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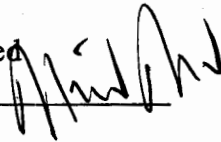
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The thesis is accepted by the faculty of Shariah & Law, International Islamic University, Islamabad in partial fulfillment of the requirement for the LLM degree in Corporate Law.

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## Declaration

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Commercial Bribery National Legislation and Recent Development  
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Submitted by me in partial fulfillment of LLM degree in Corporate Law, is my original work, and has not been submitted or published earlier and shall not in future be submitted by me for obtaining any degree from this university or any other university or institution.

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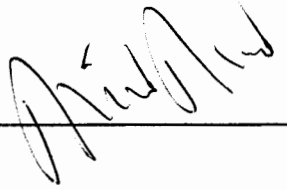
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## CERTIFICATE

It is hereby certified that Mr. Shoaib Hassan S/o Altaf Hussain, Registration No. 203-FSL/LLMCL/F08 has successfully completed his thesis under my supervision. He affirms that he has neither submitted the thesis nor will submit it in future in any other university for thesis evaluation or viva voce examination. I recommend his thesis to be dully accepted for viva voce examination.

Signature

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be 'Shoaib Hassan'.

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- I kneel down and pay all my gratitude to Almighty Allah who made and blessed me with the interest, abilities and patience to think, see and compile my knowledge. Without His bestowment it was impossible for me to even imagine about it.
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## **Author's Dedication**

After a long struggle and effort that were supported by grace of Allah, I finally completed this knowledge enriched thesis, and in this struggle for knowledge I am not alone. There are people with whose love, prayer, sincerity, and kind help I am able to complete this auspicious task, there for I believe that in this joyous movement I want to dedicate my efforts to my beloved parents, my spiritual knowledge enhancers "teachers and fellows" who kept me encouraged during this struggle of knowledge.

I am thankful to all these people with the core of my heart. May Allah reward them I hope this will be very much knowledgeable for the coming alumni of IIUI.

# INTRODUCTION

## Introduction to Commercial Bribery

### What is Bribery?

Bribery is a form of corruption which involves an action relating to money or gift given to someone that alters the attitude of the person.

#### According to Black's Law:

Bribery is considered a crime and is explained by Black's Law Dictionary as "the offering, giving, receiving, or soliciting of any item of value to influence the actions of an official or other person in charge of a public or legal duty"<sup>1</sup>. The bribe is something which can be even a gift given to control the recipient's attitude. It may be anything in shape of money, good, right in action, property promotion, freedom, anything having value, advantage, or merely a promise or undertaking to encourage or control the action, vote, or control of a person in an official or public ability.

#### According to Legal Dictionary:

Bribery, in simple words is the crime of exchanging money or some other precious item in order to have influenced a public official in the performance of his/her duties. Bribery generally includes paying to get any illegal interest in any shape.<sup>2</sup>

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<sup>1</sup> Black's Law Dictionary, England (2007), p.122

<sup>2</sup> John Burke, Osborn's Legal Dictionary; 6<sup>th</sup> Edition, England (2003), p.110

### **According to Criminal Law Dictionary:**

Bribery is defined as “a secret payment to a public officer in exchange for preferential treatment”.<sup>3</sup>

### **According to Common Law:**

In common law Bribery is defined as” the receiving or offering any undue reward by or to any person whatsoever, in a public office in order to influence his behavior in office and induce him to act contrary to the known rules of honesty and integrity.”<sup>4</sup>

### **Understanding Bribery**

Bribery is basically a payment or promise of payment for an illegal desired service. In general terms, this payment is made to anybody in exchange for her/his violating some governmental duty or responsibility.<sup>5</sup>

#### **a. Bribe and Reward**

For better understanding the problem of distinguishing bribes from rewards and gifts is very important. The problem comes because gifts are often being used in business and government to help out for having decisions in their favour. And even to the level to which a businessman, professional person, or government is biased in her/his decisions by accepting gifts by violating her/his duties. In such cases we are just to speak of these gifts termed as bribes. If it is correct, however, this sort of temptation should be resisted in any case. A bribe after all, pre supposes an agreement for biased

<sup>3</sup> A. Gamer, A Dictionary of Criminal Law & Terms, 6<sup>th</sup> Edition, England (2009), p.25

<sup>4</sup> Pro. Michle Dean, Dean’s Law Dictionary, 4<sup>th</sup> Edition, Scotland (2006), p.52

<sup>5</sup> Philip, Art”Bribery”, Ethics in Business, No 4, Vol 94 (Jul 1986), p 621

<http://www.jstor.org/page/info/about/policies/terms.jsp> Visited on: 03/09/2010 01:55

decision making. A gift may be made with the motive of inducing an official to show favour to the giver, but unless acceptance of what is transferred can be construed as an agreement to show favour. In some of the cases, one can say, the acceptance of what is offered can be so construed. Considering the case of professional wrestling most of the people have strong belief that the outcome of professional wrestling matches is pre determined. Then are the losers bribed? The answer altogether depends on how we understand their practice. If we take them to be participating in a wrestling competition, we can say that they have been bribed. In that case, failing to compete they are violating an understanding constitutive of their practice. It is reasonably very much clear, however, that these wrestlers are not engaged in an athletic competition. Rather, they are engaged in a dramatic performance. In such case the losers are not bribed. They are only doing what professional wrestlers are normally paid to do so, namely, to play out their part in an informal script.<sup>6</sup>

If I regularly delight the neighborhood policeman to have a free lunch or dinner at my residence and he, in response regularly avoids to charge me for my illegally parked car, we are having basically a strong reason to say that we are bribing each other.. What I want to explain is just that to the degree that it is wrong to speak of agreements, it is also wrong to speak of bribes. Adding on the same, if I offered an official with a costly item to bring him to show preference on my behalf, in violation of his official duty, I have basically bribed him.<sup>7</sup> Moreover, if you have any reason to believe that accepting what I am offering will encourage you not to perform your duty, you have indeed done something incorrect by accepting my gift. Yet an official

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<sup>6</sup> Mariaane Jennings, *Business: its legal ethics and global environment*, Scotland (2005), page: 38

<sup>7</sup> John D. Enver , *Business Ethical & Legal Values*, New York (2000) , p. 122

may accept such a gift innocently, believing that it is what it purports to be, namely, a sign of comradeship or goodwill gesture. And she/he may do so with justifiable confidence that doing so will not in any way affect the discharge of her/his duty. It may be replied out of such cases that officials are generally bribed by such inducements only when they are in fact induced to do what is desired of them for doing illegal job. But again, if it may be the case that an official accepts any gift what is offered innocently, believing it to be a gift, and that she/he believes mistakenly that it will not affect her /his conduct in any way. In such case she/he has in fact exercised bad judgment, but she/he cannot be having bribed. Indeed, it seems that it is not just to say that she/he accepts a bribe even when she/he recognizes the purpose of the inducement and believes that accepting it is likely to influence her. There is a difference between accepting a drink with the perceptive that one is agreeing to be seduced and accepting a drink with the knowledge that so doing will make one's seduction more likely. " To be bribed is to be bought, not merely to be influenced to do something"<sup>8</sup>. From a moral point of view, whenever failure to perform one's official duties is wrong it may be as bad to accept a gift that one knows will influence one in the conduct of one's duty as it is to accept a bribe. And clearly we are allowed morally to criticize those who offer and accept such inducements.<sup>9</sup> In addition to that, we are right to assume to stop this sort of thing lawfully, restricting the circumstances under which persons may present gifts to officials and the conditions under which officials may accept such gifts. However, such gifts should never be confused with

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<sup>8</sup> Antonio Rrgandona, Privateto-Private Corruption, Journal of Business Ethics, Vol. 47(1999), p.253 <http://www.jstor.org/page/info/about/policies/terms.jsp> Visited on: 03/09/2010 01:55

<sup>9</sup> Antonio Rrgandona, Privateto-Private Corruption, Journal of Business Ethics, Vol. 47(1999), p.267 <http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:59

bribes in proportion. People who usually work in the same institute or in the same sort of job usually form friends in spite of the fact that some of them are always in a position to make decisions that can affect the welfare of others. Here, as everywhere, friendships are made and maintained in part by exchanging favors, gifts, meals, and by different other ways<sup>10</sup>. Should we need to take seriously the inducement theory of bribery? However, this aspect of friendly and governmental reality would always be threatened.

There are cases, again, in which neutrality is so important that decision makers should be barred both from accepting gifts or any favor from any person likely to be directly or indirectly affected by their decisions and from forming friendships with alike persons. And they should prohibit themselves when they are being asked to make a decision that affects either a friend or someone from whom they have already accepted gifts or favors. The practical difficulty of the inducement account is that it may always require us to be unreasonably doubtful of certain exchanges constitutive of mutual aid and friendship.<sup>11</sup>

#### **b. What makes bribery corrupt?**

For instance when an official uses his post, power and, prestige for his personal profits by taking advantage from people. This can also sometimes changes the internal official matter. To elaborate these points we need to look upon them with critical point of view. There can be disagreement on the fact that bribery may even

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<sup>10</sup> Deborah & Ginebri, Repudiation, J. Public Choice, Vol. 14, No. 6, (1994) p. 303  
<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 02:20

<sup>11</sup> Alchain, H. Demsetz, Production Information Costs, J. American Economic Review, Vol. 6 No. 8 (2005) p. 62  
<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55



take place when a person doing so is taking all legal and exact official step, but on moral and ethical grounds he might be on a very different level. This can further be explained with example; In this case a blackmailer threatens his victim, that he will leak the information unless he is paid with his desires. Now the victim may pay him for the sake of his reputation. We analyze from this that when a blackmailer threatens to commit a crime unless he provided with his wishes; he is actually putting himself on stake against the law of land. What makes the behavior of blackmailer criminal is that he is interfering in another person's affairs and a blackmailer has no right or justification for his act of threatening and making money by such ways.<sup>12</sup>

#### **c. Exploiting people interest for personal benefit**

This can be explained in a case for instance a labor union leader threatens to cause a strike unless he is paid some extra money. What the union leader is doing is that, he is turning group power and a group dispute to personal gain.

Now here the blackmailer (union leader) is using a third party under his influence as a source for threatening or rather exploiting the powers he has as a labor union leader. There are numerous such examples and now a days in the present scenario it is not hard to find them. Commercial bribery is getting common day by day. What we observe in these examples that blackmail is the misuse of informal or formal power of agency or representation.<sup>13</sup>

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<sup>12</sup> Scott Turow, Philip, What's Wrong with Bribery, J. Of Business Ethics, Vol 4, No. 7(1999) p. 249 <http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

<sup>13</sup> Scott Turow, Philip, What's Wrong with Bribery, J. Of Business Ethics, Vol 4, No. 7(1999) p. 251 <http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

## **Commercial Bribery**

### **Commerce**

The word commerce means that the purchase and sale of product for the sake of earning profits. So there are many people who are engaged in the commerce and business. The functions of the commerce are coordinating various activities, generate capital, package the products and sell the products on the internet. So this is the reason you can engaged in the commerce as well. There are many businesses which are engaged in the commerce and trade. When a person engages in the commerce then they deal with the different activities like accounting, financing, management, human resource management and marketing. So this is the reason the commerce is in great use in the today world. The purpose of the commerce is to generate business and earn profit for the people so there are different people who are directly engaged in the business and earning their livelihood. So there is a great importance of the trade and commerce for any country. The generation of the commerce and trade activities in a country boosts the economy of the country and helps to people to earn money out of it.<sup>14</sup>

### **Commercial Bribery:**

This type of bribery is associated with unfair trade practices. It causes an advantage which one contestant protects over his fellow contestant by his covert and corrupt connections with employees and/or agents of probable purchasers.

