

**Let the Sinless Cast the First Stone:
The Role of the Judiciary in Combating Corruption and its
Challenges**

By Gian Carlo E. Miranda

Acknowledgement

I would like to dedicate this to my parents, Joel and Noemi Miranda for their never-ending support in all of my endeavors.

To my sister Franceska, who has always been a source of joy to me.

To Janeca, for being there all the time and for bringing out the best in me.

To Prof. Mathias Moschel for being such an excellent head of the program,

To Prof. Cindy Wittke, my thesis adviser, for her insightful and helpful comments during the writing process.

To my university, the Central European University, for believing in me and giving me the opportunity to embark on an intellectual journey.

In all things I do, may God be glorified!

Contents

Abstract.....	3
Introduction	4
Chapter 1: The Legal Framework in Curbing Corruption	8
Constitutional Foundation	8
The Extent of Corruption	10
The Philippines	10
India	14
Corruption in America.....	17
Chapter II: THE LEGAL FRAMEWORK IN THE ANTI-CORRUPTION AGENDA.....	18
The Philippines.....	18
Anti- Corruption Laws in India	22
Chapter III: COURTS HANDLING CORRUPTION CASES	26
The Philippines.....	26
Efficiency of the <i>Sandiganbayan</i> or the Anti-Graft Court.....	33
Indian Courts Handling Corruption Cases	35
Disposal of Cases by the Special Court	38
The United States Handling Corruption.....	39
CHAPTER IV:THE CHALLENGES FACED BY THE JUDICIARY	42
Judicial Independence.....	42
Corruption within the Judiciary	46
Separation of Powers.....	48
Social Tolerance of Corruption	51
Trust and Confidence of the People	53
Reputation of India’s Judiciary.....	56
Recommendations	58
Conclusion.....	60
Bibliography	63

Abstract

The paper aims to discuss the role of the judiciary in combating corruption in the Philippines, India and the United States. It will engage in a three way approach. First, the paper will look at the gravity and extent of corruption which can be attributed to political structures and other sociological factors such as religion, history and culture. Second, it will discuss the effectiveness of the legal framework and the judiciary in rendering decisions in cases involving public officials. The paper will take the example of the Pork Barrel Controversy in the Philippines which allowed legislators to use millions of dollars without being subject to scrutiny. It will examine how the courts used legal technicalities to downplay corruption. It will also tackle the disproportionate case of the 2G scam and Jayalalithaa Jayaram as an example as to how Indian courts interpreted the law, and led to the flip-flopping of decisions. Third, it will analyze the various barriers and challenges that impede the judiciary in fully utilizing its power against graft and corruption. It becomes paradoxical when the institution which is deemed the last bastion of justice is also tainted with allegations of corruption and its independence had also been compromised.

Introduction

Corruption is defined by the United Nations Development Program as “the abuse of public power for private benefit through bribery, extortion, influence peddling, nepotism, fraud or embezzlement which not only undermines investment and economic growth but it also aggravates poverty.”¹ Another well-recognized definition by World Bank and the Transparency International is that, “corruption is the abuse of public power for private benefit or profit.”² Seemingly, there is no unifying and concrete definition of this political phenomenon, but various political philosophers have presented their definitions. The classical definition given by Joseph Nye, a political philosopher, is that corruption is a, “behavior that deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains.”³ Another new perspective shared by political theorists is that corruption is an “act that goes against the formal rules of conduct governing the actions of someone in a position of public authority because of private-regarding motives such as wealth, power, or status.”⁴ According to Samuel Huntington, “where political opportunities are scarce, corruption occurs as people use wealth to buy power, and where economic opportunities are few, corruption occurs when political power is used to pursue wealth.”⁵

¹Jon Quah. “Curbing Asian corruption: An impossible dream?” *Current History-New York Then Philadelphia*, 105 (2006):176

² Id.

³ Joseph Nye. “Corruption and political development”, *American Political Science Review*, vol. 61, no. 2, (1967)417-427

⁴ Mushtaq Khan. “A typology of corrupt transactions in developing countries.” *IDS Bulletin*, vol. 8, no. 5. (1996)

⁵ Samuel P. Huntington. “*Modernization and corruption*”, in *Political order in Changing Societies*. (New Haven, Connecticut: Yale University Press, 1996). (Republished in *Political Corruption . A Handbook . Heidenheimer et al.*, New Brunswick, 1989, Transaction Publishers. Chapter 23.

Corruption can also occur when the private and the public sector deal with each other and the resources are illegitimately converted to favor private interests.⁶ Corruption is a universal problem which varies in its extent and gravity in different countries. It can be committed through many forms and by all segments of the society. Although public officials are seen to be more prone to abusing their power for personal gain, the private sector and individuals cannot be disregarded as incapable of committing corrupt practices. It is an activity that encompasses multiple actors and institutions to perpetuate the grip on power. Then, corruption becomes a larger norm which forms a cycle that permeates the very culture of a society.

The judiciary plays a very crucial role in the process of combating corruption. In all the three branches of the government, the judiciary functions as the balancing force to ensure that the legislative and the executive branches are performing in compliance with the laws. The judiciary stands as the guardian and the last bastion of the rule of law. However, when the institution which is supposed to lead the fight against corruption is also tainted with corruption and its integrity is questioned, the whole political system becomes rotten and dysfunctional. His Lordship Dahiru Musdapher, Supreme Court Chief Justice of Nigeria once said in his speech:

“Corruption in the Justice sector is a keystone to corruption throughout society. Without an honest criminal justice system, the wealthy, especially the corrupt, can escape the consequences of their crimes. Such impunity reduces the perceived cost of corruption. The risk that corrupt activity will result in imprisonment and accompanying public humiliation is minimal. The gains from corruption are therefore not discounted and there is thus little reason beyond personal integrity not to engage in corrupt acts.”⁷

This paper aims to study the role of the judiciary in combating corruption by analyzing the decisions that were rendered by the courts of the Philippines and India. It shall be done in a three-

⁶ Arnold J. Heidenheimer, M. Johnston and V. T. LeVine. *“Political Corruption. A Handbook.”* (New Brunswick: Transaction Publishers, 1989)

⁷ The Role of the Judiciary in Combating Corruption in Nigeria citing His Lordship, Hon. Justice Dahiru Musdapher Keynote Speech at the SERAP Roundtable on 9th February 2012, available at <http://www.premiumtimesng.com/opinion/101606-the-role-of-the-judiciary-in-combating-corruption-in-nigeria-by-tayo-oyetibo-san.html> (last accessed on April 1, 2016).

way approach: firstly, it will examine the causes of corruption which can be attributed to the complexity of political structures, and other sociological factors such as history, culture and religion.

Secondly, it will study the effectiveness of the courts in ensuring that politicians who have been involved in corrupt activities have been held liable under the law. Moreover, it will probe into the case of the Philippines where legal technicalities have been used by the judiciary to downplay corruption and to legitimize certain government activities to make it fall within the bounds of law. It will begin with the jurisprudential background of the “Pork Barrel Controversy.”

Lastly, the paper will provide a deeper analysis on the challenges that impede the judiciary in fulfilling its role in the larger anti-corruption agenda. The judiciary, having the constitutional duty to ensure transparency and accountability in all governmental units, is hounded with controversies of partiality and corruption. In determining the legitimacy of the courts’ actions, the paper shall also look into the perception and confidence of the people in these institutions.

The paper will focus on three jurisdictions namely the Philippines, India and the United States. I have chosen the Philippines because it is considered to be one of the most corrupt countries in Asia and it exemplifies a complex dynamics of corruption. It will present a case of binary politicization by the administration and the opposition side of the government, which results in stronger anti-corruption actions and political decisions. The example of the impeachment of the Chief Justice Reynato Corona shall be used as an example of politicking which led to prosecution of politicians involved in corruption.

I have chosen India because of the well-entrenched corruption in the whole political system. This entrenchment is characterized by the systemic and institutionalized corruption that

thrives in almost all of its government agencies. I will take into account the major corruption controversies which had been decided by the Indian courts and will examine how the courts acted on these cases. The propensity of the courts to decide in favor of acquittal shall be also taken into account in the academic discourse.

Further, in relation to the third approach, the paper shall look into the challenges faced by the Indian courts with regard to the allegations of corruption and bribery. The comparison is insightful because the political situation of India is similar to what is happening in the Philippines, from the flip-flopping of the decisions to the inefficiency in prosecuting corrupt public officials.

The third jurisdiction which is the United States will be used as a benchmark in looking at effective anti-corruption strategies. However, the comparison shall be contextualized in the two other countries and determine whether strategies and actions by the United States courts will be applicable or effective.

Chapter 1: The Legal Framework in Curbing Corruption

Constitutional Foundation

According to Article 2, Section 27 of the 1987 Philippine Constitution, “The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.”⁸ It is the mandate of the Constitution that every branch of the government shall take part in the larger anti-corruption agenda.

There are constitutional roles and duties that needed to be fulfilled by every department, and the judiciary plays a pivotal task in this agenda through judicial review. The Philippine Constitution expressly vests the judiciary with the power of judicial review under Section 1, Article VIII. It provides that in addition to the power to settle actual controversies, the judiciary has the power “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.”⁹ The Supreme Court of the Philippines elucidated in the case of *Angara v. Electoral Commission*:

“The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed judicial supremacy which properly is the power of judicial review under the Constitution.”¹⁰

This power of review is very broad and includes cases of corruption in order to maintain the constitutional principle that “public office involves the public trust.”¹¹ Hence, “public officers and employees must at all times be accountable to the people, serve them with utmost

⁸ Article II, Section 27, 1987 Philippine Constitution.

⁹ Article VIII, Section 1, 1987 Philippine Constitution.

¹⁰ *Angara v. Electoral Commission*, G.R. No. L-45081, July 15 1936.

¹¹ Article XI, Section 1, 1987 Philippine Constitution.

responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.”¹²

There is no direct mention that the judiciary is also to prosecute cases even *against* the government in cases involving corruption. However, it goes without saying that as the policy of the state, it must be implemented in the national level, and that includes the judicial system. But is the absence of the provision laying down the foundation of the judiciary’s constitutional role in the anti-corruption agenda problematic? I do not think so.

In India, there has been no specific mention on the mandate of the government to ensure accountability and transparency. The word “corrupt” has been mentioned only once in the Constitution, relating to the disqualification of a member of the legislature when it is involved with illegal and corrupt practices.¹³ In the same way, the United States Constitution has no specific provision on the role of the government to ensure that corruption shall be dealt with in the states and in the federal government. Thus, it shows that the lack of provision on the exact wording about the policy of the national government enshrined in the Constitution to fight corruption does not necessarily equate to its ineffectiveness to hold public officials accountable. It is incumbent upon a government to protect itself from acts that deviate from the normally accepted legal procedures. When public officials take the rules into their own hands, grave abuse of discretion becomes prevalent in the political system, thereby rendering the rule of law inutile.

¹² Article XI, Section 1, 1987 Philippine Constitution.

¹³ Art. 326, The Indian Constitution.

The Extent of Corruption

The Philippines

According to the 2015 Corruption Perception Index conducted by Transparency International,¹⁴ the Philippines is ranked 95th and considered as one of the highly corrupt countries. This is a reflection not only of the problem in the government and political institutions, but rather on the embedded values in a society that have been harbored through time. The historical roots of corruption can be traced back to the Spanish colonial era, when the Spaniards unequally distributed the resources to the Filipino.¹⁵ They distributed lands to Filipinos in exchange for loyalty to the Spanish crown.¹⁶ When the Americans arrived, the social demarcation which favored the elites continued.¹⁷ The growing disparity between the rich and the poor was already evident at that time, and the Americans contributed to this social crisis when they supported the country's elites who ended up holding the key positions in the government. After the colonial period, the dictatorship of former President Ferdinand Marcos was considerably notorious in wide scale corruption and cronyism.¹⁸ When Marcos was ousted from power, and Corazon Aquino was installed after the people power revolution, hopes were high that a genuine change was about to begin. To the people's dismay, local elites resurfaced and took hold of their properties again just like in the olden days.¹⁹

Corruption has been viewed as a "cultural and psychological phenomena in a country marked by incompatible legal and cultural norms."²⁰ The Filipino culture is known for its gift-giving traditions and the notion that every favor necessitates a token of appreciation or some form

¹⁴ Corruption Perceptions Index. available at <http://www.transparency.org/cpi2015> (last accessed April 25, 2016).

¹⁵ Peter Krinks, *The Economy of the Philippines: Elites, Inequalities and Economic Restructuring* (2006).

¹⁶ Edna Co, Challenges to the Philippine Culture of Corruption, in *Corruption and Development*

¹⁷ Joaquin Bernas S.J., *The 1987 Constitution of the Philippines: A Commentary* (2009).

