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White-Collar Crimes: How to Combat the Offence of Bribery

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ABSTRACT

In the era of globalization, where nations struggle and aspire to modernize themselves, a good social order becomes *sine qua non*; whatever may be the nature of the given state and its government. Bangladesh, as a sovereign country, has its goal to “realize through the democratic process a socialist society, free from exploitation...” It has been observed when government officials start to receive bribes in exchange for their statutory service it brings serious anarchy to the state and its regular operation. In recent times the citizens of Bangladesh are in dire need to be reminded of what constitutes the offense of bribery per the laws of the land. A bribe is an additional benefit given; whether financial in nature or not, that encourages the individual receiving such benefits to execute a relevant function or activity in an improper manner. This research proposal’s key goal is to formulate the information gathered to increase background knowledge on the subject matter for its readers as well as provide recommendations to enhance the legislation focusing on anti-corruption practices. The paper will further address what amounts to an additional benefit and how a relevant functions or activity can be performed in an improper manner by the relevant authority or concerned person. The Research methodology relied on the author solely for the purpose of collecting and analyzing the data by applying open-ended and conversational communication. The author relies on comparative legal research methodology to better analyze how similar matters are dealt with differently based on their mode of interpretation and convenience in different jurisdictions.

Keywords: Bribery, Corruption, Globalization, Fraud, Combat, Inappropriate gift, and White-collar crimes.

INTRODUCTION:

Economies in developing financial bodies like Bangladesh with inadequate proceeds of crime controls are particularly vulnerable due to a lack of comprehensive anti-corruption regimes. An individual in position of money and power can offer a lucrative sum to a concerned authority thereby giving them an incentive to providing an advantage or benefit to such individuals due to the reward that has been offered. The author is of the observation, when the government officials start to receive bribe in exchange of performing their statutory service it brings serious anarchy in the state. When money, goods or services are offered with the

intention to influence any act, decision or approach of a person or organization, it constitutes as bribery (Shajib, 2017). To comprehend how the offence of bribery works we first need understand what constitutes as a bribe. Upon perusal of the above statement, it can be derived that a bribe is an additional benefit given, whether financial in nature or not, that encourages an individual receiving such benefits to execute a relevant function or activity in an improperly manner. The Transparency International Bangladesh conducted various survey and reported in a press conference that the locals are acceptedly bribing officials at numerous sub-registrar’s offices up to BDT 5 lakh

to get their land deeds registered. The survey also revealed that bribe in the range of BDT 20 lakh must be provided for various official recruitment, promotion, and transfer of officials (Staff Correspondent, 2019).

This article's key goal is to formulate the information gathered to increase background knowledge on the subject matter for its readers as well as provide suggestions to enhance the legislations focusing on anti-corruption promotion. Here the author desires to rely mainly on secondary sources for data collection where the author applies qualitative analysis methods to examine relationships between the variables to better emphasize on such criminal activities. The author faced significant difficulties in correlating all the information related to the offence of bribery under one article. However, faced with such difficulties, the author has successfully provided an analytical framework that assisted in establishing the analysis required for proposing further recommendations to better combat offences of bribery within the region.

The author further advises to conduct additional empirically based case studies to further examine the solidness of the theoretical foundation to better provide the acquired implementations concerning bribery laws in the regime. Research methodology applied by the author is solely for the purpose of gathering and analyzing the data acquired, applying an open-ended and conversational communication (Sharan B. Merriam, 2015). Here the author relied on secondary sources for data collection where the author applied qualitative analysis methods to examine relationships between the variables to better emphasize on such criminal activities that amounts to bribery offences.

What amounts to an inappropriate gift?

Exchanges of gifts and hospitality in the business arena often helps demonstrate appreciation to fulfill social norms, and building trust and better working relationships; however, such gifts and hospitality often can be misused to encourage an individual to execute or undertake an action that is deemed as improper or conducted in an improper manner. When money, goods, services or favors are offered with the intention to influence act, decision or approach of a person or organization, such actions constitute as bribery. Due to inadequate guidance on the given topic, there remains a grey area in Bangladesh, which has yet to be