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<sup>14</sup> Robert G. Natelson ,The Legal Meaning of “Commerce” in Commerce Clause, Journal of Business Transactions, Vol 12, No. 2(1998), p.140  
<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

What are the fundamental reasons which are in general perspective make the commercial bribery corrupt?<sup>15</sup>

Bribery is considered corrupt mainly because of two basic reasons:

- (1) It connects a public official being used his appointment to acquire any favor from people; and <sup>16</sup>
- (2) It, in most of the cases hurt the basic official action. One may feel the second concern as secondary in significance as well. Firstly, though there is some kind of dissimilarity, bribery may carry out even when official appointment holder takes all his jobs in legal way<sup>17</sup>. Judge John Noonan even quotes two literary examples where an official is "*double-damned because he takes a bribe and does not act upon it.*" Second, as just illustrated, "*bribery arose as an offense in English law primarily in contexts suggesting concern for how officials acquire wealth.*"<sup>18</sup> Typical moral and economic financial statement of the hypothesis of bribery argues that it's an exploitation of society. In Corruption, Susan Rose- Ackerman sees legislators as agents for plural principals who take bribes to advance their self-interest at the possible expense of the interests of their principals. In Bribes, Judge Noonan argues: The notion of fidelity in office, as old as Cicero, is inextricably bound to the

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<sup>15</sup> Antonio Rrgandona, Privateto-Private Corruption, Journal of Business Ethics, Vol. 47(1999), p.270 <http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

<sup>16</sup> Ibid, p-260

<sup>17</sup> Ibid, p-267

<sup>18</sup> J.Beck, Micheal ry, Regulation and Bribe, J. Managerial and Economics Decision, Vol 10, No. 6 (1989) p. 98 <http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

concept of public interest distinct from private advantage.<sup>19</sup> It is exclusively beyond any argument that officials of the any government are supposed to work for the public interest instead for their own. When government officials start to act of their own interests they are in fact doing against the job for which they are employed. Thus, the misuse of public power for personal interest is the most important justification for a law against bribery. Any official who is accepting a bribe is basically using public influence, the influence of the government or the public, to gain personal interest.<sup>20</sup>

This same assumption of misusing other people's interests for personal gain perhaps underlies other divisive areas of law apart from blackmail and bribery-including payola (disc jockeys receiving personal payoffs to influence their decisions in ways that may not benefit their employers or audiences), insider trading (private information used for personal gain that must be used, if at all, after disclosure to the general public), and commercial bribery (purchasing agents or other company officials use company leverage for personal gain). All of these areas-bribery, blackmail, payola, insider trading, and commercial bribery-share problems of determining underlying to the influence being used.<sup>21</sup>

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<sup>19</sup> J.Beck, Micheal ry, Regulation and Bribe, J. Managerial and Economics Decision, Vol 10, No. 6 (1989) p. 100 <http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

<sup>20</sup> Ibid, p.102

<sup>21</sup> John Davey , Bribery In Commercial Relationship, J. Harvard Law Review, Vol. 87, No. 13(1996)p. 257 <http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

## **The background of Commercial Bribery**

Traditionally, if a government official seek payment on account of doing any illegal action by using his office or his ability to influence official action. Bribery is a basically dishonest advantage given or received to manipulate official action. In England and the United States, the most important public corruption crime over most of the last 700 years has been extortion, although in recent year's bribery prosecutions appear to be at least as common. As a crime that is called bribery, this crime most probably looked comparatively late (mid-1500s) and may not have been normally functional to managerial officials till 1800s.<sup>22</sup>

Apparently, there was always a great need to penalize bribery like attitude by public appointment holders. Continuously since the 1200s, extortion has met that need. One experiences almost the same type of public corruption cases in the late 1200s as in modern cases in the federal courts. Then, as now, extortion has frequently embraced earnings by compulsion, fake deceptions, or bribery. Bribery and extortion significantly overlapped and have for centuries. In the late nineteenth century and the first half of the twentieth century, many American courts tried to detach the two crimes; sometimes even they claimed that the two crimes were equally restricted. However, even during this period, there remained a significant line of cases, dependable with the past and afterward cases, holding that the two crimes could be committed on the

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<sup>22</sup> James Lindgren , The History and Practice of Bribery, J. University of Pennsylvania Law Review, Vol. 141, No. 11(2001) p.245,  
<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

same facts-indeed, even affirming bribery and extortion convictions for the same transaction.<sup>23</sup>

### **Commercial Immorality & Commercial Bribery**

It is very alarming, but hard fact that people internally or externally are motivated in their actions by money. If this is so, then what are the chances of change? If this is so then how we are going to eradicate the lust of wealth, power and self interest. The history of these evils starts with the history of man. This evil found in every society, in every country. Materialism has grown vast roots in our society. With increase in wealth, business, trade and economy in society there is rapid proportional growth of corruption. Enticement is one of reason that makes people spend their fortunes on it. With the time the love of luxury in society is increasing. Technological advancement has also participated in this aspect at great deal to increase the whims of people. For instance focus on the matter of lucky draws, in matter of second a stroke of luck changes the life of a person. So every body wants to be wealthy in no time. This lust is not only found in an individual but in societies, countries, nations, corporations, and even in between governments. This lust Leads to filthy like corruption, bribery, nepotism<sup>24</sup>.

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<sup>23</sup> James Lindgren, Bribery and Extortion Distinction, J. University of Pennsylvania Law Review, Vol. 14, No. 16 (2002) p. 245

<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

<sup>24</sup> George C. S. Benson , Codes of Ethics, Journal of Business Ethics, Vol.8, No.5, (May, 1989), P.305.

## **Corporate Salaries: A Form of Bribery**

Multinational Companies or Trans National Corporations literally meaning that a Company who is conducting or running their business in several countries. These Organizations are more organized, having huge revenue, vast experienced, more tactical and have more strong strategy than local ones. These corporations due to this strong strategy can penetrate more in a society of a host country rather than local business organizations. It is a common phenomenon that these transnational corporations pay higher salaries to local people in host country where they are performing their business. The one side of picture is beautiful, clean and transparent. This beautiful side is because Investment and business is coming in the host country which will bring strengthening in their economy and they are gaining more revenue and opportunities for people. People are getting better job than local opportunities. At the same time there is some negative aspects are associated with this colorful picture. These higher salaries are form of unethical bribery. This can be discussing through different aspects. This menace starts as these transnational corporations starts business in the host country. These corporations pick intelligentsia and having good managerial skilled person from local business organization at higher salaries. This activity causes deficiency of skill full person in local market and local economy growth rate decreases. Slowly this corporation tries to make their monopoly in the host country through those skillful managers through their strategy. When these corporations hire a manager on ransom salary, the corporation expects that the person will do at its best and will remain loyal for the interest of corporation. The corporations also expect the person will do every thing for the interest of corporation.

A conflicted situation arises when in a society a person have obligation use the resources to promote himself, families and society. This conflict is in between corporation's interest and person's obligations in local society. The expectations of corporation to their interest are a form of bribery at the stake of local interest and obligation. These multinational companies pay more salaries to their employee because they have more expectations with their employee. The devastating situation is the interest on corporation conflicts with the interest of employee's family, society, traditional system and culture of host country. So we can say these salaries become the cause to violate the employee's interest and obligations with in which he is residing.<sup>25</sup>

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<sup>25</sup> Stephane Sturab , Opportunism, Corruption and Multinational Firm's Mode of Entry, Arab Law Quarterly, Vol. 9, No. 11 (1996) p. 55  
<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010



## **Causes of Commercial Bribery**

### **Economic Causes of Commercial Bribery:**

The regulatory state encourages corruption because profits are always determined more by government policies compared by conventional management or industrial skills. It has been experiential although that, in a most important agent structure where the problem of the principal is to propose an institution to oversee the system of government, it may not be competent to remove corruption, as expenses could go beyond benefits (Acemoglu and Verdier, 2000). That is, with involvement calculated to accurate market failures,

Corruption is always an unwanted face result of necessary involvement. Also, there is not one way of causality, as corruption can enlarge government involvement, since a solid could use bribes to gain positive state policies. Treisman's (2000) regression results on the causes of corruption show that greater state interference in the economy was appreciably connected with advanced corruption. The connection between government expenditure and Corruption may have agreed these considerations that are bit quite multifarious. Other researches have emphasized the expenses of bribery as part of the literature has alert on the association between enforcement, corruption, and avoidance. Polinsky and Shavell (2001) examined both the most favorable quantity of capital to be billed to law enforcement and recognition of bribery and most advantageous fine structures. Nevertheless, detecting bribery is not only a difficulty of the size of capital to be allocated and of fine structures but depends very much on the competence of the Institutions that grant information on which discovery and enforcement are based. The problems that the most important (government) may

not be compassionate and ineffective policies that are used to generate and remove rents from the private sector. Therefore the excellence of political and social institutions has always played a very important role to control corruption.<sup>26</sup>

### **Political Causes of Commercial Bribery**

The legal system has been worried as a main cause of disparity in commercial bribery across countries. If the system of justice is effective one the little commercial bribery would be there, but the findings of Treisman (2000) suggest caution in accommodating the view that a legal system in itself determines commercial bribery. In cross-regional analysis within a country, the legal system is the same and, if quite unchanging over time, this factor cannot explain the difference in corruption between regions. Another persuade on commercial bribery is delegation. The connection is not clear. In a federal system rivalry among jurisdictions minimizes opportunities for corrupt activities but also decentralized political systems may be more susceptible to commercial bribery<sup>27</sup>.

Prud'homme (1995) and Tanzi (1995) have suggested that corruption may be greater at the local level because of the greater intimacy and frequency of interaction between private individuals and officials at more decentralized levels. We can expect a democratic system to be lesser corrupt than a dictatorship, because of political contest. However, in a democratic system, if the political corruption is at higher level

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<sup>26</sup> Kaufmann , Privatization and Corruption In Transaction Economies, Journal of International Affaire, Vol. 7, No. 5 (2001) p. 234  
<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010

<sup>27</sup> Rose Ackmenn , Democratic Institutions and Corruption, Journal of Incentives and Constraints in Politics, Vol. 2, No. 6 (1991) p. 140  
<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010

the lower may be the possibility of appearance of a political party that promises clean government. If people got a belief that all stake holders in politics are striving for their own interest and working for the benefit of their family or some other social group to which they owe loyalty, the voters will not believe that a change in the ruling party will decrease corruption. Therefore in a country where “civic community” is at lower percentage, the capability of electoral struggle to lessen corruption will be pathetic.

Persson, Tabellini and Trebbi (2003) find a positive effect of proportional representation on corruption. They also find that larger voting districts—which would mean lower barriers to entry—are correlated with less corruption.<sup>28</sup>

### **Cultural Causes of commercial bribery**

The above discussion clearly proposes that countries that share alike political organizations and monetary policies will almost have similar corruption levels. However, this is infecting but not political institutions what we examine. Even though West European countries share similar and economic policies, in contrast to this phenomena Italy has much higher corruption than other countries. This proposes that we must look at the sound effects of cultural and social differences of those countries on the level of corruption.<sup>29</sup>

Social capital has an effect on commercial bribery. Social capital is formed from the straight networks and dealings between persons, groups, and unions in civil society.

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<sup>28</sup> Rose Ackmenn , Democratic Institutions and Corruption, Journal of Incentives and Constraints in Politics, Vol. 2, No. 6 (1991) p. 150

<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010

<sup>29</sup> Ibid, p.155

A well-developed system of associations and connections starts accommodating relations between individuals and firms. This is straight trust. Contribution in intentional connections is an asset of social capital and may have an encouraging effect on equality and economic development. Ostrom (1990) proposes that “small-scale institutions enable a group of individuals to build on social capital thus created to solve larger problems with larger and more complex institutional arrangements. Also, Coleman (1990) proposed that social organization facilitates social capital formation, and allows the achievement of goals that could not be gained in its absence, or at a higher cost. Putnam (1993) computed the level of “civic-ness” of each of Italy's 20 regions in 1970 and found a remarkable concordance between the performance of regional governments and the degree to which social and political life in the regions approximates the ideal of civic community. Putnam suggested that low economic development as well as low social capital would lead a community into a “vicious cycle”, draining its social capital and transforming it into a less civic community. The opposite also holds, and a community with economic development and high social capital can enter a virtuous cycle leading to a productive community (Putnam, 1993).

The above-mentioned writers share the view that a society with established examples of trust, assistance and social communication will generally have privileged incomes, more democratic and successful management, and smaller amount social problems. This view implies two suggestions to be experienced independently, connections increase straight trust, and therefore development friendships increase democracy (vertical trust) as they increase positive approaches headed for political institutions

.The above debate is fairly important for consideration causes of corruption. Corruption reflects a weedy sense of fidelity to organized society. We must say that corruption imitates lack of civic asset.<sup>30</sup> One should speak of corruption only, when officials or persons of semi-official standing, or licensees who are estimated bound by moral standards, accepting meeting of flexible worth for which, on the outside, they do not compensate. Corruption can only be defined by enumerating one or more legal perceptions and comparing them historically, and in the glow of international law. An assessment of older and more modern American concepts defers the following: the makers of the Constitution were led by group-interests and partially, also, by self-interest. If the self-interest became too strong, it was considered indecent, even though not agreeable to accusation. Hamilton, as Secretary of the Treasury, showed hesitancy in passing upon his own land claims but did not deem it incompatible with his official duties to communicate occasionally with friends, as to the probable prices of public securities and bank stocks . . . neither did he deem it necessary to inhibit his brother-in-law from dealing in securities". The American system of rewards and support since Andrew Jackson has time and again been considered proper because it enables the party in power to manage with the help of officials who will be dependable It has not been measured inappropriate for a representative to put his wife or some other relative on the congressional payroll; it is not inappropriate even if said employee does not work very acutely. But it is improper, for the boss to accept a bribe. Corruption is legally defined as: the "act of an official or fiduciary person who