¹⁸ Supra note 15

¹⁹ Jeffrey Winters, *Oligarchy*. Cambridge University Press. (2011)

²⁰ Prosperina Tapales, *Different Faces of Filipino Administrative Culture*. UP NCPAG (1995).

of reciprocation. This is part of the typical socialization of individuals with their families, relatives and neighbors. The principle of “*utang na loob*” or “debt of gratitude” means that any kind of help you receive from someone will never be forgotten.²¹ In fact, even if the public officials are simply doing their functions and rendering services to the people, these acts would be perceived as an act of kindness rather than a compliance of public duty. Certainly, these are some of the reasons why corruption thrived, and continues to thrive, very well in the Philippine society.

In the Philippines where corruption is systemic, people normally tolerate corrupt practices and consider such as part of the daily course of business.²² It is very usual and commonplace to be confronted with illegal fees and demands for bribes in everyday situations. The practices have become so prevalent that people are willing to pay the price just to get the service they need, be it within an administrative concern or a dismissal of a case in the courts. On the perspective of the civil servant, it is a common conception that working for the government gives you a better leverage to earn more money. Salaries of public officials are low and incentive mechanisms for better performance are not in place. Hence, government institutions create a conducive environment to commit corrupt acts and illegal activities.

In 2000, the Philippines was in the headlines of international news due to the ouster of former President Joseph Estrada (hereinafter “Estrada”) in a bloodless “people’s revolution”.²³ Hundreds of thousands of people rallied in the streets and called for his resignation after allegations of plunder. He was also criticized for his lavish lifestyle and gambling, and used a fake name in his million dollar account. During the presidency of Estrada, Ombudsman Aniano Desierto

²¹ The Cultural Foundation of Corruption, *available at* <http://www.mb.com.ph/the-cultural-foundation-of-philippine-corruption/> (last Accessed April 16, 2016.)

²² Combating Corruption in the Philippines: An Update, *available at* <http://www1.worldbank.org/publicsector/anticorrupt/FlagshipCourse2003/PhiliCombatCorruptUpdate.pdf> (last accessed April 15, 2016).

²³ Estrada v. Desierto, GR Nos. 146710-15, March 2, 2001

reported that at least 100 million pesos were lost on a daily basis since 1988 and around 1.4 trillion pesos have been lost due to corrupt practices of public officials.²⁴ The World Bank estimated that around 3.8 percent of the GNP was also lost to graft and corrupt practices during the peak of the corruption scandals.²⁵

Due to the political instability and the massive clamor of the people for his resignation, a complaint from the lower house of the Congress was filed to initiate the impeachment process. Investigations were made in the Senate, but even before the sessions were concluded, former President Estrada decided to step down. Afterwards, the Supreme Court convicted him for violation of the Anti-Plunder Law and sentenced him to jail. But five years after, he was pardoned by then President Gloria Arroyo. Estrada regained his political rights and this enabled him to run again for Presidency. Although there is a provision in the Constitution on the prohibition of the re-election of a President,²⁶ the issue whether a President whose term was not finished could run again for the same office is legally untested. In 2010, he decided to run for President where he landed in second place after Benigno Aquino Jr.²⁷ This scenario goes to show that the Filipino people have almost forgotten Estrada's misdeeds in the past, and he even won the mayoralty election in Manila in 2013. In 2016, he was already running for his second term as the Mayor of Manila.

Large scale corruption in the national government had continuously become more exposed. In 2015, the Vice President of the Philippines Jejomar Binay was involved in an overspending scheme regarding the acquisition of a city hall building worth millions of dollars. Immediately

²⁴ Peter La. Julian, "P100M lost to graft every day—Desierto", Philippine Daily Inquirer, 10 July 1999.

²⁵ Amando Doronila, "WB report targets Erap administration", Philippine Daily Inquirer, 8 November, 1999.

²⁶ Article VII, Section 4, 1987 Philippine Constitution

²⁷ Kimberly Jane Tan, COMELEC allows Erap to run for president in May 10 polls *available at* <http://www.gmanetwork.com/news/story/182015/news/nation/comelec-allows-erap-to-run-for-president-in-may-10-polls>. (Last accessed at April 15, 2016).

after, there was an investigation on the Vice-President's assets and how their family had accumulated massive wealth considering the meager salary of a public official. This led to a scrutiny of their lifestyle and the dismissal of his son as a mayor of Makati, the city where the central business district is located. A case was filed against the Vice President's son who was the mayor of that city, and the legal battle reached the Ombudsman and *Sandiganbayan*.²⁸ The courts ruled that he was guilty for violating the Anti-Graft and Corrupt Practices act due to his failure to comply with the bidding standards and the acquisition of overpriced construction materials.²⁹

The Aquino administration (2010-2016) wanted to keep its election promise of "*Tuwid na Daan*" which literally means "straight path."³⁰ President Aquino was clearly conscious about being true to his words when he ran for the Presidency. However, it seemed that the fight against corruption is only a fight against the opposition. From 2010 to 2016, public officials who were prosecuted came from other political parties and not from the Liberal Party, which is the bailiwick of President Aquino. Doubts and speculations have marred the reputation of the Aquino administration, and the political moves were calculated to overthrow almost anyone who opposed them. The government lost the trust of its people, and this loss of trust was manifested through the campaign for the 2016 elections where the presidential candidate of the Liberal Party did not gain popular support. It was a political backlash due in part to the incompetence and the ineffectiveness of the Aquino government and its selective administration of justice.

One of the reasons for the frustration of the people was the failure of the Aquino government to completely resolve corruption. Although some officials were jailed, the "big fish"

²⁸ Elizabeth Marcelo, Graft raps filed vs. Junjun Binay, *available at* <http://www.gmanetwork.com/news/story/555904/news/nation/graft-raps-filed-vs-junjun-binay-other-makati-officials-before-sandiganbayan> (last accessed March 20, 2016).

²⁹ *Id.*

³⁰ The *Tuwid na Daan* Myth, *available at* <http://www.manilatimes.net/the-tuwid-na-daan-myth-2/200725/> last accessed April 3, 2016.

remained scot free. Undeniably, there is a culture of dualism prevalent in Philippine society, where junior officials are always held accountable while high ranking officials are considered to be above the law.³¹

India

Due to the large territory and diverse population of India, the country has become ungovernable.³² India is the 7th largest country with one of fastest growing populations in the world. The structure of India's government is complex with the four layers of administration: "central, state, local and district levels, all of which provide a conducive environment for corruption."³³ When the British came to India, they formulated rules to maintain control over the key actors in the decision making process.³⁴ This structure only caused further confusion and chaos.

The attitude of Indians towards corruption can also be traced back to its roots in Hinduism. According to Krishna Tummala, "the Hindu system of life, as being not only absorbing but also forgiving in itself appears to be a hurdle' in combating corruption as 'a corrupt official can always count on the benevolence of a superior authority'".³⁵ Another Indian scholar N. Vittal concurred to this theory, saying that the "social roots of corruption' in India to Hinduism's 'eternal message of tolerance, the sense of forgiveness, the hope held for sinners to come to the right path [which] probably have also led to the tolerance of a sin like corruption.'³⁶

³¹Amelia P.Varela, "The Culture Perspective in Organization Theory: Relevance to Philippine Public Administration" in *Introduction to Public Administration in the Philippines: a Reader*, Bautista, Victoria, Alfiler, Ma. Concepcion, Reyes, Danilo and Tapales, Proserpina (eds) 2nd edition, UP-NCPAG, Philippines (2003)

³² Supra note 1.

³³ Id.

³⁴ Id.

³⁵ Krishna Tummala, Political Corruption in India: Coalition Dharma?!? Available at <http://journals.sfu.ca/ipmr/index.php/ipmr/article/viewFile/82/82> (last accessed April 27, 2016).

³⁶ Shri N Vittal, *Corruption in India: The Roadblock to National Prosperity*, New Delhi: Academic Foundation, (2003).

One of the major challenges to India's public administration is the lack of political will.³⁷ Political will refers to the overall efficacy of the people from various sectors to systematically end corruption. It is an essential component of the anti-corruption agenda. The government must be dedicated in pooling its resources to effectively implement anti-corruption policies, and that the justice system must be fully functional in compliance with its mandate.³⁸

Corruption in India is pervasive, where nearly half of the economy of the country is dependent on the informal sector, and the so-called shadow economies are part of the usual day-to-day business of a typical Indian. The scale of corruption has grown tremendously from simple bribery of the police up to the prosecution of cases in the courts. US \$30 billion were lost to government coffers in coal scams, US \$25 billion were forfeited in underpriced telecom auctions, and US \$10 billion of smuggled conflict diamonds mark some of the bigger scandals that have splashed across newspapers and TV channels.³⁹

In spite of the large-scale corruption cases, public officials have remained in office and prosecution had not progressed effectively. The delays in the investigations and prosecutions by the courts have certainly increased opportunities for further corruption.⁴⁰ According to a report made by Transparency International India in 2007, these were the pending cases before the courts: 33,635 in the Supreme Court; 3,341,040 in the high courts; and 25,306,458 cases in the courts.⁴¹ Hence, even if the structure of the government of India is decentralized and multi-layered, the problem of court congestion is still looming and has remained unresolved.

³⁷ S.J. Kpundeh, "Political Will in Fighting Corruption" in *Corruption and Integrity Improvement Initiatives in Developing Countries*, Edited by: Kpundeh, S.J. and Hors, I. 91–110. New York: United Nations Development Programme. (1998).

³⁸ Supra note 1.

³⁹ Scott Carney, *The Red Market* (New York: William Morrow, 2011).

⁴⁰ Leslie Palmier, *The Control of Bureaucratic Corruption: Case Studies in Asia*, New Delhi: Allied Publishers, (1985).

⁴¹ Transparency International India 2007. 'Indolence in India's Judiciary', in *Global Corruption Report 2007*. Cambridge: Transparency International and Cambridge University Press, pp. 214 – 217.

According to the records in 2013, 120 of India's 523 members of the Parliament were facing criminal charges and this reflects the ineffectiveness of the institutions to ensure that the rule of law is obeyed.⁴² The Former Indian Central Bureau of Investigation (CBI) head, C.V. Narasimhan, decried his own impotence, noting: "Not a single CBI case involving ministers has ended in a firm conviction in the court 2013 during the last 40 years."⁴³

In the analysis of P.C. Alexander on the Indian Civil Service, he noted that the major cause of corruption is the notion that public officials can always get away with the punishment prescribed by the law.⁴⁴ He further argued that the constitution has given the officials sufficient protection from illegal inquiry and harassment, and that they are given reasonable time to defend themselves in a court or a tribunal.⁴⁵ However, he strongly stressed that when these procedures are used as part of some public officials' dilatory tactics, the rules become the loophole to circumvent the process.⁴⁶

On that account, the culture of corruption sprawls to every sector of the Indian government as it is not only limited to elected officials but also to other civil servants who receive bribes.⁴⁷ The bribes they are offered are more than the actual salary they receive, which in effect disincentivizes those who are complying with the standards and code of conduct. Thus, the system is very hard to dismantle and even the newer, more idealistic bureaucrats are forced to be part of

⁴² Venkat Chandrasekaran, "Corruption in India and Mechanism to Control: A Study," *Radix International Journal of Research in Social Science* 1 no. 12 (2012):1–10. Real-time tracking suggests that this figure has increased to 128, some twenty five percent of Indian legislators. *available at* <http://www.mibazaar.com/indianpolitics.html> (last accessed on December 1, 2015.)

⁴³ Jon ST Quah, "Curbing Corruption in India: An Impossible Dream?" *Asian Journal of Political Science* 16 no. 3 (2008): 240–259.

⁴⁴ Alexander, P.C. 1995. *The Perils of Democracy*, Bombay: Somaiya Publications.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Jason Miklian and Scott Carney, *Corruption, Justice and Violence in Democratic India*, *SAIS Review* vol. XXXIII no. 1 (Winter–Spring 2013).

this money-making scheme. The rare cases of convictions in India are hollow victories as they cannot fully resolve this deep rooted socio-political illness.

Corruption in America

Much like cancer, which affects both rich and poor alike, corruption is a political phenomenon that does not only thrive in poor countries but can also be prevalent in richer, more developed countries. During the early 70s, there was a massive campaign of anti-corruption led by civil society organizations and state prosecutors in the United States. These measures were institutionalized by city councils and state legislatures.⁴⁸

In 1986, lawyers in the United States submitted a report to the Department of Justice about their indictment of public officials that were appointed and elected.⁴⁹ In Boston, a group of lawyers led the prosecution of Mayor Kevin White and city officials who were involved in discrepancies involving building permits.⁵⁰ Also, another close ally of Mayor White was indicted for political extortion under the Hobbes Act. On that same year, lawyers in New York filed cases against public officials in Queens and Bronx.⁵¹ These campaigns led by attorneys were aggressive in Chicago, Philadelphia, Washington and other cities, and cases were filed against state officials including governors and legislators in Louisiana, California and New Mexico.⁵² It was the golden age of the anti-corruption movement for lawyers in the United States.