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substantially explored for better implementation of anti-bribery laws. TRACE International, a globally recognized business association dedicated to anti-bribery compliance, categorized Bangladesh as 'high risk of business bribery' (Bhuiyan, 2021), listing Bangladesh as the second worst in South Asia in its 2021 Bribery Risk Matrix. Adding to their findings, TRACE International further revealed how Bangladesh has fared poorly in taking measures to discourage bribery and implementing anti-bribery enforcement (Beslija, 2021). To better understand the concept of bribery, few key elements that need to be discussed here are what amounts to an additional benefit and how can a relevant functions or activity be performed in an improper manner. The additional benefit may be in form of luxurious gifts, cash, disproportionate generosity, waivers, discounts or even favors. The relevant function or activity on the other hand refers to activities connected to a business or performed by or on behalf of a corporate body, not to mention functions that are public in nature. It is pertinent to know how we may conclude that a relevant function or activity has been performed 'improperly'. It is only when the performance amounts to a breach of the expectation that the concerned individual should act impartially in good faith and without prejudice keeping in mind the extent of trust the position provides to the concerned individual (Burrows, 2020). As a reference the author would like to refer to The Bribery Act, 2010 ('2010 Act') incorporated in the United Kingdom. The 2010 Act bans any exchange that amounts to bribe, especially exchanges with the intent of inducing business or to achieve personal gain as this may encourage an individual receiving such benefits to execute a relevant function or activity in an improperly manner. It further bans any illegitimate attempt taken to influence any act, decision or approach of any person or organization that constitutes bribery and in so doing attempts to redefine the law regarding the exchange of inappropriate gifts and hospitality. In Bangladesh, according to the Penal Code, 1860 ('1860 Act'), offering or accepting gratification that is not a legal remuneration is not permitted by the law. The 1860 Act, however, creates certain levels of uncertainty for institutions and individuals in trying to understand on how they can legitimately extend corporate social hospitality keeping their activities in line and not committing an offence of bribery. In the

beginning of this article the term 'inappropriate gift' had been mentioned, where one may ask as to what amounts to an 'inappropriate gift'. Generally, a mere gift shall not amount to a bribe unless the gift has been provided as a consequence of an award or advantage improperly obtained by the recipient (Thomson Reuters Practical Law, 2018). One needs to put emphasis on the motive behind the gift, keeping in mind the value and frequency of the gift provided. All things considered, the value, record keeping and transparency in receiving and accepting gifts play a crucial role in distinguishing the gift from being a bribe.

Government initiative in achieving an anti-corruption regime

In 2022, The Transparency International Corruption Perception Index Report, ranked Bangladesh as the second most corruption-riddled nation in South Asia (Dhaka Tribune, 2022). The author is of the observation that although there remain existing mechanisms for accountability and internal control for corruption in various government departments, such check and balance procedure, however, lack proper functionality. The corruption and irregularities in both private and public sectors of the land runs on what the author termed a "partnership and agreement outline", from top to bottom tier of the establishment. Dr. Iftekharuzzaman, Executive Director of Transparency International Bangladesh in a press conference stated locals in a sense are 'being held hostage by the institutionalization of corruption' (Staff Correspondent, 2019). The government in its attempt to achieve an anti-corruption regime established the Anti-Corruption Commission ('ACC') through the enactment of the Anti-Corruption Commission Act, 2004 ('2004 Act') to prevent corruption and other corrupt practices in the country. Recent drive against corruption of the ACC would include the North South University money laundering scandal, where several Trustee Board Members of the University were accused to be involved in BDT 304 crore money laundering case (The Daily Star, 2022).

The function of the ACC is to determine the procedure of the enquiry, investigation of malpractices and filing cases along with the arrest of accused individuals. The main aim of the ACC is to create a strong anti-corruption culture throughout the whole society. The case Anti-Corruption Commission vs. Mohammad Shahidul

Islam and Ors; reported in 68 DLR AD 242 states as follows 'the Anti-Corruption Commission Act is applicable in respect of public servant as well as "any other person". The main aim of those Acts is eradication of the Corruption which is permeating every nook and corner of the country. There, however, remains certain lacking in ACC's conducts as observed by the author and further expressed by Dr. Iftekharuzzaman. In an interview to a local daily, Dr. Iftekharuzzaman stated that the ACC's 'investigating capacity leaves much to be desired - in terms of the skills and expertise necessary, honesty and integrity of the staff, and sufficient internal control and oversight to prevent lapses and irregularities' (Bay, 2020).

CONCLUSION AND RECOMMENDATIONS:

The author emphasis on a stricter implementation of laws governing corruption and bribery. Strict enforcement demonstrating the ramifications of misconduct is often debated to be the most effective way of deterring white-collar crime (Soltes, 2016). As per the laws of the land such corruption cases are handled and investigated by the ACC. Upon researching, the author observed there remains an unrealistic expectation on the ACC to fully deliver its mandate without a major overhaul. Dr. Iftekharuzzaman, in his article reported by The Daily Star, said: 'Any crime is bound to flourish when laws and regulations are not enforced and violators are not held accountable (Iftekharuzzaman, 2020). His observation further included that dysfunctionality of institutions has been caused due to severe politicization, and such has become so entrenched in the society that it cannot be changed overnight (Bay, 2020). The author believes that incorporating moral teachings as to what amounts to the offence of bribery its socio-economic harm to an individual, the society and the national economy shall help promote a corruption adverse environment. Furthermore, as recommended by the author, the implementation of the organization's bribery prevention policies via training module should help mitigate identified risks and assist in preventing deliberate un-ethical conduct by the institutional worker. Although the author believes one single wrong identified and brought to light can help moderately bring down the entire criminal operation, however, such an anti-bribery regime cannot be achieved in a fortnight. The author is confident, that go-