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<sup>30</sup> Rose Ackmenn , Democratic Institutions and Corruption, Journal of Incentives and Constraints in Politics, Vol. 2, No. 6 (1991) p. 160  
<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010

unlawfully and wrongfully uses his station or character to procure some benefit for him or for another"<sup>31</sup>. The importance is on illegally and wrongfully. Just what is in a specified time, and place, measured unlawful or wrongful is not a stuff of a priori ethics of conduct. There are cases of red blooded corruption where the flexible value does not emerge on the surface, and on the other hand flexible notions of corruption and bribery have been built, and to find out worth, handy cash, which do not in themselves constitute full fledged bribery. If a obliged patient gives a gift to his doctor besides the usual fee, no one called it a corruption. Albeit gifts have, as we will point out later, very meticulous psychological effects, the patient who gives a gift is not irritating to protect something which other patients would not be competent to secure without further offers. Free-of-charge offers have been discussed by economists, psychologists and advertisers. There are two types of such offers: those where, certainly, nothing is not charged nor is any reciprocation expected, as e.g. in charity. There are secondly such actually free offers which do not show in the bill but which heave the general level of the dues: thus, a hotel will not charge for the lift provide there but it has more charges than the other hotels not having elevators. Accepting free gifts, if it is called corruption, is economically within the soft of the second type. If a bribe is given and accepted both parties are either overtly or tacitly agreed upon this much: the obvious gift should be retaliated in some way. Furthermore, as we have discussed above, mostly governmental official are bribed<sup>32</sup>

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<sup>31</sup> Rose Ackmenn , Democratic Institutions and Corruption, *Journal of Incentives and Constraints in Politics*, Vol. 2, No. 6 (1991) p. 165

<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010

<sup>32</sup> James Lindgren , The History and Practice of Bribery, *J. University of Pennsylvania Law Review*, Vol. 11, No. 4(2002) , p. 245

<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

Historically, this has not always been the case and a short investigation of the chronological changes in the notion of the compulsions and duties of officials is meaningful. The Greeks and the Romans held that awareness and science, ideas and philosophical imminent, education, the presentation of religious rituals and government in its judicial, legislative and executive paved the way to corruption and bribery.<sup>33</sup>

### **Socio-Psycho Analytical Aspects**

Psychology, in present age plays a vital role to teach us. Meeting each other in a pleasant way is a strong force in communal life. We react in a compassionate way to the one who meets us in a sympathetic manner. Therefore any particular deed of sympathy even a mere wave may produce compulsion. And it should be harassed that those steps of kindness from the fleeting "idealistic" notion to the eternal material article are, sensitively at any rate, steps on one ladder. Thus, corruption very often does not start with that purposeful sub-surface accepting which we mentioned above but with an open handshake. And very often the loop is put around the neck of the victim without his notice that he is becoming fascinated.<sup>34</sup>

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<sup>33</sup> James Lindgren , The Politics and Practice of Bribery, J. University of Pennsylvania Law Review, Vol. 11, No. 4 (2003) p.117

<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

<sup>34</sup> James Lindgren , The History and Practice of Bribery, J. University of Pennsylvania Law Review, Vol. 11, No. 4 (2002), p. 250

<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 01:55

## **Bribery in Islam**

Islam strictly prohibits bribery in both cases either bribery is giving or received in both cases ALLAH forbids and this is not in ordinary in nature but substantive in nature. At several places in Quran ALLAH forbids bribery.

### **Concept of Rishwah in Islam:**

As we clearly see from the above Noble Verse, ALLAH Almighty prohibited us from using our property or money (as we call it today) as a "bait" to "eat up wrongfully and knowingly" what doesn't belong to us, or what we don't deserve. What ALLAH Almighty talked about in the Noble Verse above is exactly what we refer to as "bribery" today.

### **According to Holy Quran**

"And do not eat up your property among yourselves for vanities, nor use it As bait for the judges, With intent that ye may Eat up wrongfully and knowingly A little of (other) people's property"<sup>35</sup> Another Place it is said something similar to this meaning is expressed where it says: "do not devour your property among yourselves falsely, except that it is being traded by your mutual consent..."<sup>36</sup>

### **According to Ahadith:**

There are several traditions by Mohammad SAW on bribery. Taking bribe and giving bribe both are haram in islam. Holy Prophet strictly condemns bribery. We can analyze from his traditions how filthy this act is?

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<sup>35</sup> Al Quran Surah Al Baqra Verse 188

<sup>36</sup> Al Quran Surah Al Nisa Verse 29



### **i. Bribery Leads to Hell**

The Holy Prophet (PBUH) sayings “The giver and taker of the bribe will both go to hell”.<sup>37</sup> Another place it is said that the summary of saying “One who pays bribery and one who receives bribery both will go to hell”.<sup>38</sup>

### **ii. The curse of Allah**

The Holy Prophet (PBUH) sayings “The curse of Allah is on the one giver or taker of the bribe”.<sup>39</sup> The summary of other sayings by Holy Prophet (PBUH) “The curse of Allah is on who pays bribe or who takes bribe”.<sup>40</sup>

### **iii. The curse of Holy Prophet (PBUH)**

The sayings of our beloved Holy Prophet (PBUH) “The Prophet (PBUH) cursed the one who bribes and one who takes bribe”.<sup>41</sup> The summary of other sayings by our beloved Holy Prophet (PBUH) “The Prophet (PBUH) cursed the one who pays bribery and one who receives bribery”.<sup>42</sup>

### **iv. Eating the flesh of swine**

The sayings of our beloved Holy Prophet (PBUH) “Taking bribe is like eating the flesh of swine”.<sup>43</sup>

<sup>37</sup> Musnad al Bazzar, Hadith No 1037, Narrated By Abdur Rehman Ibne Ouf

<sup>38</sup> Almojum al Ousat Atabrani, Hadith No 2026, Narrated By Abdullah Bin Amar

<sup>39</sup> Musnad Ahmed, Hadith No 6489, Narrated By Abdullah Bin Amar

<sup>40</sup> Sunnah Ibne Maj, Hadith No 2313, Narrated By Abdullah Bin Amar

<sup>41</sup> Abu Daood, Hadith No 3582, Narrated By Abdullah Bin Amar

<sup>42</sup> Sahih Ibne Habban, Hadith No 5077, Narrated By Abdullah Bin Amar

<sup>43</sup> Musnad al Bazzar, Hadith No 1025, Narrated By Abdur Rehman Ibne Ouf

#### **v. Bribery in any decision**

The sayings of our beloved Holy Prophet (PBUH) “The Prophet (PBUH) cursed the one who bribes and one who takes bribe in any decision”.<sup>44</sup>

#### **vi. Allah’s Curse**

Muslims are prohibited to bribe a judge or a public officer to unfairly obtain a decision in favor of one’s self against a rival or to unlawfully consume the property of others while they are aware of the prohibition of this act.

On the authority of Abu Hurairah (may Allah be pleased with him) that the Messenger of Allah (pbuh) said, “Allah’s curse is on the one who offers the bribe and on the judge who accepts it.”<sup>45</sup> (Tirmidhi)

Furthermore, what is mentioned above concerning the ruling of the one who offers a bribe applies to the one who arranges it, i.e., if it is aimed at obtaining fair ends, he would be sinless; and *vice versa*.

#### **vii. Gift to officials are a form of Bribery**

The sayings of our beloved Holy Prophet (PBUH)

Gifts to officials are a form of bribery. Abu Umamah Al-Bahli (may Allah be pleased with him) said that the Messenger of Allah (PBUH) said,

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<sup>44</sup> Sunnah Timadhi, Hadith No 1336, Narrated By Abu Hurera

<sup>45</sup> Sunnah Timadhi, Hadith No 1236, Narrated By Abu Hurera

*“Whoever intercedes on behalf of his brother and therefore he offers him a gift, it would be nothing other than a grievous usury.”* <sup>46</sup>(Abu Dawud)

Ibn Mas’ud (may Allah be pleased with him) said, “To accept a gift from your brother because of fulfilling his need is the precise meaning of consuming the forbidden things.”

Once Masruq asked Ibn Ziyad to assist him in removing a wrong inflicted upon him. Having assisted him, Masruq offered Ibn Ziyad a slave as a gift. Ziyad, on his part, rejected the gift saying, “I have heard Ibn Mas’ud say, ‘Forbidden is the gift offered because of removing a wrong from a Muslim. “He wondered, “O Abu’ Abd Al-Rahman! Is not bribery restricted to offering a bribe to judges!” He replied, “This latter is a form of Shirk (association).” (Al-Haithami in *Majama’ Al-Zawa’id*)

### **According to Islamic Scholars:**

Sheikh Yusuf Al-Qaradawi, states in his well-known book, the Lawful and the Prohibited in Islam, Sheikh Yusuf Al-Qaradawi, states:

Taking a bribe is a form of devouring people’s wealth wrongfully. A bribe refers to any kind of property offered to a judge or public official in order to obtain a decision or some benefit in favor of oneself or against a rival, to expedite one’s own affair, or delay that of one’s competition, and so on. Islam has prohibited the Muslim to approach the public officials or their subordinates for the purpose of offering them a bribe; it’s also prohibited for a person offered the bribe to accept it. Not only that, it’s also prohibited for any third person to be an agent in such dealing. If someone finds

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<sup>46</sup> Abu Daood, Hadith No 3421, Narrated By Umamah Al Bahli

himself in a situation in which all avenues of redressing a wrong done him, or recovering a right which has been forfeited, are blocked except through the payment of a bribe, it is preferable for that person to wait patiently till Allah guides him to a better way of redressing the wrong or recovering his rights.<sup>47</sup> Still, should he resort to bribery, the sin will not be on him as long as he has tried all other lawful avenues to no avail and as long as he just regains his own rights without infringing upon the rights of others. In such a case the burden of the sin will fall entirely on the recipient of the bribe. Some scholars have deduced this from Hadith reporting that the Prophet (peace be upon him) begged although, in fact, they did not deserve to receive charity. `Umar quoted the Prophet, peace and blessings be upon him, as saying: "One of you takes charity from me and carries it away under his arm, while it is (Hell) fire for him." `Umar asked: "O Messenger of Allah! How can you give it to him, knowing that it is fire for him?" The Prophet (peace and blessings be upon him) replied: "What am I to do? They persist in their begging, and Allah has forbidden me to be stingy." (Reported by Abu Ya`la) If the pressure of insistent begging induced the Prophet (peace and blessings be upon him) to give some people what he knew to be Hell-Fire for them, what about the pressure of the need to defend oneself against injustice or the need to regain one's right?

However, the Muslim scholars affirm that bribery is prohibited when it is aimed at consuming other's property or rights unfairly. The one who makes arrangement for

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<sup>47</sup>Sheikh Yousaf Al Qaradawi, *The Lawful and Prohibited In Islam*, Cairo (1997) p. 147

this Messenger of Allah (pbuh) cursed also the one who arranges for the payment of a bribe”<sup>48</sup>

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<sup>48</sup> Masnad Al Bazzaz, Hadith No 4160, Narrated By Soban

# **INTERNATIONAL LEGSILATION ON COMMERCIAL BRIBERY**

## **U.S. Efforts to Curb Bribery**

Since the approval of the Foreign Corrupt Practices Act (FCPA) in 1977, U.S. business men have been charged with penalties because of involvement in bribery. It was almost impossible to curb bribery with out these penalties.<sup>49</sup>

## **Foreign Corrupt Practices Act**

### **Origins**

In 1970s, it was revealed that U.S. corporations were offering handsome amounts in shape of bribery to foreign official. Such Allegations of suspicious communication were not limited to petty businesses or minor officials in indistinct countries. But, the public became alert that commercial giants like Exxon, Gulf, Mobil, and Lockheed had offered considerable amounts to presidents, prime ministers, and percentage of major trading partners.<sup>50</sup>

### **Anti-Bribery Provisions**

The FCPA has two basic areas of applications, the anti-bribery provisions and the accounting provisions. The anti-bribery provision makes it unlawful for any person to be involved in any offer of payment to any foreign official, political party, influencing the decision of any party, inducing party to do unlawful duty, to get any

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<sup>49</sup> Micheal J Misal & Edwar J Fishman , The Foreign Corrupt Practice Act, U.S Legislation With Global Implications, California (1999) p. 34

<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010

<sup>50</sup> Ibid, p.39

illegal advantage inducing any party, official, or candidate to use its or his/her influence.<sup>51</sup>

In simple words, to offer or to pay, either directly or indirectly to any person or organization to gain any illegal advantage a federal crime.<sup>52</sup>

### **Extent and Scope**

The FCPA's anti-bribery provisions pertain to people or entities subject to U.S. Law who intentionally take part in an illegal deal in particular, these provisions apply to everybody, officer, director, employee, agent, or stockholder acting on behalf of the issuer. These provision equally apply to the person or entities nominated as "domestic concerns. The anti-bribery provisions are not applicable to foreigners who are not citizens or nationals of USA. in addition, while the anti-bribery provisions are not applicable apply to foreign-incorporated subsidiaries of U.S. corporations, a U.S. based can face charge for intention involvement in illegal payments made by a foreign subsidiary.<sup>53</sup>

### **Violations**

The FCPA also prohibits payments which are made in order to get control of the decision of any foreign official are to stop any official for doing any action which refrain from doing any act in violation of the lawful duty of an official. The FCPA is dishonored even if any official go with the set pattern which are favored by the person making the bribe, so long as the briber possesses the requisite intent to

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<sup>51</sup> Micheal J Misal & Edwar J Fishman , The Foreign Corrupt Practice Act, U.S Legislation With Global Implications, California (1999) p. 41

<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010

<sup>52</sup> Foreign Corrupt Practice Act, 1977, U.S.C. Ss. 246

<sup>53</sup> Ibid, Ss. 248

wrongfully influence a recipient's actions. The FCPA has defined "foreign official" generally to contain any officer or employee of a foreign government or "Instrumentality" of the government, which is generally understood to include officers and employees of a commercial enterprise owned by a foreign government. This definition of "foreign official" was broadened additional by the 1998 FCPA amendments to include any officer or employee of an international organization as defined by executive order. The FCPA prohibits the payment of money or anything else of value such as gifts or valuables The best form of a violation of the anti bribery provisions happens when a U.S. Corporation offers an amount to foreign government officials to tempt them to grant a government contract to the U.S. Corporation.<sup>54</sup>

### **Indirect Bribery**

The anti-bribery provisions unambiguously forbid payments made directly to a foreign Government official, as well as those payments which are made indirectly to them by knowing that these payments would have influence on the decision of foreign government official. A company is considered to have knowledge of a payment if it is aware of a "high probability" that the payment will be made and consciously disregards that probability.