⁴⁸ Edward L. Glaeser, Raven E Saks, Corruption in America. Journal of Public Economics October 2005. Available at http://projects.iq.harvard.edu/files/gov2126/files/glaesersaks_2006.pdf (last accessed April 2, 2016).

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

Chapter II: THE LEGAL FRAMEWORK IN THE ANTI-CORRUPTION AGENDA

The Philippines

There are various safeguards established in law and jurisprudence in curbing corruption in the Philippines. In Title Seven of the Revised Penal Code,⁵³ there is a particular category for crimes committed by public officers. In Article 203, the Code defined a public officer as, “any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer.”⁵⁴

In Chapter Two of the same Title of the Code, it mentions the misfeasance and malfeasance of duties committed by judges and prosecutors.⁵⁵ It can be inferred from the articles that because judges can exercise their discretion arbitrarily, such can lead to unjust repercussions. In these acts, there is a presumption of corruption, for instance in knowingly rendering unjust judgment, a judge cannot simply decide without justifications.⁵⁶ Any act of the judge that maliciously delays the administration of justice shall also be criminally sanctioned.⁵⁷

Furthermore, the Revised Penal Code also mentions bribery, which is committed “when any public officer who shall agree to perform an act constituting a crime, in connection with the

⁵³ Act 3815, The Revised Penal Code of the Philippines Title Seven.

⁵⁴ Id. at Art. 203.

⁵⁵ Id.

⁵⁶ Article 204, Revised Penal Code

⁵⁷ Section 2, Article 210, Revised Penal Code

performance of this official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another.”⁵⁸ Also, the law penalizes indirect bribery, which is committed “if the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act.”⁵⁹ This crime is especially prevalent in courts, where every favorable decision comes with a price.

Republic Act 3019 or the Anti-Graft and Corrupt Practices Act (hereinafter, the “Anti-Graft Law”) reiterates that “a public office is a public trust.” It is a constitutional mandate to repress acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.⁶⁰ Section 3 of the act gives an enumeration of punishable acts that constitutes corruption. It includes the receiving of any form of gifts from private individuals to influencing public officers to perform acts that will be a violation of the law and those which will cause undue injury to the government.⁶¹

With the Revised Penal Code and the Anti-Graft Corrupt Practices Act, two cases can be filed simultaneously against an erring public official. This is due to the fact that the second law is a special one, which makes the official liable for two crimes and subject to two sentences, but imprisonment under both may only be limited to 30 years.⁶² In the application of these laws to the Philippines, crime of bribery under the Revised Penal Code is mostly used against police officers, while the Anti-Graft Law is used as basis for crimes committed by local executives.

⁵⁸ Supra note 53, Art 210

⁵⁹ Supra note 53, Art. 211

⁶⁰ Republic Act 3019, Anti- Graft and Corrupt Practices Act of the Philippines.

⁶¹ *Id.* at Section 3.

⁶² Article XI, Section 1 of the 1987 Philippine Constitution.

The Ombudsman Act of 1989 empowers the office of the Ombudsman and its deputies to prosecute cases and file complaints against erring public officials, thus, all acts which are not in accordance with their legal mandate can be deemed as violation of this act, and it is broad enough to cover all corrupt practices.⁶³ Section 8 of the Act provides a regulatory mechanism for public officials amassing wealth during their incumbency. The current net worth of the public official as stated in his statement of assets and liabilities will be investigated to check if it is commensurate to the salary actually received. In addition to that, the relatives and members of the family are also subject to scrutiny and are also duty bound to disclose their sources of income, and failure to comply can result in criminal charges.

Although the laws are crystal clear and ideal in terms of ensuring accountability in the government, all of these have remained powerless due to lack of proper enforcement. For instance, a case that has reached the Ombudsman will be decided; however, the Ombudsman does not have the power to enforce its decisions like the courts do. In fact, the Ombudsman is not a court and only functions as the prosecutorial arm of the government. After probable cause has been found, the case will then be transferred to the *Sandiganbayan*, the Anti-Graft Court. Apparently, the Ombudsman in the Philippines has more powers compared to its counterparts in different parts of the world where the office of the Ombudsman is only an advice giving body; if such advisory is not followed then the actions of the Ombudsman are deemed worthless. However, the Ombudsman is in charge of the determination of a probable cause, upon finding of such, it will refer the case to the *Sandiganbayan*. Then, the court will hear the case based on the merits presented by the two parties.

⁶³ Republic Act No. 6770, Ombudsman Act of 1989.

Anti-Graft Court

As early as 1978, a Presidential Decree was already issued establishing an anti-graft and corruption court called *Sandiganbayan*, which means “people’s advocate.”⁶⁴ Its mission was to give life to the mandate of the Constitution that public office is a public trust and thus, public officials are at all times accountable to their oath to serve the people with integrity.⁶⁵ The *Sandiganbayan* has jurisdiction to try criminal and civil cases involving high profile public officials and private individuals.⁶⁶ Despite this measure, corruption is not fully addressed and few officials have been prosecuted and jailed for their corrupt practices. The decisions of this court are appealable to the Supreme Court and some convictions have been overruled in the past. If the defendant is unsatisfied with the ruling of the Supreme Court, he can still file a motion for reconsideration and have the case decided *en banc*. This is a long and laborious process, and usually takes more than ten years to finish.

However, the *Sandiganbayan* court has also been tainted with allegations of corruption. This occurred when a judge named Gregory Ong was dismissed by the Supreme Court for his violation of the Code of Professional Responsibility for judges. The Supreme Court found gross misconduct and impropriety when it was found out that he was connected in the pork barrel fund anomaly.⁶⁷ This decision of the Supreme Court had serious repercussions on the legitimacy of this court to handle corruption cases. If one judge has been dismissed because of bribery, where and what is the assurance that the other judges are not corrupt as well? When the graft court itself is

⁶⁴Daniel Wagner & Edsel Tupaz. Monkey Business as Usual in the Philippines, available at http://www.huffingtonpost.com/daniel-wagner/monkey-business-as-usual_b_1967520.html (last accessed April 2, 2016).

⁶⁵ Republic Act 7975, An Act to Strengthen the Structural and Functional Organization of the Sandiganbayan

⁶⁶ Id.

⁶⁷ Mark D. Meruenas, Profile: Who is Sandiganbayan Justice Gregory Ong? Available at <http://www.gmanetwork.com/news/story/380756/news/nation/profile-who-is-sandiganbayan-justice-gregory-ong> (last accessed April 2, 2016).

being put to the spotlight for allegations that its members have committed corruption, another agency must be existent in order to monitor the situation.

Whenever a judge decide a case, the political aspect cannot be relegated. For instance, it is apparent that President Benigno Aquino was part of the opposition to the former President Arroyo. Aquino had appointed most of the judges that comprise the current lineup of the Supreme Court Justices. Thus, political revenge is manifested through the appointed judges. There may be merits to the case against Justice Gregory Ong who is known to be a close ally of Arroyo, but the politics involved in the whole process cannot be relegated.⁶⁸

Anti- Corruption Laws in India

In India, the laws relating to corruption are exhaustive and are similar to the Philippines. However, the success of addressing corruption remains bleak and would still require a laborious process. In the Indian Penal Code of 1860,⁶⁹ a public servant is defined as “a government employee, officers in the military, navy or air force; police, judges, officers of Court of Justice, and any local authority established by a central or state Act.”⁷⁰

Another important piece of legislation is the Prevention of Corruption Act of 1988⁷¹ where it expanded the definition of public servants to include office bearer of cooperative societies receiving financial aid from the government.⁷² The Act also penalizes “a public servant for taking gratification to influence the public by illegal means and for exercising his personal influence with a public servant.”⁷³

⁶⁸ Id.

⁶⁹ Indian Penal Code Chapter II, Section 21

⁷⁰ Id.

⁷¹ Prevention of Corruption Act 1988 of India

⁷² Id.

⁷³ Prevention of Corruption Act 1988 of India, Chapter III, Section 7

The Prevention of Money Laundering Act of 2002⁷⁴ was an important step for Indian government to control funds. The law provides that laundering of money can be committed by a person when he or she is related to any activity connected to the proceeds of an illegal activity.⁷⁵ The law also elucidated that the “proceeds of crime” can be money or any property which are connected to a criminal activity that were specified in the Act.⁷⁶

In the process of investigation of corruption cases, there are three crucial institutions that play a major role in India’s anti-corruption policy. These are the CVC or the Central Vigilance Commission, the CBI or the Central Bureau of Investigation and the ACB which is the Anti-Corruption Bureau. Matters involving the laundering of money committed by public officials shall be prosecuted by the Directorate of Enforcement and the Financial Intelligence Unit.⁷⁷ The CBI is in charge of the prosecution on a national level while the ACB has jurisdiction over the cases filed in the states.⁷⁸ However, the ACB is not precluded to elevate the cases to the CIB.

Further, the CVC is over-all in charge of various departments in the government and the CBI is under its jurisdiction. It can transfer the cases to CVO or to the CBI for another investigation. It must be noted that prosecution can only begin when it is authorized by the central or state government, and it has been established that there could be a possible violation of the Prevention of Corruption Act. Thereafter, special judges shall be called upon to review the matter.⁷⁹

United States Laws

⁷⁴ Prevention of Money Laundering Act of 2002, India.

⁷⁵ Id. at Sec 2(1) u.

⁷⁶ Id.

⁷⁷ Corruption Laws in India, PRS Legislative Research *available at* http://www.prsindia.org/administrator/uploads/general/1302844978_PRS%20Note%20on%20corruption%20laws.pdf, last accessed December 1, 2015.

⁷⁸ Id.

⁷⁹ Id.

In the United States, the crimes of corruption have not been fully defined in the statutes. However, there are various laws that have been made applicable to crimes relating to graft and corruption. For example, the Hobbs Act penalizes any acts that obstruct, delay or affect commerce by robbery or extortion.⁸⁰ Although there had been no specific mention in the law that governs various matters in corruption, court decisions have interpreted this law as to include acts of corruption. In the case of *United States v. Evans*,⁸¹ the Court ruled that the Hobbes Act shall include bribery. It was thoroughly explained in the case that it must be proved that a public official has accepted payment which does not relate specifically with his public function. Another important legislation is the Racketeer Influenced and Corrupt Organizations Act of 1970 (hereinafter, “RICO”), it was specifically designed to eradicate syndicated crime by instituting various penal mechanisms that shall address unlawful activities.⁸²

For a successful prosecution of a case under the RICO, numerous elements shall be established: a public official must be have committed offenses which can be punishable by other laws, and a pattern of racketeering must be apparent.⁸³ There must be at least two acts of racketeering which both constitute a criminal conduct. In the case of *H.J. Inc. v. Northwestern Bell Tel. Co.*,⁸⁴ the Court reiterated that criminal conduct “forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.”⁸⁵

⁸⁰ Hobbs Act, 18 U.S.C. § 1951

⁸¹ *United States v. Evans* 504 US 255 (1992).

⁸² *United States v. Turkette*, 452 U.S. 576, 589 [1981]

⁸³ Michael J. Hutter. Prosecuting Public Officials/Figures for Corruption : The Approach in the United States. *available at* http://www.humaneprosecutions.org/hutter_prosecuting_public_officials_for_corruption.pdf (last accessed March 31, 2016).

⁸⁴ *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239-240 [1989]

⁸⁵ *Id.*

It can be observed that the Philippines and India have well established legal framework against corruption. The laws enacted by the United States were not directly targeted to the issue of corruption. However, the United States system does not prevent the member states to come up with their own legislation, even if there is no particular federal mandate.

