different capacities since 1992". The Supreme Court ordered him to be fined Rs. 8.4 million and to be sent to jail for 18 months.

On April 30, 2017 the Supreme Court sentenced the former IGP's Om Bikram Rana, Hem Bahadur Gurung, and Ramesh Chand Thakuri to jail. The Supreme Court sentenced Rana to two years in jail. Gurung and Thakuri were each handed jail terms of one year. The three former IGP's were convicted of embezzling millions of rupees allotted for buying equipment for Nepali peacekeepers working with the UN Mission in Darfur, Sudan. In 2007, the Nepal government allocated NPR 450

million toward the purchase of armored personnel carriers and other equipment for the peacekeepers, which the UN Mission was to reimburse later. The police chiefs were accused of embezzling NPR 280 million by procuring ramshackle, World War II-era carriers from the Czech Republic.

On 16 July 2017, The CIAA filed cases against three members of the Tax Settlement Commission (TSC) at the Special Court on the charge of embezzling Rs 10.02 billion which is the biggest corruption case in Nepal’s history. The anti-graft watchdog has demanded Rs 33 billion in fines from all three of them, besides jail terms of eight to 10 years.

The Constitution of Nepal 2015 has also provisioned the CIAA as anti-corruption institution. However it curtailed the jurisdiction of CIAA to a considerable degree compared to its predecessor under the Interim Constitution 2007.

Table-3 : Major Anti-Corruption Agencies in Nepal

S. No.	Anti-Corruption Agency	Type	Major Focus
1	Commission for the Investigation of Abuse of Authority (CIAA)	Constitutional body	Investigation and prosecution of cases of corruption and improper conduct
2	National Vigilance Centre (NVC)	Prime Minister’s Office	Awareness raising and corruption
3	Special Court	Judiciary	Adjudication of corruption cases
3	Special Court	Judiciary	Adjudication of corruption cases
4	Office of Attorney General	Constitutional body	Public prosecutor
5	Judicial Council	Constitutional body	Combating corruption in judiciary
6	Revenue Investigation Department	Prime Minister’s office	Detection of revenue leakage
7	Independent Review Committee	Committee under Public Procurement Act	Corruption related to public procurement over Rs30 million.
8	Central Arrear Collection Office	Financial Comptroller/Ministry of Finance	Collection of government dues and arrears
9	Parliamentary Committees including Public Accounts Committee and State Affairs Committee	Parliament	Parliamentary oversight

10	Office of Auditor General	Constitutional body	Auditing of books of accounts
11	Department of Money Laundering investigation	Prime Minister's office	Investigation on money laundering and control of financial investment in terrorist activities
12	Offices of Chief District Officers	Ministry of Home	Handling district-level corruption cases, within the authorities delegated by CIAA
13	Office of Financial Comptroller	Ministry of Finance	Government budgetary control

Source : Content analysis in 2018

Similarly, the development partners; various organizations have also conducted the anti-corruption initiatives in Nepal. In 2000, the Swiss Agency for Development and Cooperation (SDC) started the good governance project. This project conducted intensive media advocacy, capacity building for youth and other stakeholders, promoting social accountability in the local level. This project was conducted by Pro-public which lasted till 2012.

ADB had conducted anti-corruption activities through Governance Reform Program in 2001 A.D. This project established efficiency unit at the ministry of finance and to change units at the ministry of education, health and agriculture. This program also supported to whistle blower protection and money laundering bill and civil service act.

Similarly, in 2001 DANIDA/HUGOU stated institutional strengthening of CIAA. This project supported Management Information System (MIS), conducted training and workshop and procurement of equipments for CIAA. In 2004, DFID ESP launched Anti-Corruption Project through Federation of Nepalese Chambers of Commerce and Industry (FNCCI). This project's major interventions were that it formed Corporate Ethics Forum, established a complaint hearing unit, and developed codes of conducts and conducted business ethics and corporate social responsibility programs. DFID/ESP also started a Civil Society Anti-Corruption Project from 2005. The main scope of this project was to strengthen civil society organizations and government staff capacity to promote zero tolerance against corruption. In this way, despite the initiatives from government, non-government and private sectors the anti-corruption movements do not seem to have made positive impacts. The following chapter tries to define briefly for the causes.