If the marketing agents makes a payment as bribe to any foreign official in order to gain any advantage, U.S. Corporation must be required to reveal that it did not hold

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<sup>54</sup> The Foreign Corrupt Practice Act 1977, U.S.C Ss. 371



the marketing representative "knowing" that he/she wouldn't pay any bribe to any official.<sup>55</sup>

### **Joint Ventures**

Joint ventures may perhaps present special concerns under the FCPA where one of the parties to the business enterprise is a foreign official, a state-restricted company, or a company restricted by a foreign official .yet if the individuality of joint venture partners have not any doubt to create a risk of FCPA violation as they are not foreign official the dealings of those partners may produce a legal responsibility risk. even though few joint venture partners might not be answerable to FCPA as their all actions are not been declared doubtful by

FCPA.<sup>56</sup>

### **Conspiracy**

Occasionally, vital proof for the tribunal is located in a country that is aloof to the U.S. government. However, a defendant could not be given relaxation when government prosecutors get realize that they cannot gain significant foreign evidence. Charges of conspiracy of FCPA violation are frequently associated to government for suspected actions which directly violate the FCPA, and conspiracy is repeatedly the crime for which a accused is eventually convicted .as government of U.S law

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<sup>55</sup> Ibid, Ss:372

<sup>56</sup> The Foreign Corrupt Practice Act 1977, U.S.C Ss. 380

enforcement agencies can easily prove the case of conspiracy against the accused by just revealing the agreement of violation of FCPA.<sup>57</sup>

### **Exceptions**

There are legal ways available to give money and anything having value to a foreign government official. Any government official who renders legally cleared services to any political party apart from his own official duties may be given money with exception that he has not utilized his official seat. If there are chances that receiving amount from payer will effect his seat ,such cases are strictly scrutinized by FCPA. Despite the existence of certain lawful payments, the anti-bribery provisions are subject to only one statutory exception, which are only applied only in very conditions. The FCPA allows to facilitate and expedite the payments to foreign government official in order to gear up the government routine function like obtaining licenses, permits, or visas; processing work orders; providing police protection, mail delivery, or phone and water service; and scheduling inspections related to contract performance or the transit of goods.<sup>58</sup>

### **Defenses**

The FCPA provides positive defenses if the payment made is justified that it is (1) is legal under the laws of a foreign official's country or (2) represents reimbursement of reasonable expenses incurred by a foreign official in connection with the demonstration of products or services. The obligation is on the defendant to prove that payment was payment as per one of these constricted categories. In order to

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<sup>57</sup> Ibid, Ss. 382

<sup>58</sup> The Foreign Corrupt Practice Act 1977, U.S.C Ss. 394

comply with its obligation under the first positive defense, a defendant need to prove that payment which is under doubts is made in accordance with the written law of the foreign country, which often proves to be a difficult case, yet, the legitimacy of a payment under foreign law may be verified by a foreign statute or regulation. The second defense allows the payment to be made to foreign official who have made inquiries about the propriety and have been given non-excessive travel and Advisory Opinions.<sup>59</sup>

### **Penalties**

The FCPA have strong regulations and harsh penalties are made on those who violate anti-bribery provisions. Any corporation or an individual who has been charged for violation may be fined of \$2 million for each violation. The FCPA explains that any individual who is working for a cooperation is subject to fines of up to \$100,000 and imprisonment of up to five years for each violation. However, under other federal law, fines for individual violators may be even increased to \$250, 000, or, if the violator has gained handsome amount and blamed for loss of handsome amount, fines may total twice the value of the gain or loss. Additionally, civil penalties of up to \$10,000 can be forced on either a corporation or an individual. A conviction under the FCPA may also result in additional penalties under other laws. The statute of limits under the FCPA is five years for criminal actions<sup>60</sup>

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<sup>59</sup> The Foreign Corrupt Practice Act 1977, U.S.C Ss.394

<sup>60</sup> Ibid, Ss:396

## **Advisory Opinions**

If a U.S. person or body is considering future conduct that raises issues under the anti-bribery provisions, the FCPA allows the person or entity to request an view from the DOJ as to whether the conduct would constitute a violation under the DOJ's present enforcement policy. The DOJ, which is responsible for enforcing of anti-bribery provisions, must provide its opinion within thirty days of receiving the request .if the DOJ opines that the prospective conduct would not constitute a violation of the anti-bribery provisions; the opinion creates a trustworthy assumption that the conduct is legal.<sup>61</sup>

## **Accounting Provisions**

The FCPA amended the Securities Exchange Act (SEA) of 1934 to add in certain record keeping necessities into the SEA. The accounting provisions force strict requirements on publicly-held U.S. corporations in order to

- a. Make and keep books, records, and accounts, which, in reasonable detail, precisely and literally reflect the dealings and dispositions of the assets of the issuer; and
- b. Advise and keep a system of internal accounting controls adequate enough to provide rational assurances

(i) Transactions are made as per management's authorization,

(ii) Transactions are recorded . . . in conformity with generally accepted accounting principles . . .

(iii) Access to assets is being allowed as per management's authorization; and

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<sup>61</sup> The Foreign Corrupt Practice Act 1977, U.S.C Ss. 389

(iv) The recorded accountability for assets is the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

These requirements usually were projected to disallow the use of "off the books" slush resources being used to pay foreign officials and were already ingredient of the normally acknowledged accounting principles in the United States. The DOJ, which has been assigned with the responsibility for the criminal enforcement of the accounting provisions, normally alleges violations of these provisions only when chasing violations of the anti-bribery provisions. The civil and criminal penalties which are applied to the FCPA accounting provisions are the same like those that are applied to all other violations of the SEA. Criminal penalties are made only for "knowing" violations of the accounting provisions, like intentional forgery of a company's internal accounting controls or deliberate distortion of company books and records.

The penalties for accounting violations are approved in three "tiers." In the first level, the penalty may equal the greater of \$5000 for a natural person or \$50,000 for any other person, or the gross amount of pecuniary gain realized by a defendant as a result of the violation. The second tier is applied when the violation involves "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," and the maximum penalty increases to \$50,000

for a natural person or \$250,000 for any other person. The third tier applies if, in addition to fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, the violation also "directly or indirectly results in

considerable losses or formed a major risk of substantial losses to other persons.” The maximum penalty for a third-tier violation increases to \$100,000 for a natural person and \$500,000 for any other person.<sup>62</sup>

### **Gap-Filler Statutes 1952**

Several other U.S. anti-bribery statutes supplement the FCPA’s foreign application by mainly focusing on bribes which are paid to domestic public officials and private sector persons.<sup>63</sup>

### **Federal Bribery Statute 1962**

The Federal Bribery Statute declare it a crime to dishonestly give, offer, or promise anything that has value to any U.S. public official or person who has been chosen to be a public official with the intention to control any official act. As the federal bribery statute is only applied to the federal public officials, all US states have enforced statutes elimination bribery of state and local public officials. “Public official” includes members of Congress and employees of the federal government, whether they are appointed or have been elected, but it does not apply on former official. It is also applied on those individual who are working in private sector but running a policy on behalf of federal government. If anything that has value, such as goods, services, or promises of future business or employment are made, may form a bribe under the Federal Bribery Statute.

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<sup>62</sup> Carl Pacini, Judyth A. Swingen, Hudson Roger , The Role of the OECD and EU Conventions in Combating Bribery of Foreign Public Officials, Washington,(1998):, p.89

<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 02:15

<sup>63</sup> The Uniform Commercial Code 1952, Ss 22

Possible penalties for Federal Bribery Statute violations include a jail term of fifteen years, fines valued at three times the amount of the bribe, or both. Moreover, a public official who has violated the bribery statute may be disqualified from holding any office of “honor, trust, or profit under the United States.”<sup>64</sup>

### **False Statements Statute 1970**

Under the False Statements Statute, it is a crime to “knowingly and willfully falsify hide or face up by any trick, scheme or device a material fact, or make any false, fictitious or fraudulent statements or representations.” A “statement” may comprise of a claim or a document that is related to a subject within the power of any department or agency, whether or not the person making the statement has realized it. In the context of commercial bribery, the False Statements Statute is used either to punish false claims that no illegal payments were made or to penalize the submission of false accounting records that hide acts of bribery. All those who violate the False Statements Statute may be imprisoned for five years each false.<sup>65</sup>

### **Commercial Bribery Coverage**

Commercial bribery happens when payment is made to a private-sector employee or official with the intention to manipulate her conduct regarding her/his employer’s affairs. Exchange of such bribes is illegal.

though there is not a single federal statute which forbids commercial bribery, the Mail and Wire Fraud Statutes, the Bank Bribery Act and the Racketeer prejudiced and

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<sup>64</sup> Federal Bribery Statute 1962, Ss 201

<sup>65</sup> False Statement Statute 1970, U.S.C Ss. 109

Corrupt Organizations Act (RICO) all are providing penalties for commercial bribery. Moreover, many states forbid commercial bribery via their own performance.

The commercial bribery laws normally forbid a person from conferring or agreeing to award a advantage upon an employee, agent, or fiduciary without the permission of that person's employer, if such type of advantage is planned to control the employee's conduct with respect to the employer's affairs. These laws are based on the belief that the employer is the sufferer of a fraud when the employee has used her/his position to gain unlawful profit in switch for making or influencing certain decisions disturbing the employer's business commercial bribery statutes violator may be fined, imprisoned for up to five years, or both. If the violation affects a financial institution, fines may be increased to \$1 million and the term of imprisonment may be extended to thirty years. These statutes can play a very important anti-bribery role in cases in which out-of country payments are legal under the FCPA because they were not made to a "foreign official."<sup>66</sup>

### **Bank Bribery Statute 1985**

The bank bribery statute makes it unlawful for any officer, director, employee, agent, or attorney of any financial institution associated with the federal banking system to beg, accept, or agree to receive anything that has got value if the person giving the gift has got intentions to get reward for business dealings with the financial institution. The degree of the penalties for violating this statute depends on the value/ amount of the gift. If the gift price is less than \$1000, the recipient may be ordered to pay a fine of \$1000, to serve a full year in prison, or both. And the gift given has a

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<sup>66</sup> False Statement Statute 1970, U.S.C. Ss.110



worth more than \$1000, a person may be fined the greater of \$1 million or three times the value of the gift, sentenced to a prison term of thirty years, or both.<sup>67</sup>

## **UK Legislation on Commercial Bribery**

### **Bribery Act 2010**

**Executive Summary:** For any organization that is doing business in the United Kingdom, the risks connecting to corrupt payments will increase noticeably beginning in April 2011, when The Bribery Act 2010 takes effect. The Act has a wide range of criminal offences in connection with dishonest payments to public officials and private parties anywhere in the world. It is effective on the organization and individuals all over the world subject to UK law.

It is significant to highlight that all organization working in / out side the UK if involved in bribery will be liable to this act. The only defense will be for the organization to prove that it had in place “adequate procedures” to prevent such payments occurring.