Chapter III: COURTS HANDLING CORRUPTION CASES

The Philippines

In the 1970s, the Philippines was at the height of corruption, where former dictator President Ferdinand Marcos had control over all the wealth and resources of the country. He had the final say as to how government agencies and corporations shall operate and how much he would get from all the transactions. In a case involving Philippine Export and Foreign Guarantee Loan Corporation,⁸⁶ former government officials during the time President Ferdinand Marcos were charged the violation of Article 3 of the Anti-Graft and Corrupt Practices Act, which prohibits the persuasion of a public officer to do an illegal act. Vicente Chuidan, a former crony of Marcos, facilitated the procurement of loans in favor a company that was owned by the former. Marcos and his cronies colluded to gain access to the money by making it appear as a legitimate transaction. The case was brought to the courts but later on dismissed in 1998.⁸⁷ Even the case involving the Philippine Estates Authority⁸⁸ which involved the overpriced construction of a boulevard in Manila is still pending since 2003. Almost all of the cases involving corruption that were brought to the courts were dismissed or are still pending. Hence, this reflects the lack of the political will of the Philippine courts to ensure that all those who violated the law should have been sent to jail. After three decades, the Philippine judiciary is still being questioned for its efficiency and impartiality

The distribution of the *pork barrel funds* began as a practice in the 1920s when the Philippines was still under the tutelage of America. During the 50s, the power of the legislature

⁸⁶ Chuidan v. Sandiganbayan, GR No. 156383, January 19, 2001.

⁸⁷ Reynaldo Santos Jr. Anti-Graft Court's Top 10 cases involve billions of pesos. *available at* <http://www.rappler.com/newsbreak/51-fast-facts/62401-anti-graft-court-top-10-cases-billions-pesos> (last accessed March 21, 2016).

⁸⁸ Chavez v. Public Estates Authority. G.R. No. 133250, July 9, 2002.

was broadened from merely project allocation and fund release to project identification. The authority was transferred from the Secretary of Commerce to the legislators and this change gave the latter the unbridled discretion to use public funds.⁸⁹ In 1972, former President Ferdinand Marcos declared martial law and the operation of the pork barrel was temporarily suspended. However, the authoritarian President institutionalized this lump sum fund under the guise of the “Support for Local Development Projects”⁹⁰ and released the fund to handpicked legislators who were his cronies and hardcore political allies.⁹¹ After the Martial Law period, the EDSA People Power Revolution took place and the *pork barrel funds* were revived in the form of the “Visayan and Mindanao Development Fund.”⁹² The Senators at the time requested for bigger funding in the amount of 2.3 billion pesos for the purpose of small local infrastructure and community projects, and the name was eventually changed to “Countrywide Development Fund.”⁹³ During the time of President Joseph Estrada, it was formally changed to “Priority Wide Development Assistance Fund,”⁹⁴ but its nature remained the same. Corruption through the *pork barrel funds* have become an open secret in the Philippines so much so that such spending activity is not subject to audit, and local government officials are given wide discretion to use it without fear of being scrutinized by the courts.

In the case of *Philippine Constitution Association v. Enriquez*, the pork barrel controversy started when the petitioners in this case challenged the constitutionality of the Appropriations Act

⁸⁹ Belgica v. Executive Secretary citing Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. available at <http://verafiles.org/pork-by-any-name/> (last accessed April 2, 2016).

⁹⁰ Ruben Magan Gumala. Evolution of the Pork Barrel System in the Philippines. available at <http://www.up.edu.ph/evolution-of-the-pork-barrel-system-in-the-philippines/> (last accessed April 2, 2016).

⁹¹ Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,' available at http://www.congress.gov.ph/download/14th/pork_barrel.pdf (last accessed April 1, 2016).

⁹² Sheila Coronel (ed), et al, *Pork and Other Perks: Corruption and Governance in the Philippines*, (Quezon City: Philippine Center for Investigative Journalism, 1998)

⁹³ Id.

⁹⁴ Supra note 91

of 1994.⁹⁵ This involved the countrywide development fund where local legislators have control over allocated funds and are free to utilize it based on their own development plans. The Supreme Court upheld this practice as constitutional and even lauded the Congress for this ingenious way of utilizing the funds because the Congressmen had more control of fund distribution to different sectors. Interestingly, the Supreme Court said that it was imaginative and innovative because the local legislators are more aware of the needs of their constituents. Hence, it would only be proper for them to be the custodian of the funds. In this case, the Supreme Court was in favor of the decision primarily because of decentralization, given the nature of the Philippine government where all important decisions come from the capital Manila. The Supreme Court likely ruled this way because the scheme was a more effective form of governance given that the legislators are directly involved in the distribution of goods and services. Essentially, the legislators perform executive functions which were deemed to be more effective because they can relate more to the needs of their constituencies.

The *pork barrel fund* or the Priority Development Assistance Fund (hereinafter, “PDAF”) was a recurring controversy in Philippine jurisprudence. In 2013, the Supreme Court of the Philippines decided the case of *Belgica v. Executive Secretary*, which involved legislators’ misappropriation of public funds by funneling such funds to fake non-government organizations.⁹⁶ There were records that some Congressmen invested the funds in building public schools, hospitals, houses and other projects for the poor by collaborating with numerous nongovernment organizations. In the height of controversy, Janet Napoles, (hereinafter “Napoles”) a private individual, who was known for her a lavish lifestyle, had been affiliated with several members of

⁹⁵ Philippine Constitution Association v. Enriquez, G.R. No. 113105. August 19, 1994.

⁹⁶ Supra note 89

the Congress. It was discovered that Napoles put up many organizations which served as the beneficiaries of the PDAF, but in reality, these charity organizations were bogus. Essentially, the members of the Congress made their allocation of public funds appear legitimate when in reality, they had actually colluded with Napoles.

In the Supreme Court decision, the practice was struck down as unconstitutional, but the Court did not strongly rule against it and the issue of corruption and public official's liability were not exhaustively explained. The Court mainly dwelled on the violation of separation of powers and local autonomy. Certainly, issues on separation of powers and local autonomy may have repercussions or effects that can lead to corruption. However, such dimension of the problem had not been explored by the Courts. Arguably, the Supreme Court may not want to meddle with the issues of corruption as a matter of public administration, and simply restrict itself to mere questions of legality.

The decision in *Belgica* raises two looming concerns with regard to the judiciary's fight against corruption. First, whether the courts are truly loyal to its Constitutional mandate that "public office is public trust"⁹⁷ and its duty to address corruption. It is vital in this academic discourse to understand their effectiveness and speediness in handling corruption cases, including the lower courts, special courts and the Supreme Court. In this case, the Supreme Court took almost twenty years to rectify its own error when it allowed in *Philconsa* the release of *pork barrel funds*. In its decision, the fund was challenged on the basis of the violation of separation of powers. The corruption component was discussed briefly by the Supreme Court only when it touched upon the issue of accountability. The Supreme Court elucidated that this pork barrel mechanism renders the Congress incapable of monitoring its members. According to the petitioners, the Pork Barrel of

⁹⁷ Article XI, Sec 1, 1987 Philippine Constitution

the PDAF "gives each legislator a direct, financial interest in the smooth, speedy passing of the yearly budget" which turns them "from fiscalizers" into "financially-interested partners."⁹⁸ The Supreme Court agreed in this reasoning. The Supreme Court opined that the budget can be monitored through congressional oversight. In the case of *ABAKADA v. Purisima*,

“Congressional oversight may be performed either through: (a) scrutiny based primarily on Congress’ power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation;⁹⁹ or (b) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.”¹⁰⁰

However, it becomes problematic when the Congress through its post-enactment authority can help the legislator channel the funds to activities that will directly benefit him. In the case of the Philippines, these funds have been used to finance electoral expenditures. This loophole has been used by numerous legislator who have been part of political clans in the provinces of the Philippines. Interestingly, the PDAF’s propensity to encourage more political dynasties was touched upon by the Supreme Court in its ruling of *Belgica*. Section 26, Article II of the Philippine Constitution reads, “The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.”¹⁰¹ However, the Court may have again relied on a legal matter that cannot be addressed with a concrete solution because this provision is not self-executory and still requires further legislation. In the current state of political affairs, it is impossible to pass such a law considering most of the members of the Congress come from political clans.

⁹⁸ Supra note 89

⁹⁹ *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008

¹⁰⁰ Id.

¹⁰¹ Section 26, Article II 1987 Philippine Constitution

One of the issues raised in *Belgica* was the violation of local autonomy. The Philippine Constitution provides that, “The State shall ensure the autonomy of local governments.”¹⁰² Moreover, the Local Government Code also enunciates that,

“The policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.”¹⁰³

Whenever the PDAF was dealt with, the legislators had to interfere with the authority of the local governments in the delivery of government projects. The Supreme Court ruled that the legislators would in effect substitute their judgment for the local governments in terms of local affairs, thus, violating the local governments’ autonomy. More importantly, there were already existing government offices such as local development councils that could take care of the pork barrel funds, and the need for the legislators to step in to the process would be superfluous.

The second concern with regard to the judiciary’s fight against corruption is that although the government of the Philippines has well-entrenched laws on corruption which are extensive and comprehensive enough to cover almost all illegal acts, the turnout rate of conviction is still very low. Cases brought to the lower courts are processed normally for a period of ten years. Sometimes, these cases are dismissed primarily because of the failure of the prosecution to present evidence and the long delay of proceedings which in effect violates the right of the defendant to a speedy disposition of his case. The notion that corrupt politicians can never go to jail nor be made liable is deeply embedded in the Filipino psyche. Mostly, cases filed against politicians are unsuccessful

¹⁰² Section 25, Article II 1987 Philippine Constitution

¹⁰³ Local Government Code, Republic Act No. 7160, Sec. 2

because of technical lapses and procedural violations. Hence, ensuring the enforcement of the laws will require institutional cooperation that is tantamount to a system cleanup or overhaul.

In 2001, the plunder case was filed against former President Estrada involved the highest amount of money that was handled by the Anti-Graft Court. The alleged misappropriation of money amounted to US \$94 million. The former President used dummy accounts under the name of Jose Velarde to conceal the accumulated wealth.¹⁰⁴ It turned out that the name Jose Velarde was a non-existent account holder. Estrada was convicted, but he was subsequently pardoned.¹⁰⁵ According to the reports of the Anti-Graft Court, Estrada had failed to settle US \$9 million as payment to the government.¹⁰⁶ Also, his son Jinggoy Estrada was included in the plunder case, however, he was later on acquitted in 2007 and then pardoned by President Arroyo.

These events pose two problems which undermine the role of the judiciary in curbing corruption. First, the act of pardon by the President is a bargaining tool to forge political ties. In this case, Arroyo absolved Estrada of his past political sins and restored his full civil and political rights which even allowed him to run for Presidency in the 2013 elections. It was a maneuver by Arroyo to appease the supporters of Estrada because at that time there was a strong clamor to free the latter. On the one hand, the exercise of the power to give pardon is inherently vested upon the President, and it must be respected because it is expressly stated in the Constitution. On the other hand, such power can be vulnerable to abuse and can be the subject of exchange of political favors. Moreover, this power of the President is a privilege that cannot be subjected to judicial review. It is within the ambit of the executive power and the wisdom behind it cannot be questioned.

¹⁰⁴ Equitable VP: Erap signed as Jose Velarde, *available at* <http://www.philstar.com/headlines/157654/equitable-vp-estrada-signed-jose-velarde> (last accessed February 5, 2016.)

¹⁰⁵ Former Philippine President Pardoned. *available at* <http://uk.reuters.com/article/uk-philippines-estrada-idUKMNB0007120071025> (last accessed February 5, 2016.)

¹⁰⁶ *Id.*

Efficiency of the *Sandiganbayan* or the Anti-Graft Court

The *Sandiganbayan* has the jurisdiction over the public officials above Salary Grade 23 and other enumerated positions in the Anti-Graft and Corrupt Practices Act.¹⁰⁷ The cases that are not appealed to the Supreme Court are decided before this court, which are the bulk of the corruption cases in the whole country. Having a special court to address the issues with regard to public official's violations of their public duties is an ideal way to de-clog the dockets of the ordinary courts. For the purposes of this paper, it is important to probe into the disposal rate of cases of this court.

(2001 to 2006)

Disposal	Frequency	Percent
Pending	3909	53.4
Dismissed	1494	20.4
Archived	1413	19.3
Dismissed with Trial	277	3.8
Withdrawn by the Office of the Special Prosecutor	54	0.7
Acquitted	51	0.7
Convicted	45	0.6
Transferred to other Court	36	0.5
Dismissed (Respondent Deceased)	28	0.4

¹⁰⁷ Republic Act No. 3019, Anti-Graft and Corrupt Practices Act of the Philippines.

Dropped from Information	12	0.2
Acquitted (Demurrer to Evidence)	4	0.1
Pleaded Guilty	1	0.0

(Source: Generated from Sandiganbayan Database provided by the Statistics Section of the Sandiganbayan (database as of May 15, 2006) subjected to descriptive statistical analysis using SPSS.)

From the table shown above, it is noticeable that the courts were congested with many cases and that majority of those heard were dismissed. The pattern shows that the likelihood of having a case of corruption be dismissed is higher than the possibility of an actual conviction. It may be safe to presume that the courts have failed to evaluate the cases within the reasonable time prescribed by law. Moreover, it became normal to extend the resolution of the cases which actually prolong the agony of the litigants.