vernment revenue could yield a larger sum given an increased transparency and accountability established within the region regarding corrupt and bribery practices. As with moral intention, the individual's responsible for corruption and irregularities could be identified and given exemplary punishments. The author emphasizes on the ideology expressed by The American Society of Criminology annual award winner, Professor E.H. Sutherland an American criminologist, renowned for his elaboration of the differential association of various theories of crime. The author is of the observation that the offence of bribery not only causes financial damage to the state but also creates distrust, lowers morality amongst the locals and produces disorganization on a larger scale. Here the author's view largely aligned with that of Professor Sutherland, who was of the observation that social damage from ordinary crime often provides a less harmful impact on our institutions than that of white-collar crimes. In 2022, a fraud amounting to BDT 451.5 crore was discovered via investigation conducted by the Chattogram Customs Authority of Bangladesh. The authority discovered a total of 20 companies falsely claimed 20% export incentive through ghost shipments of 965 consignments (Suman, 2022).

Such trade-based corruption practice is not a recent occurrence in Bangladesh. The lack of adequate knowledge on corrupt practices, poor data communication and digitalization network system along with the dreadful affair of corrupted traders, bankers, and customs officials involved in bribery are the main causes for the rise of such corruption in Bangladesh (Md Monzur Morshed, n.d.). In view of the facts presented above, the author is of the observation that white-collar crimes via the offence of bribery are a serious problem in Bangladesh. In this article it is not the intension of the author to examine the flaws that may remain in the provisions of existing laws; rather to provide emphasis on the enforcement of the laws in place. Measures implemented should be legally preventive, constructively educational and socially denouncing to further achieve an anti-corruption regime.

Spread public awareness

A local daily reported, that an assistant sub-inspector of police was suspended after primary investigation reported elements of bribery, where he was found

guilty of taking bribe from an auto-rickshaw driver in Dhaka's Jatrabari area (The Daily Star, 2020). Such offences of bribery have become a deeply rooted aspect of the Bangladeshi culture as to where both the participants of the act consider it justified as the receivers go on to provide additional assistance to the givers in spite of the legitimacy of their pursuits. It can also be observed when government officials resent to the offence of receiving bribes in trade of their statutory services, it brings about a consequential anarchy in the state and disrupt its regular regulations. In recent times the citizens of Bangladesh are in dire need to be reminded what constitutes the offence of money laundering as per the laws of the land. A radical change in public attitude is *sine qua non*, local legislation alone seems insufficient to combat this menace primarily as corruption itself has managed to cripple the enforcement of the law. Adding to the above conversation, the author further observed that the local people lack certain patriotism due to lack of moral education facilitated by an environment conducive to adopt unfair means has worsened the malpractice of corruption in Bangladesh. The author is of the opinion that the moral education in general should be raised to ensure a sustainable improvement in preventing corrupt practices in the region. The author further recommend that moral education should be made compulsory at both primary and secondary levels emphasizing on anti-corruption regime, thereby, demonstrating the responsibility of an individual in preventing such corrupt practices (Rana and Awwal, 2020).

The current institutional curriculum should incorporate moral teachings which may be introduced at the tertiary level as to what amounts to the offence of bribery and address the socio-economic harm that the anti-corruption regime causes to an individual, society and the national economy, henceforth promote a corruption adverse environment. The author is of the opinion that such steps will positively influence students' thinking and determination against corruption and bribery.

Anti-Bribery training

The author recommends government and private institutions to provide training courses for their employees, especially the ones likely to be exposed to bribery. The tools of such organisation's bribery prevention

policy should include documentations such as trainer's handbook along with PowerPoint slides to better educate on the offences of bribery and how to tackle them. This should help set a useful benchmark in promoting anti-bribery practices and help the organizations to train and ensure employees of all levels are well educated and aware of the anti-bribery policies within the organization.

The training program should emphasize on the potential damage of bribes along with providing prevention steps that could be put in motion to achieve an anti-bribery regime in the workplace. A good example of such is set by Transparency International UK which provides a 30-minute free online course titled Doing Business without Bribery (UK, 2022). This online course has been acclaimed by professionals to be an all-inclusive anti-corruption training program for front-line workers.

Increased media vigilance

It is appreciable that the press and electronic media in Bangladesh enjoy significant freedom. The role of media in fighting corruption is widely recognized, due to such, it is the author's observation that the local media needs to portray a more educational mirroring that the society intensely denounces corruption. Transparency International in its report published in 2002 highlighted the profound significant nexus between free media alongside an independent judiciary in fighting corruption (Transparency International, 2002). The media needs to be vigilant in digging out corrupt practices and be meticulous in disclosing the significance of bribery offences and related punishments. It is the author's opinion that all these can deter potential offenders alongside keeping the society informed of such illicit crimes and stimulate social movement in achieving the anti-corruption regime.

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CONFLICTS OF INTEREST:

The author declares he has no conflicts of interest.

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