For private fund advisers/managers, the issue of bribery may arise in connection with (i) soliciting investment into the fund and (ii) investments made by the adviser/manager in the course of managing the fund’s assets<sup>68</sup>

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<sup>67</sup> Bank Bribery Statute 1985, U.S.C. Ss. 215

<sup>68</sup> James Campbell and Raymond Sweigart, UK Bribery Act: Aggressive Anti Corruption Enforcement, England, (2010) P.213

<http://www.jstor.org/page/info/about/policies/terms.jsp>

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## **Bribery Offences**

The Act, which will be applied in April 2011 and will bring the UK into full compliance with the Organization for Economic Development Anti-Bribery Convention<sup>1</sup>. The Act will improve and replace the UK's present bribery laws and sets out four principal offences. the details of these offences are set out in the following paragraphs.<sup>69</sup>

### **Bribing another Person**

Under the Act, a person is found guilty of an offence where they offer, promise or give a bribe to another person:

(1) Where the briber intends to have the benefit to bring about an improper performance of a relevant function or an activity by another person or to reward such improper performance; or<sup>70</sup>

(2) Where the briber knows or believes that the acceptance of the advantage offered, promised or given in itself constitutes the improper performance of a relevant function or activity.<sup>71</sup>

### **Being Bribed**

It is also an offence for an individual to request, agree to receive or accept a bribe from another party:

(1) Where the person requesting the bribe intends that, in consequence, he or another person will behave improperly;<sup>72</sup> or

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<sup>69</sup> UK Bribery Act 2010, Sec. 13

<sup>70</sup> UK Bribery Act 2010, Sec: 16

<sup>71</sup> Ibid, Sec:16 (3)

(2) Where the request, agreement or acceptance itself constitutes improper behavior by the person asking for the bribe;<sup>73</sup> or

(3) As a reward for improper behavior by the requesting person or another person;<sup>74</sup> or

(4) Where, in anticipation or in consequence of the request, agreement or acceptance of the bribe, the person receiving the bribe or another person (at the requester's request or with their assent or acquiescence) behaves improperly.<sup>75</sup>

### **Bribery of Foreign Public Officials**

It is an offence to bribe a foreign public official ("FPO") with briber's intention is (i) to control an FPO in his professional capacity, and (ii) to gain or preserve business or an advantage in the conduct of business.<sup>76</sup>

The offer, promise or giving of any bribe to an FPO or another person at an FPO's request or with an FPO's assent or acquiescence will also constitute bribery provided that the FPO is neither permitted nor required by written law applicable to the FPO to be influenced in the FPO's capacity as a foreign public official by the offer, promise or gift.<sup>77</sup>

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<sup>72</sup> Ibid, Sec:19

<sup>73</sup> Ibid, Sec: 19(2)

<sup>74</sup> Ibid, Sec: 19(3)

<sup>75</sup> UK Bribery Act 2010, Sec: 19(5)

<sup>76</sup> Ibid, Sec:21

<sup>77</sup> Ibid, Sec:21(2)

## **Failure of Commercial Organizations to Prevent Bribery**

This offence can only be committed by a commercial organization—which will be guilty of an offence if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for commercial organization.

“Commercial organizations” for the purposes of this offence include bodies corporate and partnerships formed in the UK and those formed outside the UK which conduct their business (or any part of it) in the UK. Firms will be guilty of an offence wherever in the world the actions or omissions which form part of the offence take place.

The offence bears strict charge and does not need any fault or negligence to be proved on the part of the commercial organization. However, the commercial organization will not be culpable of the offence if it can prove that it had in place sufficient procedures designed to prevent persons connected with the commercial organization from appealing in bribery.<sup>78</sup>

## **Adequate Procedures Defense**

The Act does not provide a definition of "adequate procedures", although the UK Ministry of Justice has confirmed that a discussion exercise on procedures that commercial organizations can put in place to stop bribery by persons connected with them will be launched in September 2010. The Guidance will be published early in 2011 so as to allow businesses time to

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<sup>78</sup> UK Bribery Act 2010, Sec: 19(6)

disseminate themselves and make necessary changes before the Act comes into force.<sup>79</sup>

### **UK Anti-Corruption Update - The Bribery Bill 2009**

The UK legislature enacted a draft ("the bribery bill"). This draft is concerned with the business organization commencing their business in UK either these corporations are incorporated in UK or somewhere else. The draft essentially appears to bring positive changes in the present bribery act.

In many aspects the Bill has got advantages over other nations' bribery statutes containing the Foreign Corrupt Practices Act. In specifically, the draft looks for to establish: a worldwide commercial bribery offence, as the offence of present, agreeing or offering a bribe comprise bribing individual outside the UK in the framework of a trade commotions; and commercial responsibility for carelessly failing to avoid bribery, by the business organization commencing their business either they are incorporated in UK or somewhere else doing their business full or partly in UK. It's a primary duty of the directors and employees to take proper measure to curb bribery and this responsibility also lies upon the representatives of that business.

If the Bill has got the status of law, the new corporate liability offence, attached with the proposed obligation of criminal liability on corporate officers whose companies commend bribery with their permission or involvement, likely will allow the UK

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<sup>79</sup> Ibid, Sec: 19(7)

authorities to impeach companies and their corporate officers for bribery offences in more easy way previously.<sup>80</sup>

### **The proposed bribery offences**

This enactment suggests an improved and combines frame work of bribery which includes

- Person and corporation that tender, agree or offer bribes, as well as to overseas authorized;
- Person and corporation that ask for, accede to accept or obtain bribes;
- Corporations that listlessly not succeed to prevent their workers or representative commencing bribe; and
- Corporation executive, administrator, commercial secretaries and other alike corporation official who support to or aid in the commence bribery through their corporation.<sup>81</sup>

### **Legal responsibility of higher corporation administration**

The Bill also come up with constitutional individual legal responsibility used for higher-ranking official (i.e. principal, executive, corporate secretaries and other similar official at any time their corporation have been accuse of the offence of with their support or hold up.<sup>82</sup>

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<sup>80</sup> UK Bribery Act 2010, Sec:25

<sup>81</sup> UK Bribery Act 2010, Sec:26

<sup>82</sup> Ibid, Sec:27

### **Failure of business associations to avoid bribery**

conventionally, it has for all time been extremely complicated to allege corporation of offense in English law as it is typically essential to show that a company's executive were straight jammed up in the track of the offense, which has forever been established tough to show in realism. The Bill looks for easy way to charge the companies to stop bribery by its human resources and representative. The new offence will be commenced if (1) one of the corporation's human resources or representative bribes another person, (2) the bribe was made in relationship in the company of the corporation's trade and (3) associate of the corporation's anti-bribery fulfillment purpose casually fail to avoid the bribe.

There is no condition to accuse the worker or manager for bribery unless they are not involved in exchange of money as bribe.

The proposed offence would be applied to all companies who are carrying out on every division of their trade in the UK (not including Scotland), whether they are incorporated in the UK or anywhere .in actuality, the suggestion would require each such corporation to answer a question that of how government can to agreement with and prevent bribery being swap by workers and representative of the corporation. A corporation or firm would not be measured culpable of this offence if it can explain that it had enough measures to prevent its workers or representative from commend bribery.<sup>83</sup>

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<sup>83</sup> UK Bribery Act 2010, Sec:27

## **Punishment**

Ten years caging joined by an infinite fine for a person; and an infinite fine for a corporation.<sup>84</sup>

## **Conclusion**

generally the Bill's intended to innovate offence of neglectful breakdown to prevent bribery, it is important that corporation incorporated in the UK or working there appraise their contract, instruction and other anti-bribery actions in sum-up for the Bill's probable to appear into power.

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<sup>84</sup> Ibid, Sec:30



## **Declaration Approved BY THE GENERAL ASSEMBLY**

The General Assembly, evoking its declaration, in which it, all corruption, counting bribery, in worldwide business dealings, reaffirm the right of any Sovereign to accept legislation and to study and acquire appropriate legal accomplishment, in according by its countrywide rule and set of laws, to combat corruption, and indulge all administration to assist to curb corruption, as well as bribery, worried regarding the seriousness of troubles pretense by corruption, which can put in hazard the firmness and security of state, deteriorate the standards of elected structure and moral principles and put at risk the social, economic and political development.<sup>85</sup>

### **UN declaration**

General Assembly initiated an endeavor to widen global principle against corruption in 2000. The consequential mechanism, the United National conference to combat Corruption, was consulted by an adhoc commission in between 2002 and r 2003.

The UN conference to combat Corruption explicitly indication a figure of former anti-corruption mechanism, as well as the Organization of American States (OAS) Inter-American conference to combat Corruption, the European Union's conference to combat Corruption concerning authorized of the European society or executive of affiliate countries of the European Union, the Organization for Economic Cooperation and Development (OECD) conference on fighting against Bribery of overseas Officials in worldwide trade business, the board of Europe's Criminal Law conference on Corruption, the Council of Europe's Civil Law conference on Corruption, the African Union (AU)

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<sup>85</sup> Leslie Shubert and Tang Zhengyu, Sidley Austin, US and PRC anti-bribery laws: regulation, risk and prevention in the life sciences industries, Columbia Law Review, Vol. 10, No 6,(2005) p145  
<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 02:15

conference on stopping and fighting against Corruption, and the United Nations' hold conference adjacent to global structured offense.

In above mentioned conventions, the UN conference to fight Against Corruption is measured the most detailed conference so far, as it has several issues in relative to the bribery.<sup>86</sup>

### **Preventive Measures:**

The convention urges all member countries to take notable action to prevent corruption.

It also says that state is to "Maintain and strengthen systems and prevent conflicts of interest." .and create a regulations of demeanor for its officials. State is to take strong measures to prevent corruption in government institutions and actions to decrease corruption. It also urges to bring awareness in the public against corruption.<sup>87</sup>

### **Criminalization and Law Enforcement:**

The convention urges the state parties to bring positive changes in the law and charge the cases of bribes with criminal law. It adds that government official who are charged with the involvement of taking money, any undue advantage .gift or any favor in return of which they have done illegal job must be penalized. Moreover, law should be made to charge foreign official who are involved in illegal exchange of money, bribes for obtaining illegal advantages.<sup>88</sup>

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<sup>86</sup> Guillermo Jorge, The U.N. Convention Against Corruption, New York, (2004)  
<http://www.jstore.org/page/info/about/policies/turn.jsp> Accessed: 03/09/2010 02:15

<sup>87</sup> <http://www.un.org/con/poc/html> Visited on 07/06/2010

<sup>88</sup> UN, General Assembly Declaration (2003)

### **Worldwide collaboration:**

Part IV of the conference contain comprehensive provisions for worldwide collaboration in explore and put on trial corruption, as well as wide provisions concerning carrying.<sup>89</sup>

### **Asset Recovery:**

In chapter v need for laws has been felt to bring back the money made by corruption and transferred to other countries. Technical Assistance and Information Exchange, Mechanisms for Implementation are other important decision of the convention.<sup>90</sup>

### **Final Provisions:**

The convention pronounces that each country gathering ought to acquire real procedures for the implementation of its constitution. This outline demonstrates the UN conference against Corruption extent an extremely wide range of issue, from removal bribery to procurement.<sup>91</sup>

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<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Leslie James, Bribery and Corruption in Commerce. The Need for the Harmonisation of Criminal Law in European Countries, J. Colombia Law Review, Vol. 4, No. 8 (2003), p.145  
<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 02:21

## **OECD Convention**

Bribery is rapidly increasing in international business. It also hitting trade an international investment due to which serious problems are occurring in economic and good governance and international business n transactions. Every country should do at their best to fight against bribery in global trade. They should make suitable legislation to curb this problem. The Organization for Economic Cooperation and Development pronounced some suggestion on 23<sup>rd</sup> May 1997 to combat bribery in worldwide trade. These suggestions are made for to fight against bribery to foreign official with regards to business transaction. To bribe foreign official in business transactions is becoming very common and it's should be penalized. So the harmonization and international business and investment could increase.

Although many legislation and recommendation have been made by United Nations, World Bank, International Monetary Fund, World Trade organization, the Council of Europe and European Union to fight against bribery in international trade and business. Companies' efforts, business organization, trade unions and non-governmental organization are being appreciated to kick out bribery. In this convention such recommendations have been made that will be more effective in curbing bribery in international business transaction.<sup>92</sup>

### **Article 1: Bribery of overseas Official**

1. Each member country will pronounce legislation and will include in a offence with in its law to tender, assure, or give any unjustified valuable or other benefit straight or in some

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<sup>92</sup> Enery Quinones, Implementing the Anti-Bribery Convention: an update from the OECD, J. Harward University Press (2003) p.78

<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 02:21

way to a overseas official and try to prevent him in performing official duties or try to get advantage in international business.<sup>93</sup>

2. Each country shall include aiding, abetting and facilitating of paying-off and buying-off of overseas official will fall in criminal offence.