In more recent records from 2014, the *Sandiganbayan's* case load ballooned to almost 3,093 cases due to the slow prosecution of the Ombudsman. Both institutions blame each other for the slow disposition of cases.¹⁰⁸ The disposal record of the *Sandiganbayan* was considered to be at its worse in its 35 years of existence.¹⁰⁹ Also, According to the court statistics of cases, the court

¹⁰⁸ Ombudsman, Sandiganbayan plummets performance in 2014. *available at* <http://www.rappler.com/nation/82945-ombudsman-sandiganbayan-performance-plummets-2014>. (last accessed April 2, 2016).

¹⁰⁹ *Id.*

disposed of 277 of the 3,370 cases in 2014, lower than the 480 cases disposed of the 3,342 caseload in 2013.¹¹⁰

The *Sandiganbayan* would argue that it was because of the slow determination of probable cause on the part of the Ombudsman, while the latter would say that the real determination of guilt happens in the former, and thus, the *Sandiganbayan* should be attributed for the delay. These conflicting arguments would only show the lack of dedication of both institutions to abide by the mandate of the law. It is undeniable that both institutions have been exercising their functions, but with the extent of corruption in the Philippines today, such efforts may not be sufficient.

The author does not argue that the effectiveness of the judiciary in its role to curb corruption can only be measured by the rate of conviction. Conviction of an accused is a matter solely within the discretion and the competence of the judge. But the pattern of having more persons acquitted in cases involving corruption had been alarming in the perspective of public administration and legal enforcement.

Indian Courts Handling Corruption Cases

In India, the 2G scam¹¹¹ was considered to be the most controversial corruption case in the country's history. It involved the bidding of telecommunication operators and the granting of licenses. A. Raja, a former minister for telecommunications favored only a few telecommunication operators in exchange of huge sums of money. Allegedly, he earned almost US \$500 million in various transactions and had these funds transferred to their accounts in Mauritius and

¹¹⁰Marc Jayson Cayabyab, Deluge of pork scam cases lowers Sandigan's disposal rate. *available at* <http://newsinfo.inquirer.net/697827/deluge-of-pork-scam-cases-lowers-sandigans-disposal-rate>. (last accessed Paril 21, 2016).

¹¹¹ Indian media 2G Scam Probe available at <http://www.bbc.com/news/world-asia-india-30140856> . (last accessed Paril 2, 2016).

Seychelles.¹¹² The Supreme Court decided to cancel all the licenses that were issued under A. Raja and the transaction was declared unconstitutional due to its arbitrariness. This case is a prime example of Indian jurisprudence where the Supreme Court of India chose to battle corruption head-on, with the nullification of all the controversial contracts. Also noteworthy in this case is the fact that the Supreme Court set a self-imposed time limit of four months for deciding the case.¹¹³ However, one reason for the expeditious disposition of the case is the public outrage and media attention. The judges had to decide quickly considering that they might be unconsciously influenced by the opinion of the public. In the current affairs of the judiciary, the handling of corruption cases by the Indian courts had been tainted with corruption, impartiality and inefficiency.

One of the most controversial personalities in India, a former actress turned politician was involved in a corruption scandal that the prosecution lasted for two decades. The former Chief Minister of Tamil Nadu, Jayalalithaa Jayaram, was initially convicted¹¹⁴ for acquiring illegal wealth amounting to US \$10 million during her term as a Chief Minister in the 90's. It took 18 years before a pronouncement by the Indian courts was made. She was sentenced to four years and made liable to pay 1 billion rupees.¹¹⁵ Due to a sudden turn of events, in July 2015, she was acquitted in the Karnataka High Court. The High Court ruled that the decision of the lower court was infirm and not sustainable in law. It was argued that the alleged illegal wealth of Jayalalithaa only comprised 8 percent of her total wealth which is still within the allowed threshold by the

¹¹² Dhananjay Mahapatra, Raja used wife's a/c to stash bribe in Mauritius and Seychelles. *available at* <http://timesofindia.indiatimes.com/india/Raja-used-wifes-a/c-to-stash-bribe-money-in-Mauritius-and-Seychelles/articleshow/7607294.cms> (last accessed April 12, 2016).

¹¹³ *Id.*

¹¹⁴ Top Indian Official Convicted of Corruption. *available at* <http://www.aljazeera.com/news/africa/2014/09/india-jayalalithaa-jayaram-corruption-20149275234775133.html> (last accessed February 15, 2016).

¹¹⁵ Rajagopla, Khrinadas, Karnataka cites Mathematical error in High Court Verdict *available at* <http://www.thehindu.com/news/national/tamil-nadu/jayalalithaa-disproportionate-assets-case-karnataka-cites-arithmetic-errors-in-high-court-verdict/article7347802.ece> last accessed December 1, 2015

law.¹¹⁶ As of the moment, the government of Karnataka has filed an appeal to the Supreme Court of India. In January 2016, there was a change in the membership of the bench that will decide on the case of Jayalalithaa. Her exoneration is still being questioned by the Karnataka government and it was alleged that the decision of the court was cryptic and illogical.¹¹⁷ To date, the case is still pending before the Supreme Court. The case of Jayalalithaa is one of the prime examples of India's lack of coherence in their legal framework. Assuming that Jayalalithaa had her wealth within the threshold set by law, then she should have been acquitted years ago. The Indian courts took several years to review and make a conclusive judgment on the case, although the acquittal had been frowned upon by the Indians. In spite of the glaring evidence and exhibits presented in the courts, the Indian Courts have used the legal technicalities in order to acquit Jayalalithaa. The law per se that sets threshold for the assets of a public official can already be perceived as a problematic way of addressing corruption in the government, more so its application and interpretation by the courts. This paper does not argue that the rule of law should be abandoned, however, the judiciary and the governments as a whole, should be capable of striking a balance between its interest in the subservience to legal technicalities and its anti-corruption policy.

Another barrier to the Indian judiciary's role in its anti-corruption agenda is the delay of the courts in administering justice. The case of *V.S. Achuthanandan vs. R. Balakrishna Pillai & Ors*, involved a contract that started in 1982, where the government only began the prosecution process in 1991.¹¹⁸ The Supreme Court only rendered a decision in 2011 and said that:

“Though the issue was handled by a Special Court constituted for the sole purpose of finding out the truth or otherwise of the prosecution case, the fact remains it had taken nearly two decades to reach its finality. We are of the view that when a matter of this nature is entrusted to a Special Court or a regular Court, it is but proper on the part of the court

¹¹⁶ Id.

¹¹⁷ available at <http://www.thehindu.com/news/national/tamil-nadu/new-judge-to-hear-jayalalithaa-case/article8078144.ece>, last accessed February 1, 2015.

¹¹⁸ *V.S. Achuthanandan vs. R. Balakrishna Pillai & Ors* (2011) 3 SCC 317

concerned to give priority to the same and conclude the trial within a reasonable time. The High Court, having overall control and supervisory jurisdiction under Article 227 of the Constitution of India is expected to monitor and even call for a quarterly report from the court concerned for speedy disposal. Inasmuch as the accused is entitled to speedy justice, it is the duty of all in charge of dispensation of justice to see that the issue reaches its end as early as possible.”¹¹⁹

The inefficiency of the courts of India is still prevalent until now. In a report made by the Criminal bureau in 2011 regarding the disposal of corruption cases in Tamil Nadu, there was noticeably an increase in the cases filed before the courts. However, the conviction rate was very low at 24.8percent, and 735 cases were still pending. Also, 33.7 percent was found out to be cases that were not completed.¹²⁰

The efficiency of the Indian courts became doubtful due to its failure to comply with section 4(4) of the Prevention of Corruption Act which says that the courts shall hold trials on a daily basis.¹²¹ Although adjournments are unavoidable, these delays should not hinder the courts in completing the hearing of the cases. Moreover, in Section 19(3) of the same Act, the law mandates that the no court shall stay the proceedings on any ground except when it will result to injustice.¹²²

Disposal of Cases by the Special Court¹²³

Number of Cases	Status
4,577	Conviction
7,157	Pending
876	Pending for more than 10 years

¹¹⁹ Id.

¹²⁰ Honorable Justice P. Sathasivam. Speedy Disposal of Corruption and Vigilance Cases. *available at* <http://www.tnsja.tn.nic.in/Article/Corruption%20SD-PSJ.pdf> (last accessed April 17, 2016).

¹²¹ Section 4(4) Prevention of Corruption Act of India.

¹²² Section 19(3) Prevention of Corruption Act of India.

¹²³ Hakeem Ifran. Too Many Corruption, Too Few Convictions. Available at <http://www.dnaindia.com/india/report-too-many-corruption-cases-too-few-convictions-1910308> (last accessed April 17, 2016).

457	Pending for more than 15 years
182	Pending for more than 20 years

In 2012, almost 1,202 public officials were found to be engaged in corrupt practices, but only 82 of them were dismissed.¹²⁴ Another alarming fact is the ineffectiveness of the Central Bureau of Investigation wherein under its office, there are 7,000 pending cases and 12 of them have been pending for almost twenty years, 457 cases for almost fifteen years and 876 cases are still under them for more than ten years.¹²⁵ The problem is similar to the Philippines, but the Indian judiciary had more cases primarily because of its larger population and territory.

The United States Handling Corruption

The United States constitution empowers Congress through the Commerce Clause, Necessary and Proper Clause, and Spending Clause to allocate resources and combat corruption on the federal level.¹²⁶ States and local governments are given the flexibility to create a legal framework that would address corruption within their jurisdiction. Moreover, in handling of the cases, the prosecution of corrupt public officials is decentralized because it is dealt with within the state level.

The prosecution begins with a criminal investigation, after which it will be transferred to the United States Attorney's Office.¹²⁷ Apparently, almost 80 percent of the cases involving corruption are referred by the Federal Bureau of Investigation.¹²⁸ The US Attorney's Office has

¹²⁴ Id.

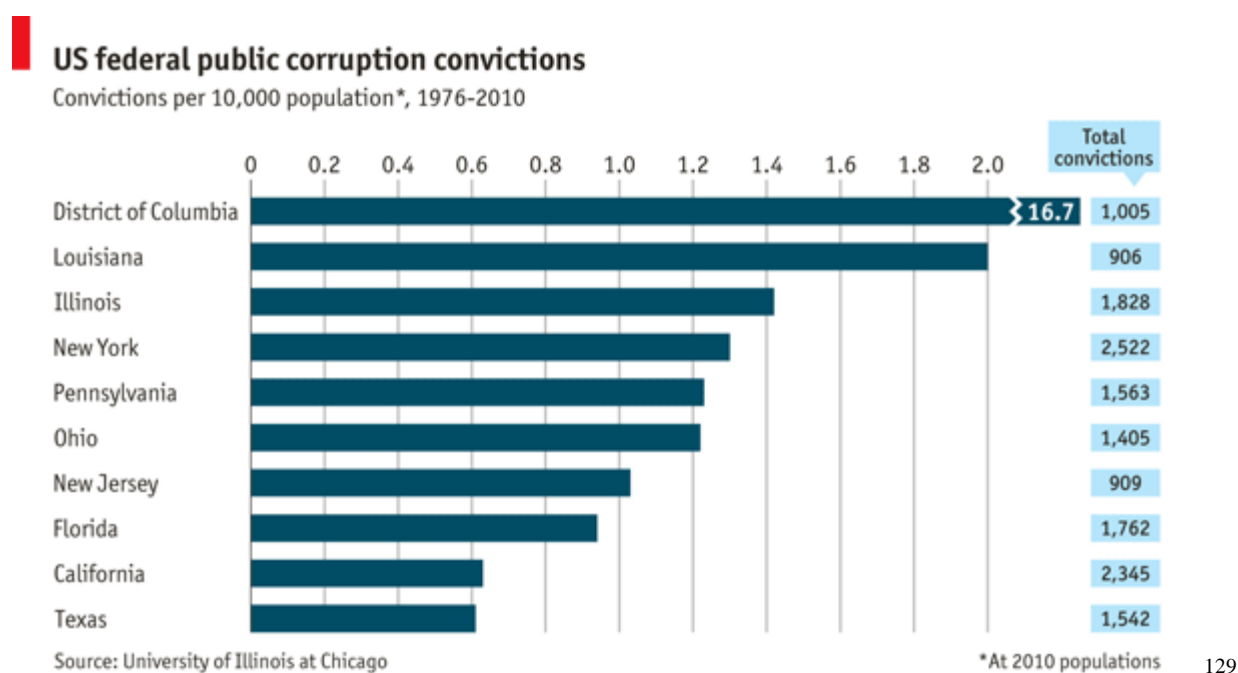
¹²⁵ Id.

¹²⁶ Id.