4. Major Obstacles of Anti-corruption Movement in Nepal

Nepal's anti-corruption agenda seems to be in a chaotic situation. The engagement of the state mechanism has vital roles to minimizing the corruption. The parliament has been drafting the law and oversight role while national

vigilance center (NVC) has promotive and preventive role. The CIAA has investigation and prosecution role and the court has adjudication which have apparently not been coherent. The anti-corruption movements not being effective account for following reasons:

First is the lack of political willingness to combating corruption. The political parties have not taken the issue of corruption seriously. Though the election manifesto contains strong anti-corruption agendas just before election, no political party seems to have been serious in case of implementing these. Major Political Parties Nepali Congress, Communist Party of Nepal (United Marxist Leninist) and Communist Party of Nepal (Maoist Center) speaks of “zero tolerance against corruption”. However the political parties still treat anti-corruption agenda only as a passing reference; focusing more punitive, and strengthening anti-corruption agencies and they focus to fighting administrative corruption. When it comes to fighting political corruptions like political party financing the manifestos of political parties are spoken little. In this way, while political parties are not able to solve the whole dimensions of corruption, the movement has not been effective yet.

Second is the lack of coordination between anti-corruption agencies. Nepal has more than 18 anti-corruption and oversight agencies working in combating corruption in Nepal. CIAA, NVC, Department of Revenue Investigation, Department of Money Laundering Investigation, Public Procurement Monitoring Office, office of the Auditor General are few examples of the anti-corruption agencies. These organizations are not able to establish strong coordination among them. So, Nepal has to rationalize multiple growths of anti-corruption agencies to avoid possible duplication of efforts, encroachment of authorities and strike institutional coordination.

Third is the inadequate anti-corruption law. Law is the most important factor for controlling corruption. There is lack of strong corruption controlling law while the implementation status of the existing law is very weak. Currently, the jurisdiction of the CIAA is limited to investigating and prosecuting corruption crimes committed by the public officials only. Private sector, I/NGOs, Judiciary, Nepal Army are out of the jurisdiction of CIAA. The constitution of Nepal 2072 has curtailed the jurisdiction of CIAA to a considerable degree compared to its predecessor under the Interim Constitution 2063. While constitution curtails the right of abuse of authority the corruption seems to increase. Anti-corruption legislative reform is expected to resolve the problems associated with overlapping jurisdictions of multiple anti-corruption agencies. For this, if an umbrella act could be promulgated, it seems to be effective. Similarly, the provision of prosecution for the corrupt is not sufficient in Nepal. The punishment provisions are not updated timely. On the one hand there is always delay in prosecution and punishment while on the other, the provision of punishment is also insufficient. There is also a provision of 20 percent off in the penalty amount for corruption which has made

the control process less effective. This provision has hindered for giving strict punishment to the culprit. Similarly, there is the need for government of Nepal to reform anti-corruption laws in line with UNCAC obligations.

Fourth aspect is the social perception towards corruption. At this time, there has been practice of earning more and more money in whatever way to be rich. The social prestige is depended on how much property one possesses. People respect the corrupt rich than an honest poor. This kind of social understanding has created hindrance for the anti-corruption movements to work effectively. People run after money and try to earn in whatever way they get. It seems that the effective moral education is inevitable right from the school level.

Fifth aspect is that while the corruption is being decentralized, the people other than public officials are also involving in corruption. The classical definition of corruption 'abuse of public power for private gain' has been changed in the present scenario. The general people other than public officials are involved in the organizations like users' committee. People are involved in various corrupt activities within these organizations like earning profit from public works, irregularities by preparing false bills and bill payment without completing works. While the government of Nepal announced for distribution of grants for reconstruction to earthquake 2015 survivors, many family provided false data of separated family and took grants. This shows that general people are also attracted towards corruption nowadays. The public and private dichotomy is being destructed slowly. This shows that ordinary people if got chance also involve in corruption. The possibility of raising the anti-corruption movement from public level has been decreasing by this.

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