### **Article 2: Accountability of Legal Personality**

1. Member countries will acquire or make legislation that will establish a liability upon legal personalities for bribery of overseas officials.<sup>94</sup>

### **Article 3: Authorization**

1. Bribery to overseas official will be punished deterrent and criminal penalties shall be imposed.
2. Each country shall impose civil and criminal liability for buying and paying off to overseas official.<sup>95</sup>

### **Article 4: authority**

1. Member countries shall establish its jurisdiction of an act of bribery of overseas public officials is commenced in any part in its territory.<sup>96</sup>

### **Article 5: Enforcement**

Each country shall make legislation in respect of trial and investigation of a other country public official according to their own rule, customs and traditions rules. This inquiry can be made for

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<sup>93</sup> UN, OECD Convention (1997), Art. 1

<sup>94</sup> Ibid, Art. 2

<sup>95</sup> Ibid, Art. 3

<sup>96</sup> Ibid, Art. 4

national interest, and to the harmonizing the commercial relationship among countries to locate the real person involved in crime.<sup>97</sup>

### **Article 6: Statute of Limitation**

Each country in its Statute of limitation shall provide adequate time frame for inquiry and hearing.<sup>98</sup>

### **Article 7: Money laundering**

Member countries where they have made an offence of bribery punishable for their officials for purpose of any money laundering in their statute will be held same on a foreign officials involve in such offence on similar terms and condition without regard being giving to place of offence.<sup>99</sup>

### **Article 8: Accounting**

1. Each country makes such precaution that accounting system of business clean and transparent and book keeping and financial statement should be in accordance with international accounting and auditing standards.
2. Each country shall impose civil and criminal liability in commission of false book keeping, account, financial records and statement of business of companies.<sup>100</sup>

### **Article 9: Shared Legal Support**

Member shall make among treaties such arrangements to assist and support investigations of crime with each other and will adopt adequate queries.<sup>101</sup>

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<sup>97</sup> UN, OECD Convention (1997), Art. 5

<sup>98</sup> Ibid, Art. 6

<sup>99</sup> Ibid, Art. 7

<sup>100</sup> Ibid, Art. 8

<sup>101</sup> Ibid, Art. 9

## **Article 10: Extradition**

The countries will hand over the accused person after adequate investigation to the country to where he committed offence.

We can say the convention of OECD is the only international instrument which require countries to make laws to curb bribery not only for their nationals and legal personalities but also for foreign public officials. Up till now 38 members have signed this convention<sup>102</sup>

## **Cases of commercial bribery**

### **Control components Incorporations**

Four executives of Control Components, Inc. ("CCI") were indicted on April 8, 2009 for alleged violations of the FCPA's anti-bribery provision and the Travel Act. According to the indictment, the defendants conspired to make hundreds of corrupt payments with the purpose of influencing the recipients to award contracts to CCI or skew technical specifications of competitive tenders in CCI's favor. The Travel Act came into play as the DOJ alleged the CCI employees violated or conspired to violate California's anti-bribery law (California Penal Code section 641.3), which bans corrupt payments anywhere of more than \$1,000 between any two persons, including private commercial parties. In the indictments, the Travel Act charges relied on alleged violations of California's anti-corruption law.

On July 31, 2009, CCI itself pleaded guilty to substantive FCPA anti-bribery charges and to conspiring to violate both the FCPA and the Travel Act. CCI admitted that, between 2003 and 2007, its employees made more than 150 corrupt payments, totaling approximately \$4.9 million.

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<sup>102</sup> UN, OECD Convention (1997), Art. 10

to officials of state-owned enterprises in China, Korea, Malaysia, and the United Arab Emirates, and paid \$1.95 million in bribes to officers and employees of foreign and domestic private companies in violation of the Travel Act. CCI agreed to pay a criminal fine of \$18.2 million and to retain an independent compliance monitor for three years.<sup>103</sup>

### **Perrin David Case**

Petitioner, with others, was indicted for violating and conspiring to violate the FCPA, which makes it a federal offense to travel or use a facility in interstate commerce to commit, inter alia, "Commercial bribery in violation of the laws of the State in which committed." Petitioner and his codefendants were charged with using facilities of interstate commerce to promote a commercial bribery scheme in violation of the laws of Louisiana, i.e., a scheme to exploit geological exploration data stolen from a Louisiana-based company by an employee of the company who was promised a percentage of the profits realized from exploitation of the information. Petitioner was convicted, and the Court of Appeals affirmed, rejecting the contention that Congress intended "bribery" in the Travel Act to include only bribery of public officials.

The indictment charged that Perrin and his codefendants used the facilities of interstate commerce for the purpose of promoting a commercial bribery scheme in violation of the laws of the State of Louisiana. Following a jury trial, Perrin was convicted on the conspiracy and commercial bribery. He received a 1-year suspended sentence and \$ 150000 fine.<sup>104</sup>

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<sup>103</sup> UNITED STATES OF AMERICA Vs CONTROL COMPONENTS INC UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF CALIFORNIA CIRCUIT May 20, 2004, Decided

<sup>104</sup> UNITED STATES OF AMERICA, Plaintiff-Appellee, v. Vincent R. PERRIN, Jr., David L. Levy and Duffy J. LaFont, Jr., Defendants-Appellants UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA May 25, 1999, Decided CIRCUIT



## **SIEMENS CASE**

Michael Kutschenreuter, former financial head of its telecoms unit and the most senior executive found guilty of commercial bribery and corrupt payments so far, was placed on probation for two years and fined 160,000 Euros (\$215,300), ruling judge Joachim Eckert said on Tuesday.

A second defendant, the former head of accounting at Siemens' telecoms unit, was placed on probation for 1-1/2 years and fined 40,000 Euros. Kutschenreuter, who now lives in Dubai, had admitted that he covered up slush funds and bribing practices of his employees. According to the prosecution, the funds were used to bribe government officials and business contacts to win telecom contracts in Russia and Nigeria.

Siemens has identified around 1.3 billion Euros (\$1.8 billion) in dubious payments that changed hands between 2000 and 2006. The biggest bribery case in German history -- has cost the company around 2.5 billion Euros in fines.<sup>105</sup>

## **Paul Edward Jumet Case**

According to court documents, from approximately 1997 through July 2003, Jumet and others conspired to pay money secretly to Panamanian government officials in exchange for awarding contracts to Ports Engineering Consultants Corporation (PECC) to maintain lighthouses and buoys along Panama's waterway. In December 1997, the Panamanian government awarded PECC a no-bid 20-year concession. Upon receipt of the concession, Jumet admitted that he and others authorized corrupt payments to be made to the Panamanian government officials. In total, Jumet and others caused corrupt payments of more than \$200,000 to be paid to the former

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<sup>105</sup> State Vs Siemens, Munich supreme court Germany April, 20, 2010.

administrator and the former deputy administrator of the Panama Maritime Authority and to a former high-ranking elected executive official of the Republic of Panama. Jumet also made a false statement to federal agents about a "dividend" check payable to the bearer in the amount of \$18,000 that was endorsed and deposited into an account belonging to the high-ranking elected Panamanian government official. Jumet falsely claimed that this "dividend" check was a donation for the high-ranking elected official's re-election campaign, when, in fact, Jumet admitted it was given to the elected Panamanian government official as a corrupt payment for allowing PECC to receive the contract.

Jumet, 53, pleaded guilty on Nov. 13, 2009, to conspiring to violate the FCPA and making a false statement to federal agents. The FCPA makes it a crime to pay or offer to pay anything of value to a foreign government official in order to obtain or retain business.

Charles Paul Edward Jumet of Fluvanna County, Va., was sentenced today to 87 months in prison for paying bribes to former Panamanian government officials to secure maritime contracts, in violation of the Foreign Corrupt Practices Act (FCPA), and for making a false statement to federal agents. In addition to the prison term, U.S. District Court Judge Henry E. Hudson for the Eastern District of Virginia ordered Jumet to pay a \$15,000 fine and to serve three years of supervised release following the prison term. The 87-month sentence is the longest prison term imposed against an individual for violating the FCPA.<sup>106</sup>

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<sup>106</sup> United States Vs Charles Paul Edward Jumet and Others. UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF PANAMA CIRCUIT May 25, 2009, Decided

## **Causes of Commercial Bribery in Pakistan**

The phenomenon of commercial bribery arose in the colonial era through the award of land, job and title were awarded to specific group and was political bribery in those days and now a commercial bribery. But in that era it was only considered to bribe is only to officials. After the independence in 1947 corruption increases rapidly, there are several causes behind that and up till now its going on. Being made a lot of legislation on corruption and bribery still corruption and bribery persist. There is dire need to know what the causes of it are and how to combat with this?<sup>107</sup>

### **Lack of Legislation in Pakistan:**

With regard to legislation in Pakistan for commercial bribery, the scene is not so appreciable. Some cases have come on surface in the recent past yet due to absence of legislation and proper loss those cases are not dealt with proper merit rather were handled with other laws. With the changing of the world and demand of modern ages such crucial problem are bound to change in forthcoming future. Thus, there is a dire need to pay attention to the legislation regarding the commercial bribery in Pakistan to meet the challenges of the coming times.<sup>108</sup>

### **Lack of implementation:**

From the experiential perspective it was realistically observed that whatever rules are existing in Pakistan are not implemented to get most of them due to lack of implementation of existing laws

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<sup>107</sup> UMBREEN JAVAID, CORRUPTION AND ITS DEEP IMPACT ON GOOD GOVERNANCE IN PAKISTAN, Lahore (1998)

<http://www.jstor.org/page/info/about/policies/terms.jsp> Accessed: 03/09/2010 02:21

<sup>108</sup> Nazir Khalid, Why Pakistan needs to takeover Law, J. Finance & Market, November 2002, p. 62  
<http://www.pakistaneconomist.com/database2/cover/c96-91.asp> Accessed: 04-06-2009

all the departments from social service to economics from political to educational all suffering boundless. In consequent, our people are getting disappointed and disillusioned from the state services in such perspective where existing laws are ineffective then making new laws are out of question. Therefore, there is a need of hour to develop the best ways of implementation to make state services effective.

### **Lack of Transparency:**

Transparency is considered fundamental factor in the smooth run of institutes in a country. But unfortunately, like other things, our country is suffering from the fruits of this factor. Without transparency and clearance no institute can gain the popular fame, it may be either judicial system, educational, economical, or political system. Consequently, there would be little involvement of the people to the development of the country. It is also high time to bring transparency in our country to the topmost of all.<sup>109</sup>

### **Economic:**

Improper pays and improper distribution of wealth and having no equality with regards to pays and pension. Improper distribution of wealth is major cause of corruption and bribery in society.

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### **Social / Cultural:**

Demand of society, officials and baradri to show off and demonstration of power and wealth. Everyone wants to be rich over a night without being hard work by using short cuts.<sup>111</sup>

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<sup>109</sup> Ibid, p. 59

<sup>110</sup> Nazir Khalid, The Corruption in Privatization, J. Business Economist, November 2002, p. 340

<sup>111</sup> Mansur Ali Khan, Destiny of Mankind, Lahore (2009), p. 261

**Developmental:**

Low literacy rate in society, low development and inadequate facilities to person even basic need are unapproachable. So the need of adequate opportunities to everyone and to open the new horizons.<sup>112</sup>

**Political:**

Political instability is major cause of corruption. The vote bank is not based upon ideology it is based upon personality racism and baradriism. The political institution and parties and agenda should be strong n clear and should be based upon democracy.<sup>113</sup>

**Legal and Judicial:**

The judicial system is complex and to gain justice it is bit difficult. Justice should be easy and free.<sup>114</sup>

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<sup>112</sup> Javed Hashmi, translated from Haan Main Baghi Hoon, 1<sup>st</sup> Edition (2006), p. 161

<sup>113</sup> Ibid, p. 127

<sup>114</sup> J. Mohen Lal, Corrupt Practices, Dehli (1996), p. 67

## **Modes of Entry**

As term commercial bribery is new our society, but its deep effects are found since long. There are several mode of commercial briber in our society which are briefly discussed as follow.

### **In Health Sector**

Health sector is strongly hit by the commercial bribery. Pharmaceutical companies and especially multinational companies try to induct their product by bribing medical superintendents and other higher authorities. These pharmaceutical companies offer gifts and other valuable incentives to authorities to get their commercial benefits.

### **High Ways and Works Department**

High way and works department is strongly affected by commercial bribery. Companies get the tenders by offering bribery, gift, and other valuable to concern authorities. These companies take tender out of the way by giving a specific percentage to officials.

### **Income Tax Excise & Custom Department**

Commercial bribery is very common in income tax, Excise & Custom department. Corporations get inadequate rebate in tax and pay fewer duties by offering bribery to officials. Tax evasion although very common in whole world but in our country it's becoming culture of society.

### **Developmental Authorities**

Commercial bribery also prevailing in developmental authorities like CDA, LDA, FDA, KDA. Tenders are being offered to those corporations whose pay a specific percentage to officials.

## **Privatization Commission**

In privatization of institutes, there commercial bribery also involves. Multi national companies take their benefit by offering bribery to official. In most cases the ruler of countries likes president, Prime minister and ministers are also involved in big deals.

Although all of these modes are required to be discussed in detail but I will content on the following two because they do target the people directly.

## **Commercial Bribery in Taxation**

The constitution empowers the Federal Government to collect taxes on income other than agricultural income, taxes on capital value, customs, excise duties and sales taxes. The Federal Board of Revenue (FBR) and its subordinate departments administer the tax system. Each of the three principal taxes has a different history and different set of issues. For a large number of income tax payers the core of the business process is pre-audit and assessment by a tax official. This process gives considerable discretion to tax officials, with potential for abuse. Moreover, this process is also not tenable as the number of taxpayers increase.