¹²⁷ James E. Alt & David Lassen. Enforcement and Public Corruption: Evidence from US States. Available at <http://epstein.wustl.edu/research/LPE.Alt.pdf> (last accessed April 5, 2016).

¹²⁸ Id.

played an active role in the prosecution of cases involving corruption. The United States courts have shown their dedication in the anti-corruption campaign. In the 70s, when massive prosecution for corruption took place, the courts showed that public officials are still within the tutelage of the law. It was a political statement that no person can be above the law. But more than the courts system's success, the political culture in the United States had become more mature, and the rule of law had always been the pillar of the country's existence.



Source: The Economist citing University of Illinois at Chicago

From the table above, it shows that the anti-corruption agenda campaign in the United States is very effective. For instance in 2014, the former governor of Virginia, Robert McDonell who intervened for a businessman in exchange of 177,000 USD in loans, vacations, and luxury

¹²⁹ Daily Chart: American Corruption, available at <http://www.economist.com/blogs/graphicdetail/2012/03/daily-chart-10> (last accessed April 5, 2016).

items,¹³⁰ was convicted for 3 years in prison. The greater challenge in the prosecution of corruption in the United States is whether or not the federal prosecutors should intervene in the cases. For example, in the case of McDonnell, there was an argument by his lawyers that the acts of the accused were legal under the Virginia law.¹³¹ The variation of application of the law may vary depending on the states involved. The need for a unifying theme in proscribing corruption might be necessary. However, from the figures that were cited, it appears that the current system of governance is effective. The judicial system's effectiveness places the United States as one of the countries with strong premium on combating corruption.¹³² With a population of 300 million and one of the biggest countries in the world, India and the Philippines can learn a lesson from the United States. In order for that to happen, both countries must deal with the various challenges within the institutions of judiciary, ranging from its independence, corruption and the trust and confidence of the people.

¹³⁰ Robert Barnes. Supreme Court will review corruption conviction of former Va. governor Robert McDonnell *available at* https://www.washingtonpost.com/politics/courts_law/supreme-court-will-review-corruption-conviction-of-former-va-governor-robert-mcdonnell/2016/01/15/e281ede0-b3c8-11e5-a76a-0b5145e8679a_story.html (last accessed April 5, 2016).

¹³¹ Randall Eliason. Federal Prosecution of State and Local Corruption: From Sea to Shining Sea. *available at* <https://rdeliason.com/2015/03/30/federal-prosecution-of-state-and-local-corruption-from-sea-to-shining-sea/> (last accessed April 5, 2016).

¹³² Fact Sheet: The U.S. Global Anti-Corruption Agenda *available at* <https://www.whitehouse.gov/the-press-office/2014/09/24/fact-sheet-us-global-anticorruption-agenda> (last accessed April 5, 2016).

CHAPTER IV:THE CHALLENGES FACED BY THE JUDICIARY

Judicial Independence

The principle of separation of powers enables each department to be free from interference and intrusion by another political agency of the government. In the Philippine Constitution, there is mention of the autonomy of the judiciary. This was interpreted by the Supreme Court as fiscal autonomy and independence from being influenced by the executive branch. However, the issue of being influenced by the executive is a pertinent issue to the corruption discourse. By legal mandate, it is the President that appoints the justices of the Supreme Court which are preliminarily nominated by a Judicial and Bar Council. The Judicial and Bar Council is composed of retired justices, law professors, congressmen, and representatives from the private sector.¹³³ In this way, the nomination process would yield impartial results. Moreover, the interview process is televised in order to avoid the appearance of corruption in the selection. Although the nominees go through the rigors of an interview, in the end, the final decision of the President will prevail. The President has the power to appoint the members of the Supreme Court subject to the limitation that it must come from the list of candidates provided by the Judicial Bar and Council. But this does not prevent the President to nominate a candidate for the position, and this becomes problematic because it essentially bypasses the whole political process. Thus, the justices appointed will most likely be loyal to the appointing officer. During the reign of former President Gloria Macapagal Arroyo, she appointed various justices in the Supreme Court and even handpicked the Chief Justice in order to avoid prosecution in the future. After the President serves his/her term, he/she becomes vulnerable

¹³³ Briefer: The Judicial and Bar Council *available at* <http://www.gov.ph/about/gov/judiciary/sc/briefer-jbc/> (last accessed February 12, 2016).

to criminal actions that can be tried in the courts. It is strategic that the President appoints the justices, because then the latter somehow repays the debt of being appointed by sabotaging any criminal cases that might be filed against the President.

When the case challenging the validity of the PDAF was brought to the Supreme Court,¹³⁴ it was struck down as unconstitutional because the justices appointed by President Aquino were outnumbered by the other justices. Although the President's power to appoint can be seen as a way to ensure that the highest court of the land remains an ally of the Executive, the Supreme Court of the Philippines still retains its independence and effectiveness through abiding by the provisions of the Constitution and well-settled jurisprudence. To a certain extent, the appointing power of the President is trumped by the Judiciary's steadfast allegiance to the constitution. Even in the prosecution of the corruption charges against then President Arroyo, she was ultimately found guilty (despite having appointed several justices to the Supreme Court) and now serving the sentence for multiple counts of violation of the Anti-Graft and Corrupt Practices Law.

If in the Philippines there is no provision which demarcates the judiciary and the executive, the Indian Constitution has provided for such. It is mentioned in the Indian Constitution that the judiciary should be separated from the executive in the public services.¹³⁵ However, it is also similar to the Philippines because the members of the Supreme Court are appointed by the President with only the exception of the Chief Justice. In this process, an advisory group composed of members of the Parliament shall be consulted by the President before a decision is made.¹³⁶

¹³⁴ Supra note 89.

¹³⁵ Art. 50, The Indian Constitution.

¹³⁶ M.P. Singh. Securing the Independence of the Judiciary: the Indian Experience *available at* <http://mckinneylaw.iu.edu/iiclr/pdf/vol10p245.pdf> (last accessed April 21, 2016).

However, the President is not bound by the advice of the Board, the former shall only prepare a memorandum of explanation stating the reasons why it refused to comply with the advice.¹³⁷ The power of the President to avoid is not devoid of any political challenges. In April 1973, the appointing power of the President became a controversial issue when a junior judge was appointed and superseded the other senior judges.¹³⁸ This scenario also happened in the Philippines when Chief Justice Sereno was appointed by President Benigno Aquino. She was the youngest member of the Supreme Court and it was expected that Justice Carpio will be appointed because he is next in line in terms of superiority. It was viewed as an insult to the stability and integrity of the Supreme Court of the Philippines when the President appointed an ally.

One of the challenges of to the role of the judiciary in combating corruption is its independence. When the judiciary is indebted to the President and does whatever the latter wants, then the courts will be rendered ineffective and will be reduced to mere puppets of the executive. Corruption begins when there is an exchange of values, be it political or financial, in order to achieve an illegal objective. When judiciaries are easily swayed by external forces, then its decisions will be tainted with impropriety.

In India, although there is a direct mention in the Constitution that the judiciary shall be separate from the executive and the legislature in the realm of public service, the influence over each other is not unimaginable. Appointment of lower court judges are done by the President of India subject to a consultation with the judges of the Supreme Court and the High Courts in the states as may deem necessary.¹³⁹ It is similar with the Philippines because of the appointing power by the President. It only differs with the lack of a Judicial Bar and Council which is an independent

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ Art. 124 par 1, The Indian Constitution.

committee in the Philippines that will handle the selection process. In India, a consultation with the other judges seemed to be the counterpart. However, this consultation can be bypassed by the President because the provision only says that it shall be done when it is deemed necessary. In the determination of necessity, it appears that the President has the sole power to decide whether such appointment will need prior consultation with the other judges.

It can be argued that the Philippines has a better or even more stringent way of selection because the composition of the Judicial and Bar Council comes from various sectors of the society, which is not the case in the judges to be consulted in India. At the end of the day, in both countries, the President has an overarching power in the appointment process. Even if the Judicial and Bar Council has given the list of candidates to be appointed, the President can still push forward the candidate that it always wanted, and such is also similar in the experience of India because the President can simply disregard the opinions of the their judges in forming his own decision.

In the United States, the President has the power to appoint the justices of the Supreme Court. In their Constitution Art 2 (2), such appointment of the President will require the concurrence of the Senate.¹⁴⁰ The nominees for the position are recommended by the Senate and even members of the lower house. Thereafter, the Senate Judiciary Committee shall hear the confirmation and the appointment shall be good for lifetime. As to judges in the lower courts, such as in the federal district courts and circuit courts, it has become customary that the Senators belonging to the political party of the President would initiate the initiation process. Moreover, the Senate Judiciary Committee has been given wide discretion to determine the likelihood of being nominated or even appointed by the President. Thus, the patronage politics had become very

¹⁴⁰ Fiona O'Connell & Ray McCaffrey Judicial Appointments in Germany and the United States *available at* <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2012/justice/6012.pdf>

visible and normal in the appointment of judges. Certainly, this kind of system is vulnerable to corruption and bribery. However, the United States is still performing very well in terms of the impartiality of the judiciary in the administration of justice. Interestingly, this example evokes that even with this kind of appointment process, the likelihood of corruption can still be mitigated.

Corruption within the Judiciary

It is of common knowledge that corruption is rampant in the judiciary of the Philippines, starting from the lower courts up to the higher courts, and this problem certainly affects the constitutional role of the judiciary in combating corruption. The courts being the last bulwark of protecting the ideals of good governance, transparency and accountability, the institution's integrity has become tarnished.

In 2014, Chief Justice Renato Corona of the Supreme Court of the Philippines was impeached on the ground of culpable violation of the Constitution due to his failure to disclose his statement of assets, liabilities and net worth.¹⁴¹ It was proven that he accumulated wealth during his tenure as a public official and he was not able to corroborate evidence to prove that the money came from legitimate sources. This creates a quandary with regard to the constitutional role of the judiciary in the whole political process, its integrity, independence and its loyalty to the rule of law.

The trial of Chief Justice Corona was considered as the trial of the century as it was the first time for the Philippines to impeach a member of the highest court of the land. It is worthy to note that the Chief Justice was appointed by the former President Gloria Macapagal-Arroyo who is the political opponent of the current administration. Arroyo's regime was known for numerous

¹⁴¹ Jeffrey Damicog. Ombudsman charges Corona over misdeclared SALN. *available at* <http://www.mb.com.ph/ombudsman-files-raps-vs-corona-over-misdeclared-saln/> (Last accessed April 5, 2016).

criticisms and controversies of large-scale corruption. In fact, the appointment of Chief Justice Corona was a circumvention of the law as it is prohibited to appoint a justice during the last days of the President in office.¹⁴² However, due to the dominant political clout of the Arroyo administration, they secured a decision by the Supreme Court legitimizing the appointment.¹⁴³ To a great extent, the current President Benigno Aquino III wanted to get rid of the Chief Justice due to the latter's records of unexplained wealth.

In addition, the prosecution argued that Chief Justice Corona was liable for betrayal of public trust due to his manipulation in the flip-flopping of decision involving a controversial labor dispute between the workers of the national airline of the Philippines and its management.¹⁴⁴ More so, he was alleged to have inoculated the former President Arroyo and her family from prosecution, and his disbursement of the Judiciary Development Fund was deemed questionable.

The impeachment court was composed of the current members of the Senate which is dominated by the Liberal Party and its allies. During the proceedings, the Chief Justice was almost compelled to release the details of his bank account. In the Philippines, bank accounts are subject to privacy protection through the Bank Secrecy Act.¹⁴⁵ Although there are exceptions to the rule, such as when the depositor would consent to it or there was an order by the Court of Appeals to disclose the details of the account when there is probable cause that the proceeds originated from criminal activities.¹⁴⁶ Initially, the lawyers of the Chief Justice advised him to invoke his right against self-incrimination and simply do not take the witness stand. However, due to circumstances

¹⁴² Camille Diola. SC upholds order vs Arroyo Midnight Appointments *available at* <http://www.philstar.com/headlines/2015/06/16/1466577/sc-upholds-order-vs-arroyos-midnight-appointments> (Last accessed April 5, 2016).

¹⁴³ Id.

¹⁴⁴ FASAP v. PAL, G.R. No. 178083, July 22, 2008.

¹⁴⁵ Republic Act No. 1405, Sec. 2, Bank Secrecy Act.

¹⁴⁶ Id.

unforeseen, the Chief Justice acquiesced to the request of the Senators when he took the witness to properly justify and substantiate his claims that his wealth came from his earnings as a private practitioner and from his inheritance.