During the nineties, despite many changes in the tax regime and introduction of withholding and presumptive taxes, Federal Government tax to GDP ratio has varied narrowly around eleven percent. The tax base has grown but still remains narrow and skewed. The number of income tax filers is around one million.<sup>115</sup>

If the tax to GDP ratio does not increase significantly, Pakistan cannot be governed effectively, essential public services cannot be delivered and high inflation is inevitable. An effective

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<sup>115</sup> [www.fbr.gov.pk](http://www.fbr.gov.pk)

revenue organization must be comprised of trained and dedicated persons with integrity, transparent processes, a comprehensive information system, and taxpayer education.

## **Pakistan's Taxation System**

Federal taxes in Pakistan like most of the taxation systems in the world are classified into two broad categories, viz., direct and indirect taxes. A broad description regarding the nature of administration of these taxes is explained below:

### **Direct Taxes**

Direct taxes primarily comprise income tax, along with supplementary role of wealth tax. For the purpose of the charge of tax and the computation of total income, all income is classified under the following heads:

- Salaries
- Interest on securities;
- Income from property;
- Income from business or professions
- Capital gains; and
- Income from other sources.<sup>116</sup>

### **Personal Tax**

All individuals, unregistered firms, associations of persons, liable to tax, at the rates ranging from 10 to 35 per cent.<sup>117</sup>

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<sup>116</sup> Income Tax Ordinance 2001, Sec 6

<sup>117</sup> Income Tax Ordinance 2001, Schedule 2



## **Tax on Companies**

All public companies (other than banking companies) Pakistan are assessed for tax at corporate rate of 39%. effective rate is likely to differ on account of allowances exemptions related to industry, location, exports, etc. <sup>118</sup>

## **Sales Tax**

The sale tax is evolving into Pakistan's key revenue earner is beyond any doubt

Sales Tax is levied at various stages of economic activity at the rate of 15 per cent on:

- All goods imported into Pakistan, payable by the importers;
- All supplies made in Pakistan by a registered person in the course of furtherance of any business carried on by him;
- There is an in-built system of input tax adjustment and a registered person can make adjustment of tax paid at earlier stages against
- The tax payable by him on his supplies. Thus the tax paid at any stage does not exceed 15% of the total sales price of the supplies; <sup>119</sup>

## **Analysis of Existing Taxation System**

In the last decade income tax, together with sales tax, has become the principal source of revenue for the federal government. Its contribution to total tax revenue stands at 28 percent, and its share in GDP has increased from less than 2 percent of GDP in the early 1990s to 3.6 percent

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<sup>118</sup> Ibid

<sup>119</sup> Sales Tax Act 1990, Sec 5

of GDP by the end of the decade. Among tax filers the number of companies was 18,000 in 1997, which paid 53 percent of the total tax revenue.<sup>120</sup>

The 250,000 audits/assessments are handled by an officer cadre in grade 16- 18, who number about 650. This means a workload of about 400 audits/assessments per officer per year. Therefore, it is not surprising that an overwhelming number of tax audits are conducted in haste and are perfunctory.<sup>121</sup>

### **Causes of commercial Bribery in Taxation**

- A corrupt practice in the tax administration is a two-way street. For each corrupt CBR employee, there is a corrupt private sector person who is indulging in commercial bribery either willingly or under duress.
- Antiquated state structure, systems & culture are the underlying causes of commercial bribery in the GOP, which manifest themselves in other causes in the tax administration
- Lack of tax culture or tax education is the next most important cause of commercial bribery in the private sector.
- Respondents felt that this is because of unnecessarily complex systems of taxation and poor quality of management in the private sector. This results in easy manipulation of private business by unscrupulous tax functionaries.
- The next important reason cited for commercial bribery in the private sector is high tax rates.

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<sup>120</sup> Shah Khan & Maria Inam, Pakistan's Tax System, Journal of managerial science, Vol.2, No.11, (2007) p 5

<sup>121</sup> Ibid, p 6

- Lack of accountability as a major reason of commercial bribery by the private sector many leading businessmen and rulers getting away without paying any taxes. It is cheaper to evade taxes than to pay them.<sup>122</sup>

The business organization uses this inadequacy in system for their personal gain by avoiding tax.

### **Mechanism for Curbing Commercial Bribery in Taxation**

- Improve effectiveness of existing processes through the work reorganization which reduces tax payer/tax collector interface, provides pre-audit anonymity of auditors, assigns and distributes functions and responsibilities in a manner that reduces discretion of assessing officers, promotes one window operation, assigns functional responsibilities to specialized divisions, relieves assessing officers from non-assessment functions, and moves to a systematic basis for selection of cases for tax audit.
- Develop a system with key features of universal self assessment with selective audit, centralized information system, survey and research capability, functional specialization, taxpayer education and customer service.
- Initiate education of taxpayers and withholding agents through a well-integrated program of media campaign, booklets and brochures.
- Simplify and standardize the process of issuance of exemption certificates.
- Develop support systems for audit, standardize audit work, develop well-defined work programs and check lists for different types of audits.

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<sup>122</sup> Shah Khan & Maria Inam, Pakistan's Tax System, Journal of managerial science, Vol.2, No.11, (2007) p 11

- For large corporate taxpayers, develop system audits of their record keeping and accounting systems to evaluate its comprehensiveness, control procedures and transaction flow systems.
- Make the compulsory registration process more systematic. Create a centralized national database, which captures information from sales tax, income tax and customs, utility bills, PTCL, SECP, industrial associations, and state enterprises. The selection of cases to be registered should be automated to reduce discretion. A separate register should be maintained for the same.

## **Customs**

Pakistan Customs is one of the oldest organizations of the Federal Government. Customs regulatory framework was first consolidated under the Sea Customs Act 1878. Over the years, as international trade grew, Customs administration gained importance, both as a major source of federal tax revenues and as a regulator of the economy.

The Sea Customs Act, 1878 was replaced by the Customs Act, 1969, but it did not contain any substantial changes.

However, Customs procedures, in general, did not keep pace with the changing requirements of international trade.

### **Causes commercial Bribery in Custom**

Customs procedures are based on a manual system with multiple checks and verifications of every transaction, hallmarks of a defensive and time-consuming system. These procedures were devised at a time when the volume of international trade and the number of import and export

transactions were small and import tariffs were prohibitively high. The analysis of Customs business processes highlights that they involve numerous steps, handling officials, signatures and verifications, and are cumbersome and irritating.

- The existing business processes of Customs are fundamentally manual, devised to handle a small volume of transactions. Besides being tedious and time consuming they lend themselves to collusive malpractice.
- Clearing agents carry documents from desk to desk for completing various steps in each process. They move with documents from one official to the next, as they follow the process.
- Existing work methods and processes allow excessive interfacing between Customs employees and clearing agents/clients. The clearing agent has become an integral part of the processes.
- A large number of Customs officials are involved in completion of business processes and various steps, verifications and signatures for completing processes are rather large.
- There are a number of unnecessary steps which involve office support staff and sepoys for recording the movement of documents and affixing stamps. This results in further interfacing and delays.
- There are no time standards for the completion of various activities/sub-processes. There is no effective monitoring system in place to check delays on part of the Customs employees.

- In the absence of universally applicable operating procedures and weak post-audit function, there are ample opportunities to misuse discretion by officials at functional levels. This is particularly true in determination of values for duties and application of exemption notifications
- The dispute resolution system is slow and cumbersome.
- Quality of clearing agents, responsible for making important professional input to the business processes, is generally poor due to weak system of issuance and renewal of licenses to the clearing agents.<sup>123</sup>

### **Mechanism for Curbing Commercial Bribery in Custom**

- Make a paradigm shift from the manual system of operations and business processes to a fully automated and information based system.
- Delete redundant steps in business processes, automate elements of processes and reduce document flows therein, reduce official discretion by providing information base for the processes, and relocate steps to cut the numbers of officials involved in the processes.
- Improve airport processes concerning unaccompanied baggage, immediate clearance groups, import airfreight unit, export processing and examination.
- Exports i.e. submission of electronic declarations, validation of bills of exports,

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<sup>123</sup> Umbreen Javid, Corruption & Its deep Impact on Good Governance in Pakistan, Pakistan & Social Review, Vol.48, No.1, (2010) p 125

- Simplify the duty draw back sanctioning process. It should be considered as a routine activity and end at the deputy collector level. The time frame fixed by CBR for sanctioning the duty draw back claims should be closely monitored.
- Improve the quality of adjudication and address the genuine concerns of trade and industry. Provide extensive training to the adjudicating officers and evaluate their performance based on the quality of their decisions and efficiency in disposing of their work. Enhance number of benches of customs appellate tribunal.

## **Commercial Bribery in Health Sector**

There are different modes of commercial bribery in health sector

### **Commercial Bribery at governance and regulatory level**

The domain of stewardship, governance and regulation in the health system lend themselves to commercial bribery in many areas;

With respect to decision making, basing priorities and allocations on political expediency and benefaction rather than evidence are foremost. These may enable individuals and agencies to pursue their own agendas while compromising public interest

Political and bureaucratic leakage, fraud, abuse and corrupt practices are likely to occur as a result of poorly managed expenditure systems, lack of effective auditing and supervision, organizational deficiencies and poor fiscal controls over flow of public funds.<sup>124</sup>

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<sup>124</sup> Nashtar S, Corruption in the health sector in Pakistan, Heartfile and Transparency international, (2007)

## **Commercial Bribery in the drug supply and registration system**

Commercial bribery in drug supply and registration has a direct bearing on the performance of the health system and can reduce access to essential medicines, particularly for vulnerable groups. This practice involves both the regulators and the private sector and may involve any step along the drug supply chain, starting from registration, licensing and accreditation to the setting of prices, marketing of drugs and sale and procurements.

Commercial bribery in the sector has its roots in the commercial interests of the non-bonafide pharmaceutical companies, who find compliance with regulations affecting drug licensing, accreditation and approvals costly and try and bribe and influence regulators to get their product registered, speed up the approval process, get favorable prices or to have their drugs included on the essential drug list in order to increase their market share.

In the procurement process, common corrupt practices include collusion among bidders, kickbacks from suppliers and contractors to reduce competition and to influence the selection process, and bribes to public officials monitoring the winning contractor's performance. Corrupt procurement officers can also purchase sub-standard drugs in place of quality medicines and pocket the difference in price.

The process of licensing pharmacies or chemists' shops can also be corrupted by bribes, leading to unfair decisions favoring kin or political contacts of government agents.<sup>125</sup>

### **What We Can Do?**

- A system for National Health accounts will have to be developed; this must leverage technology to enhance efficiency and promote greater transparency in health systems. For

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<sup>125</sup> Transparency International, global Corruption Report (2006)



example, electronic public expenditure tracking procedures and electronic equipment and supply inventories can track leakages from the system and a nation-wide database for matching staff and wage payments can maintain up-to-date personal records and therefore can assist in eliminating abuses such as paying ghost workers.

- In the area of drugs and supplies, Drug procurement reforms centered on electronic bidding will have to be introduced and phased-in for enhancing transparency. Greater transparency in the process of drug registration and pricing and quality control will also have to be institutionalized in order to improve the quality of drugs.
- Local regulations will have to be strengthened in line with the international code of marketing practices and should be strictly enforced as minimum requirements for the industry and the medical community to comply with.
- Other measures should be promoted to check the mushrooming of spurious drugs. Strict penalties should be implemented for violations of the law which make it possible for spurious drugs to gain access to the market such as fake licenses to sell, duplicate documents, absence of warranty of purchase of all products, gaps in the sale purchase record of all products, inadequate storage practices at outlets, and the absence of unqualified personnel at outlets.

### **Major Cases of Commercial Bribery in Pakistan**

There are several cases which purports that there is commercial bribery involve in it, but lack of legislation they cannot be identified and properly charged. But recently the steel mill case, Augosta Submarine case, LNG case are evident of commercial bribery.

## **Comparison between International Legislation and Pakistani Legislation regarding Commercial Bribery**

Unlike UK & US legislation there is no concept of commercial bribery in Pakistan. Pakistani law deals corruption in a wider sense, corruption is dealt in NAB Ordinance, FIA Ordinance and anti-corruption act. These statutes deal individuals only and there is no concept of corporation. So I will describe Pakistani law from two aspects; individuals and corporations. For this purpose an overview of existing legislation regarding corruption is given below.

### **National Accountability Ordinance 1999**

Sec 9 of NAB Ordinance deals with corruption and Corrupt Practice

#### **Corrupt Practices and Corruption:**

Anybody who is holding a public office person shall be liable for the offence of corruption and dishonest practices:

Anybody who gains or accedes to gain or offer benefits which are not legal and payments with an intention specified in sec 161 of Pakistan Penal Code

- if he accepts or obtain valuable thin without consideration
- if he dishonestly or fraudulently converts property for the benefit of himself or somebody else.
- if he by corrupt obtain any property or valuable for himself or for his siblings or reliant
- if he illegally obtain or offer pecuniary or valuable things

- If he misuse his authority to obtain or earns any advantage or errand for himself or anybody else.
- Any official deliberately initiates any orders, directions, plan or strategy for the sake of his own any other person benefit
- The offence specified in Sec 415 of PPC that is cheating is being commenced.
- The offence specified in Sec 405 of PPC that is the criminal breach of trust is being commenced by any person
- According to Sec 409 of PPC if a person who is an agent, attorney, banker, merchant or broker in his capacity commends a breach of trust.
- If he assists or aid any official to commence in scheming of offence related to corruption.
  - Anybody who commends the offence of intentional defaulting.
  - (B) Under this statute no offence will be bail able.
  - (C) Chairman NAB after completion of investigation if satisfied can close the case against anybody or any official.<sup>126</sup>

## **Punishments**

Sec 10, 11 and 13 of national accountability ordinance deal with punishment

## **Penalties for corruption and dishonest Acts:**

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<sup>126</sup> NAB Ordinance 1991 Sec 9

Anybody who commends the offence of corruption and dishonest practices shall be penalized with imprisonment that can be extended upto 14 years and fine can be imposed any sort of benefit money or property obtained through corruption shall be forfeited.<sup>127</sup>

### **Imposition of Fine:**

Fine can be imposed on convicted people that will never fewer than the amount he gained in said corruption or by his relatives.<sup>128</sup>

### **Authority to Freeze Property:**

The court and the chairman NAB have the power to freeze the property of accused.<sup>129</sup>

## **The Prevention of Corruption Act 1974**

Sec 5 of this act deals with criminal misconduct

### **Criminal Misconduct:**

- An official is said to have done an offence of criminal wrong doing
- Any official who obtain any gratification other than legal remuneration.
- If he accept any valuable thing without consideration.
- If he dishonestly convert any property for his own or someone else use.

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<sup>127</sup> NAB Ordinance 1991 Sec 10

<sup>128</sup> NAB Ordinance 1991 Sec 11 & 12

<sup>129</sup> NAB Ordinance 1991 Sec 13

- If he by corrupt obtain benefit in respect of money or something which is valuable.<sup>130</sup>

**Punishment:**

Any public servant commit such misconduct shall be punish with imprisonment which may extend to seven years or with fine or both (If any official commits any wrongdoing he/she will be punished with imprisonment which can be up to seven years or with fine or both).

It is clear from the above statute we can conclude that this statute deals with only individual not corporations.

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<sup>130</sup> The Prevention of corruption Act 1974 Sec 5

## **Recommendations**

As Pakistan belongs to developing world and the business is growing rapidly and foreign investment is coming inside but unfortunately there is no legislation on commercial bribery and there is still great need of some special legislation on the subject especially in a country like Pakistan so that people and institutions involved in such type of activities should be debarred from such a heinous act. Being expanding the boundaries of international business commerce and trade it is a dire need of time that transactions should be clear and system should be fool proof so that it will strengthen the growing economy of the country. In past almost all the governments tried to eradicate corruption through different tools and legislation but specifically the subject of commercial bribery still needs to be addressed. In order to minimize the menace of commercial corruption a comprehensive and sustained strategy is required by the Government ,whose implementation will be the collective responsibility of both federal government as well as all Provincial Governments Departments, especially when there are much public expectations for a quickened pace of accountability process.<sup>131</sup>

As there is no sufficient legislation on commercial bribery in Pakistan so there is a dire need of time to make proper and suitable legislation regarding commercial bribery. The present legislation only deals with individual and public servant to curb the bribery and corruption. There is no concept to charge and penalize a legal personality if it is engaged in corrupt activities. As we can see in USA and UK legislation that there is an absolute legislation to tackle this problem. In UK Bribery Act 2010, it is mandatory for business entity not only to avoid involvement in

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<sup>131</sup> [www.lawsite.com](http://www.lawsite.com)

corrupt activity but also to prevent itself from corruption, and if it fails to do so then it is penalized. After going through with the deep study in the Commercial Bribery and their acts in different countries that provide the penalties, I have chalked out some of recommendations that may effectively cover up the bribery prevailing in corporate sector of the society.

They are as follows:

The criminalization of private-sector bribery, especially if international aspects are present is a recent phenomenon, tracing its late development to such assumptions as:

- Criminal sanctions should be reserved for bribery of public officials, i.e., where public funds or a public duty is involved;
- Private-sector bribery, like its public-sector counterpart, is a national problem;
- Private persons should deal with commercial bribery by civil remedies or self-regulation; implementation of a state's system of prosecution

Is the purpose to curb unfair competition, penalize violations of loyalty due to employers and/or to an economic system, or ensure the protection and proper management of corporate assets?

The slow pace of development of the law of private-bribery may also be determined by reticence about the nastiness of "dirty laundry" which victims do not wish to wash in public.

## **Implementation of Law**

From the experiential perspective it was realistically observed that whatever rules are existing in Pakistan are not implemented to get most of them due to lack of implementation of existing laws all the departments from social service to economics from political to educational all suffering boundless. In consequent, our people are getting disappointed and disillusioned from the state services in such perspective where existing laws are ineffective then making new laws are out of question. Therefore, there is a need of hour to develop the best ways of implementation to make state services effective.

## **Transparency in System**

Transparency is considered fundamental factor in the smooth run of institutes in a country. But unfortunately, like other things, our country is suffering from the fruits of this factor. Without transparency and clearance no institute can gain the popular fame, it may be either judicial system, educational, economical, or political system. Consequently, there would be little involvement of the people to the development of the country. It is also high time to bring transparency in our country to the topmost of all.

## **Criminalization of Private sector Bribery**

Whatever the reason for past reluctance about curbing private-sector bribery and despite difficulties with collecting meaningful statistics on the problem, we should make proper legislation on it and it shall be treated as heinous crime. As this commercial bribery is a separate subject so there is dire need of separate and proper



legislation and it should be penalized like other blue collar crime. In this regard we should look upon at FCPA an UK bribery act 2010 and other international instruments.

### **Effectiveness of Civil Remedies**

Private bribery is actionable on such grounds as unfair competition, breach of trust or fiduciary duty, and tortuous interference with employment obligations.

Moreover, strict separation between criminal and civil process for the same wrong can encumber and discourage resort to a claim for damages.

### **Administrative Measures and Self-regulation**

Private-sector bribery present in regulatory measures and/or developed internally by business enterprises. Our legislation disqualifies companies convicted of the crime of corruption (itself or by vicarious liability through actions of officers) from bidding on contracts of public procurement.

Corporate codes of conduct and training programmers implementing them are the essential expression of corporate commitment to self-regulation. Thus, while ethical codes provide a framework in which managers, employees, unions, and business associations can articulate standards of behavior and provide for compliance procedures, they must be recognized to operate in a specific ethical and legal context, which can be supportive in varying degrees.

There is evidence that guidelines for vicarious liability of companies and for imposing sentence on crimes of bribery have taken or will take into account whether the company has an effective code of conduct or has otherwise taken all "reasonable organizational measures" to prevent acts of bribery.

As there is lack of legislation to penalize corporation and legal personalities in our country so there is dire need of time that there must be proper legislation. Pakistan is a growing country and strategically it is very rich and having growing population and big market for new businesses. It is a golden sparrow for the multinational corporations. But unfortunately if any corporation is involved in corrupt practices and especially commercial bribery there is no instrument to tackle these filthiest. The developed world is facing the problem of commercial bribery since long from they made adequate legislation to curb these evils. The translational companies spread their business and earn more and more profit by making influence to government policies by bribing to foreign and government officials. We can take guide lines from United States and United Kingdom and other international instruments. As the corporation is governed by directors, managers and their agents, so the sole responsibility lies upon them that they should avoid such corrupt practices. To refrain from these evil the following mechanism can be adopted in the light of international legislation and instrument.

### **Corporate Code of Ethics**

Each organization which is registered under companies' ordinance 1984 shall abide by the international code of business ethics. If any corporation does not follow with regards to its internal and external affairs these code of ethics it should be fined. Every Profession has the obligation to maintain proper standards of work and professional ethics by its members.

Discussion on ethics in business is necessary because business can become unethical, and there are plenty of evidences today on unethical corporate practices. Even Adam Smith opined that "People of the same trade seldom meet together, even for

merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices." Firms and corporations operate in the social and natural environment. By virtue of existing in such environments, business is duty bound to be accountable to the natural and social environment in which it survives. Irrespective of the demands and pressures upon it, business by virtue of its existence is bound to be ethical, for at least two reasons: one, because whatever the business does affects its stakeholders and two, because every juncture of action has trajectories of ethical as well as unethical paths, wherein the existence of the business is justified by ethical alternatives it responsibly chooses. One of the conditions that brought business ethics to the forefront is the demise of small scale, high trust and face-to-face enterprises, and emergence of huge multinational corporate structures capable of drastically affecting everyday lives of the masses.

### **The Responsibility of Directors, Managers and Representatives:**

In any case of violation the responsibility should be on Directors, Managers and Representatives. If anyone from the above mentioned persons are involved in corrupt practices or involved in bribing the foreign officials should be punished with imprisonment and fine.

Corporations and companies are legal entity which are governed by directors, managers and their legal representatives. Corporation by itself unable to do anything, it's their governing body which indulge a corporation in corrupt practices.

To curb such practices penalty should be imposed on director, manager and legal representatives as they are penalized in UK Bribery Act 2010.

### **Cancellation of registration:**

If any corporation is involved in such activities its registration should be cancelled and business should be freeze.

Likewise if any corporation is involved in corrupt practices the SECP and other governing bodies should cancel the registration of that corporation and it should be banned for further any business activity.

### **Freezing of Property:**

If any corporation is involved in such activities its property should be freezed and fine should be imposed.

By becoming a member of international forums:

As the policies adopted by international forums should be adopted and we should become the members of these forums like OECD and UN declaration against commercial bribery.

### **An Independent and Impartial Judicial System:**

An independent, impartial and well-informed judiciary holds a central place in the realization of just, honest, open and accountable government. A judiciary must be independent of the executive if it is to perform its constitutional role of reviewing actions taken by the government and public officials to determine whether or not they comply with the standards laid down in the Constitution and with the laws enacted by the legislature.

### **Independent Anti-Corruption Agency**

There should be independent anti corruption and investigation agencies. The National Accountability Bureau (NAB) has been empowered to deal with corruption crimes at the top political and official levels. NAB has been particularly successful in

recovering for the country significant amounts of money. It has established a strong organization and is considered by many an efficient and effective organization.

### **Procurement**

Pakistan's fight against corruption benefit greatly from an almost total overhaul of the country's procurement system. Through public procurement a very major share of country's public resources is being wasted. For the betterment of procurement some bold steps should be taken which detail is giving below.

### **Internet Bidding System**

The bidding process should be transparent n easy. The bidding process should be on internet and it should be easy accessed to general public along with the description of corporation's detail.

### **Role of Transparency International**

Transparency is an independent agency which collect data analyze and process it and gives and impartial results. We can rely upon the information given by TI and effected areas can be healed.

### **Role of Media**

Media can play a major role to eradicate corruption from a society. Through media we can aware public at mass. There should be an independent and free media along with independent judiciary system.

### **Role of Civil Society**

Pakistan today has a large number of Civil Society organizations which are anxious to play their role of contributing to public activities, and at the same time to monitor public institutions and hold their officials to account

## CONCLUSION

Corruption is a hydra headed problem that further generate un-counter able problem in a society. Having deep linkages with economic political social and on the top legal factors, it demolishes the whole system of the country as witnessed in the history of developed countries on the one hand and developing cum undeveloped countries. It has been destroying the above mentioned domains of human development, thus, it is safe to maintain that comprehensive strategy encompassing all the mentioned sectors should be crafted to shot this chimera down. In this regard, legal deterrence seems to be the best solution to cub this chronic problem as mentioned earlier commercial bribery should be dealt immediately with irony hands so as to provide legal barrier. In the developed countries laws have been enacted to curb the latter problem. However, in Pakistan, unfortunately, it is still an issue that has been thrown on the back burner. There is no blinking the fact that Pakistan is among the severally hit countries by corruption. Therefore, it is the need the hour that legal barriers ought to be construed to follow the developed countries. As a matter of fact, there is no legislation pertaining t commercial bribery and its penetrating effects. Since commercial bribery is connected with every single individual it affects whole citizenry. People are fond engulfed in distressed and other psychological problems which will create a complete chaos in the country. After weighing its disastrous repercussion one would completely agree that it should top the priority list of the legislature. Without curtailing this hydra headed problem no process in any walk of life can be triggered. Deterioration economic condition of the country deer testimony that corruption especially commercial bribery has cut the roots of economic

developments. Moreover, it social; consequences are also hunting the society. Social institutions are badly affected and corruption is creeping in the roots of our social system culture tradition customs and even religious moral codes are disappearing because corruption taking their place. People are indifferent about morality and ethics due to the effects that corruption had imprinted on their minds. Besides, judicial system of the state is no exception. It is equally affected as the other institution of the state. Consequentially, justice has become a story of the past and denied to deserving. Though, the whole system is not corrupted, but its effects are being witnessed from top to bottom.

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