After this impeachment proceeding, the reputation of the courts' integrity in the Philippines became more questionable. This becomes problematic in a sense that the judicial system has a principal role in addressing corruption through the interpretation of laws and application of jurisprudence. Regrettably, if the courts are hounded with issues of corruption internally, then the government's anti-corruption agenda seems to be a futile exercise.

Separation of Powers

The fundamental principle of separation of powers pertains to the division of the three important branches of the government, namely the executive, legislature and the judiciary. This prevents each branch of government from encroaching upon the others' jurisdiction or competence. In the discourse of judicial corruption, the mechanisms to make the judges or justices accountable are laid down in the legal framework. In the Philippines, for judges in the lower courts, administrative or criminal sanctions shall be imposed by the Supreme Court. This gives the Supreme Court the authority and the autonomy to discipline the members of the judiciary. However, this does not preclude the Anti-Graft and Corruption court to take cognizance of the case provided there alleged violations of the Anti-Graft and Corruptions Act and the Revised Penal Code. In this process, the only available resort will always be at the courts. The greater question that needs to be addressed is when these court judges are accused of corruption, which institution shall be in charge of prosecution?

In the impeachment of the Chief Justice, the members of the Senate will be transformed into an impeachment tribunal. This in effect makes the law-makers assume judicial functions and

decide on the merits of the case. In the impeachment of Chief Justice Corona, the members of the Senate became judges and asked pertinent questions with regard to the accumulated wealth of the former. Legally, this proceeding is sanctioned by law, however, this poses a threat to political stability because it unsettles the political structure because it subjects the head of the judiciary under its tutelage. In the said impeachment proceeding, the Senator judges examined the testimony of then former Chief Justice Corona and order him to sign a waiver to divulge the details of his bank accounts. It can be viewed as the legislature lording over the judiciary when it can impose orders to them.

In India, the impeachment proceeding is rather different. The Indian Constitution provides that judges can be impeached on the grounds of proven misbehavior and incapacity.¹⁴⁷ A complaint shall be filed by the members of the lower and upper house of the Parliament.¹⁴⁸ Thereafter, they will form a committee composed of three members to determine whether the impeachment proceeding should proceed. If it involves judges from the lower courts, then members of the Supreme Courts and the High Courts shall be part of the team. If it involves an impeachment of a justice of the Supreme Court, it will be formed by the other members of the same court. The proceeding is similar to the Philippines that a complaint shall be initiated in the Congress or by the legislature. However, the stark difference lies in what kind of judges are subject to impeachment. In the Philippines, it is only the Justices of the Supreme Court as opposed to India where the coverage is broader.

Moreover, the grounds for impeachment are several and broad in its nature. The grounds include culpable violation of the Constitution, Treason, Bribery, High Crimes and Betrayal of

¹⁴⁷ Art 124 (4), The Indian Constitution.

¹⁴⁸ Judges Inquiry Act 1964 of India.

Public Trust and Corruption.¹⁴⁹ Nevertheless, the Philippine Constitution has explicitly provided corruption as one of the grounds. Another observation on the difference is the composition of the tribunal that will hear the case against the impeachable judge or justice. In India, after the committee has decided in favor of an impeachment, a debate will take place in the Parliament. The judge involved in the controversy can defend himself personally or by a representative. Subsequently, a decision shall be made by 2/3 members of the Parliament. The decision shall be forwarded to the President which shall order the removal or the impeachment of the judge. In the Philippines, only the upper house of the Congress shall be allowed in the proceeding and that the President has no direct role in the proceeding. Although in the experience of the Philippines, the file was instituted by the allies of President Benigno Aquino against Chief Justice Corona. The process can be strongly characterized by the “administration-opposition dynamics”. Aquino’s plan to remove him could not be done by him personally and he needed political instruments to legitimize such action.

In comprehending the impeachment proceeding with the analytical framework on separation of powers, the Congress or the Parliament has the power to remove the members of the Judiciary. It can affect the relationship between the judiciary and the other branches because the overall process is shaped by politics and vested interests. Interestingly, in India, the President has the final say over the removal of the judge. The interplay of the politics in India involves the three branches of the government, wherein both the executive and the legislature can meddle with the affairs in the disciplining the judges. The appointment of judges in India has been a recurring theme in political controversies. In 1973, Chief Justice Sikri was replaced by Justice A.N Ray who

¹⁴⁹ Article XI, Sec. 2. The 1987 Philippine Constitution.

was considered to be the fourth in line in the hierarchy of the judges.¹⁵⁰ Evidently, the appointment contravened the typical mode of selection based on seniority. Although such procedure is sanctioned by law, it can still cause an unsettling effect in the judiciary.

Social Tolerance of Corruption

Corruption is deeply associated with the culture, norms and values in a particular society. In various countries, it can be influenced by familial codes and relationships that transcend the politico-legal sphere.¹⁵¹ When for instance a litigant has to deal with a corrupt judge, it would seem necessary for the former to just pay the latter. It is not only convenient but the practice in itself is not entirely frowned upon in the society. The lack of punishment nor any type of castigation from the society would only encourage the same kind of activities of bribery and corruption. The act in itself can be viewed as something that could be proud of. For example, the capability of a litigant to influence or “buy” the judge exemplifies the status of that person in the social hierarchy. It is also a reflection of an elite social network and the established relationships with those who are in power.

In a study conducted by Ernst & Young, around 28 percent of the respondents said that they are willing to pay for bribes because it is just economical and the more practical thing to do.¹⁵² It goes to show that corruption is viewed as highly acceptable and due to the absence of prosecution of perpetrators of this crime. It only enhances the belief that any person engaged into these kind of activities will most likely go scot free from the law. By and large, when public officials cannot handle the situation of corruption due to the fact that they are operating within a corrupt system,

¹⁵⁰ Supra note 139

¹⁵¹ Mary Noel Pepys. Comparative Analysis of Judicial Corruption. *available at* http://assets.cambridge.org/97805217/00702/excerpt/9780521700702_excerpt.pdf (last accessed April 2, 2016).

¹⁵² Bribery and Corruption: Ground reality in India, A survey by EY Fraud Investigation & Dispute Services Action *available at* [http://www.ey.com/Publication/vwLUAssets/Bribery_and_corruption:_ground_reality_in_India/\\$FILE/EY-FIDS-Bribery-and-corruption-ground-reality-in-India.pdf](http://www.ey.com/Publication/vwLUAssets/Bribery_and_corruption:_ground_reality_in_India/$FILE/EY-FIDS-Bribery-and-corruption-ground-reality-in-India.pdf) (last accessed April 2, 2016).

then the cycle of corruption continues. It would seem that there is more incentive in being part of a corrupt system than going against it. This has a social impact in the way corruption is normalized in the collective psyche. It may appear victimless because there is no particular person who will suffer the injury, thus, it gives a false impression that there is no harm done to anyone. But in reality, corruption will pile up and when it becomes embedded in the political and social structure, it becomes harder to attenuate.

Moreover, Filipinos put a high premium on positions in the government. For instance, whenever someone is connected to a person of authority, this creates a feeling of power as well because of security that they could always go to that public official for help. In effect, there is a possibility that they could be exempt from rules and regulations. Hence, it has become a common sight in the Philippines where some people are considered as VIPs or Very Important Persons and they are given special treatment.¹⁵³ To make things worse, this type of set up is not frowned upon anymore. Instead of pushing for equality in treatment, people tend to look for political connections to gain leverage.

Organizations are composed of the people and their habits and that solving the corruption problem would entail a change in mindset of the bureaucrats and the client. It necessitates the constant modification of governance practices that will fit the peculiar situation of the Philippines.¹⁵⁴

According to Francisco Thoumi,

“Corruption is an illegality and dishonesty trap in which society's tolerance of illegality and respect for the laws of the country tend to deteriorate as they are increasingly exposed

¹⁵³ Edna Estifania Co. Challenges to the Philippine Culture of Corruption. Available at https://static-content.springer.com/lookinside/chp%3A10.1057%2F9780230590625_6/000.png (last accessed April 15, 2016).

¹⁵⁴ Amelia P. Varela, *The Culture Perspective in Organization Theory: Relevance to Philippine Public Administration*. 2nd edition. (Philippines: UP NCPAG, 2003).

to others' disrespect for the laws. In a society where there is a great amount of dishonesty and corruption, it becomes increasingly costly to behave honestly" and "[c]onsequently, a particular individual with a particular set of values could behave honestly in one environment but dishonestly in another."¹⁵⁵

In India, according to Kamala Prasad, "corruption has become intractable in administration owing to the growing incidence of corruption in high places."¹⁵⁶ To make things worse, "corruption is such an everyday fact of life in India that its exposure, even in the most rampant forms, often fails to shock"¹⁵⁷. In an article written by Samuel Paul and Manubhai Shah, they have described corruption as a way of life in India. They argued that the government had the monopoly of goods and when competition is reduced, it creates opportunities for corruption by impeding the delivery of supplies to the people. Moreover, they highlighted the problem of information asymmetry when only few people have access to the most valuable information. As a result of that, Indians tend not to eagerly think about changing the old system of governance.

Trust and Confidence of the People

In a survey conducted by the Social Weather Stations in 2015, people were interviewed about their trust and approval of the Supreme Court. The Supreme Court received a fairly good rate of 38 percent.¹⁵⁸ This is considerably high compared to the executive and legislative officials who have stayed in the single digit category. But this only reflects the view of the Filipino people towards the judiciary as a whole. In the Philippines, the Supreme Court is viewed as the branch of the government that is not directly relevant to the lives of the ordinary people. The institution is seated in the pedestal which makes it inaccessible to the ordinary litigants. Mostly, cases are settled

¹⁵⁵ Francisco E. Thoumi, "Some Implications of the Growth of the Underground Economy in Colombia" 29 J. INTERAM. STUD. & WORLD AFF. 35, 44 (1987).

¹⁵⁶ Kamala Prasad, "Administrative Corruption and Public Integrity" in *Indian Administration: Politics, Policies and Prospects* (Delhi : Dorling Kindersley ,2006)301 – 337 .

¹⁵⁷ Amelia Gentleman. 'Thin Ray of Light Shines on Dark Ocean of Graft ', International Herald Tribune , 18 January, 2008 p. 2 .

¹⁵⁸ Helen Flores. SWS: Binay approval rating slides further available at <http://www.philstar.com/headlines/2015/04/14/1443618/sws-binay-approval-rating-slides-further> (last accessed April 1 2016.)

in the lower courts and that it will take several years if it had to be decided by the Supreme Court. Moreover, cases decided by the highest court would entail a determination of constitutional issues that are of utmost importance. Although it does not mean that the lower courts cannot decide on constitutional matters, it only highlights the point that the Supreme Court is viewed as good because the people are clueless of its functions, importance and operations.

However, this does not relegate the notion that judiciary in the Philippines is corrupt. In a study conducted by the International Institute for Democracy and Electoral Assistance in 2010 about the level of trust of the people in the courts where 56 percent believed that judges can be bribed.¹⁵⁹ Moreover, almost two out of five persons expressed that a case will take many years before a decision can be made, and that the judges may not even rely on the merits of the case but be influenced on the bribes given by any of the parties involved.¹⁶⁰ Evidently, most of those who were surveyed felt that there is no equal treatment in the courts of justice. Justice is perceived to be more accessible by people from the upper class than the poor. This raises the conception that any type of cases being put forward by any poor litigant are bound to be dismissed. As a result, majority of the population living within the poverty level in the Philippines, have lost their trust and confidence in the courts.

In India, a study was conducted from 2003-2005 which revealed that three fourths of the respondents felt that corruption is prevalent in the public services as well in the civil society organizations.¹⁶¹ However, until now, there has been no unified study or survey about the Indian

¹⁵⁹ Philippine Democracy Assessment: The Rule of Law and Access to Justice. Available at http://www.idea.int/publications/philippine_democracy_assessment/upload/SoD-Philippines_chapter5.pdf (last accessed April 20, 2016).

¹⁶⁰ Id.

¹⁶¹ See Policy & Research Dept., Transparency International, Report on the Transparency International Global Corruption Barometer 2006 at 14, <http://www.transparency.org/index.php/policy-research/surveys/indices/gcb/2006> accessed April 20, 2016; copy on file with Journal of Appellate Practice and Process).

people's perception of the judiciary.¹⁶² Noteworthy, the Indian judicial system has various layers and levels, the hierarchy is complex as it suits the federal type of government. Legal scholars have applauded the Supreme Court for its decisions, however, nothing much has been said about the lower courts. Nonetheless, an important period in Indian history was during the regime of Indira Gandhi which was considered a dictatorial government who shunned away her political enemies and ordered their detention. As a matter of fact, the legality of the detentions one were brought to the Supreme Court to determine their constitutionality. To the great disappointment of many, the Supreme Court of India ruled that the detention was outside their jurisdiction because it was under an Emergency Rule.¹⁶³ This only strengthens the perception that the Supreme Court was an instrument of India Gandhi to perpetuate herself into power. Let it not be forgotten that Chief Justice Ray was appointed by Indira Gandhi by disregarding the silent rule of hierarchy in the judiciary. After the lifting of the Emergency Rule in 1977, the Supreme Court attempted to redeem its reputation by making itself reachable by the people. It began its project on free legal aid and it allowed petitions to be directly filed before the courts on matter involving human rights violations.

In effect, there reputation of the Supreme Court was refurbished in its theoretical sense. Legally, various mechanisms were put into place in order to improve the Court's integrity and independence. However, still, it cannot be immediately concluded that the Supreme Court of India has become more relevant to the vast majority of the population. Seemingly, there Supreme Court is socially detached to the people primary because litigations usually take place in the lower courts. Direct contact with the judges and negotiations are done in the lower courts. Naturally, the misconception is that Supreme Court which is only tasked to declare whether an act is

¹⁶² Jayanth Krisnan. Scholarly Discourse, Public Perceptions, and the Cementing of Norms: The Case of the Indian Supreme Court and the Plea for Research. *available at* <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1311&context=facpub> (last accessed March 31, 2016).

¹⁶³ Id.

constitutional or not. In spite of that, it still cannot be discounted that when the Supreme Court protects the constitutional rights or declare a law illegal, it has a direct impact on the lives of the people since there will be uniformity in the interpretation of the law.

The reputation may not always be the best gauge of the efficiency and the effectiveness of the judiciary in its anti-corruption agenda. However, the perception of the public is indispensable in the normative understanding of the legitimacy of the courts' decisions. If the courts are perceived to be corrupt, this creates a cycle of cynicism on the part of the public. This leads to a collective lack of trust in the institutions and that it preserve a dysfunctional system that thrives in corruption.

Reputation of India's Judiciary

In an inquiry conducted by the Central Bureau of Investigation in India, it has found out that there are fund savings allocated to a Supreme Court judge, 11 high court judges and 23 district judges.¹⁶⁴ In 2008, two High court judges from Punjab and Haryana have been involved in controversies of bribery.¹⁶⁵ In 2011, there were 16 cases of corruption that were filed against the Chief Justice of the Sikkim High Court.¹⁶⁶

In an interview¹⁶⁷ of the former Chief Justice of India V.N. Khare, he explained that corruption is endemic in lower courts and the bribery has become a common practice. He also said that one of the factors of corruption in the judiciary is the workload and the pendency of the cases. In order to prioritize cases, litigants would pay for a hefty amount to make sure that the process is

¹⁶⁴Shibashis Chatterjee and Sreya Maitra Roychoudhury. Institutions, Democracy and 'Corruption' in India: Examining Potency and Performance. Japanese Journal of Political Science. (2013).

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ Corruption is Rampant in the Lower Courts. *available at* <http://www.outlookindia.com/magazine/story/corruption-is-rampant-in-the-lower-courts/281457> (last accessed April 2, 2016).

moving on their side. Having a monitoring system would instigate compliance on the part of the judges. However, this is not an easy task because it requires an institutional reform. If the first level of judiciary will be monitored and the higher levels are not, then the same problem will persist. The solution to the problem of corruption is myopic and might not serve any practical purpose at all.

Recommendations

There is a strong need to re-conceptualize the theoretical dimension on the study of corruption. It necessitates the intersection of political science, public administration and law in the comprehension of this political phenomenon. Moreover, in dissecting the corruption debate, an analysis of the social factors that shape the way people view corruption must be taken into account. In this manner, people's perceptions and cultural inclinations must be taken into account to formulate contextualized solutions in combating corruption.

In the experience of the Philippines, when both the administration and the opposition fight against each other, it creates a strong tendency to strengthen the anti-corruption agenda even if it will not solve the problem completely. President Benigno Aquino was a strong critic of former President Gloria Macapagal-Arroyo, so when he sat into office, he made sure that he will get rid of the political appointees of the former regime and challenge all the transactions consummated during the previous government. This is a very interesting case in the Philippines because the binary politicking had created a significant impact in addressing corruption. There is some form of pressure on the part of the Aquino government to differentiate itself from the tarnished reputation of the former regime. President Aquino supported the impeachment of former Chief Justice Corona. It may be perceived as a political move by the administration because the Chief Justice used to be an ally of former President Arroyo. However, it cannot be denied that the Chief Justice had been involved in various suspicious transactions that had placed his integrity into question. It will be noteworthy to discuss for future researchers on how the political pressure can work to address issues of accountability in a society wherein corruption is chronic and systemic.

Theoretically, another question that should be raised is whether an impeachment process is a sufficient safeguard against crimes committed by judges or justices from the higher courts. The question on who becomes the judge of the judges is a looming and relevant concern in the field of law and public administration. Impeachment is a political process rather than a legal one primarily because it requires strong support from Congress. It presupposes that the President has the support of the majority in the lower house. Then again, the impeachment tribunal will be comprised of the members of the Congress or the Parliament, exercising judicial function over the accused judge or justice. This constitutional mechanism when abused can cause massive political backlash and unsettle the relationships of the three branches of the government. The proceeding must be used with caution, and resort to this remedy has been used frequently by the Congress in the Philippines. In India, the impeachment proceeding was used only once but an actual complaint was not filed. Thus, the problem of abusing this mechanism does not seem to be a concern. The greater problem lies in the lack of ensuring the accountability on the part of the judges.

Conclusion

The role of the judiciary in combating corruption is not laid down in the constitution. In fact, the need for placing it in the supreme law may not even be necessary. Governments function within a self-preservation framework. They do not necessarily need a specific law because corruption per se erodes the very foundation of its existence. The Philippines has been lauded for its ideal legal framework, however, the problem of corruption remains appalling and shocking. Arguably, the laws have not been maximized in order to fully serve its intended purpose. In the cases decided by the *Sandiganbayan*, it is apparent that since 2000, more cases have remained pending and the conviction rate remains very low. One of the reasons for this can be attributed to the ineffectiveness of the Ombudsman to file cases to the *Sandiganbayan*, and reports claim that for the last thirteen years, 2014 was the worst year in terms of disposal of cases. Another interesting aspect of the judicial process is how cases are being interpreted in the Supreme Court. Based on the jurisprudence provided, the Supreme Court mainly delved into the basic constitutional repercussions of the case presented without considering the effects in governance. When the pork barrel case was decided, the Supreme Court did not examine the practice of legislators' misallocation and misuse of funds and its relationship to corruption. It took them almost twenty years to overturn the decision and to rule that the practice was a violation of the principle of separation of powers. Further, the discussion on the issue of accountability of public officials have remained minimal. This is a reflection of the lack of commitment to sincerely address the root causes of corruption. Rather, the Court elucidated the legal matter with respect to the separation of powers, in which it explained that the legislature is infringing on the political realm of the executive. However, despite its power to rule on issues involving corruption, its reputation had been put into question when the highest official of the court was impeached.

In the case of India, the level of corruption is also structural and systemic. The large population and the complex administrative structures have contributed to the difficulty in governing it. The disposal of corruption cases had been not very impressive due to the lack of the political will of the national government. The courts have been perceived by ordinary citizens as corrupt, and that the justice system is only existing to favor the interests of the few who can pay the price.

Moreover, the institutional challenge in the Indian justice system is that the courts are congested, similar to the Philippines, and the mechanisms put into place have not been sufficient to reduce the number of undecided cases. Thus, this situation encourages corruption on the part of the judges because there is so much cases and there are only few of them who can handle it. It becomes a matter of priority for the judges to expedite the disposition of a particular case, but it comes with a price. The judicial system in India has been hounded by various controversies such as those involving corrupt politicians. The case of Jayalalithaa was dismissed and she was acquitted in spite of the overwhelming evidence that her position had been used to amass wealth. Initially, the lower courts ruled in favor of the government which led to her imprisonment. Thereafter, an appeal before the High Court reversed the decision in the lower court by saying that there has been no sufficient evidence that will link Jayalalithaa to corruption. This case is only a microcosm of various cases that had been happening in India, and they are still happening continuously.

In the United States, the legal framework may not be as comprehensive as the one in the Philippines or India. But the enforcement of the laws was very effective because the conviction rates are high and that the cases are being decided expeditiously. Moreover, the United States has

shown that the rule of law will prevail and any person who will violate the law shall be held accountable for it. In the case of former governor of Virginia, Robert McDonell, his imprisonment due to his intervention in favor of a businessman was a testament of the supremacy of law. More than the idea that the United States System is effective, we must bear in mind that it has more resources to effect significant changes in the anti-corruption agenda. This is the problem for both India and the Philippines, lack of resources is used as the scapegoat for the weak institutions. Allocation of funds are crucial in order to streamline the court system, appoint more judges and increase the salary of the officials. But on the other hand, it still cannot be guaranteed that after these mechanisms are established, the intended change will happen. There are various lessons that can be learned from the United States, but the structural and chronic type of corruption in both India and the Philippines will require more than institutional changes. When corruption has become normalized and considered as way of life for the society, then the more needed antidote is a paradigm shift from the bottom upwards.

The courts may not be without its institutional flaws and political inclinations. It is deemed problematic that the last bastion for the rule of law and justice which are the courts are also hounded with the challenges of corruption. However, in the current political structures, I believe that it will still be the judiciary which can be in the best position to end corruption. Undeniably, it will require the coordination of all the political branches, but when the judiciary makes the public officials accountable and suffer the punishment, then it will create a precedence of political will and a rippling effect on the larger anti-corruption agenda.

Bibliography

Books:

Alexander, P.C. *The Perils of Democracy*, Bombay: Somaiya Publications. (1995).

Bernas, Joaquin S.J. *The 1987 Constitution of the Philippines: A Commentary* (2009).

Carney, Scott, *The Red Market* (New York: William Morrow, 2011).

Co, Edna. Challenges to the Philippine Culture of Corruption, in *Corruption and Development*

Coronel, Sheila. (ed), et al, *Pork and Other Perks: Corruption and Governance in the Philippines*, (Quezon City: Philippine Center for Investigative Journalism, 1998)

Heidenheimer, Arnold et. al. “*Political Corruption. A Handbook.*” (New Brunswick: Transaction Publishers, 1989)

Huntington, Samuel. “*Modernization and corruption*”, in *Political order in Changing Societies*. (New Haven, Connecticut: Yale University Press, 1996). (Republished in *Political Corruption . A Handbook . Heidenheimer et al., New Brunswick, 1989, Transaction Publishers. Chapter 23.*

Hutter, Michael. Prosecuting Public Officials/Figures for Corruption : The Approach in the United States. *available at* http://www.humaneprosecutions.org/hutter_prosecuting_public_officials_for_corruption.pdf (last accessed March 31, 2016).

Khan, Mushtaq. “A typology of corrupt transactions in developing countries.” *IDS Bulletin*, vol. 8, no. 5. (1996)

Kpiundeh, S.J. “Political Will in Fighting Corruption” in *Corruption and Integrity Improvement Initiatives in Developing Countries*, Edited by: Kpundeh, S.J. and Hors, I. 91–110. New York: United Nations Development Programme. (1998).

Krinks, Peter, *The Economy of the Philippines: Elites, Inequalities and Economic Restructuring* (2006).

Prasad, Kamala. “Administrative Corruption and Public Integrity” in *Indian Administration: Politics, Policies and Prospects* Delhi : Dorling Kindersley, 301 – 337. (2006).

Palmier, Leslie, *The Control of Bureaucratic Corruption: Case Studies in Asia*, New Delhi: Allied Publishers, (1985).

Tapales, Prosperpina. *Different Faces of Filipino Administrative Culture*. UP NCPAG (1995).

Thourmi, Francisco. “Some Implications of the Growth of the Underground Economy in Colombia” 29 *J. Interam. Stud. & World Aff.* 35, 44 (1987).

Varela, Amelia. “The Culture Perspective in Organization Theory: Relevance to Philippine Public Administration” in *Introduction to Public Administration in the Philippines: a Reader*, Bautista, Victoria, Alfiler, Ma. Concepcion, Reyes, Danilo and Tapales, Proserpina (eds) 2nd edition, UP-NCPAG, Philippines (2003)

Vittal, Shri N. *Corruption in India: The Roadblock to National Prosperity*, New Delhi: Academic Foundation, (2003).

Winters, Jeffrey. *Oligarchy*. Cambridge University Press. (2011)

Journal Articles

Alt, James & Lassen, David. Enforcement and Public Corruption: Evidence from US States. Available at <http://epstein.wustl.edu/research/LPE.Alt.pdf> (last accessed April 5, 2016).

Chandrasekaran, Venkat. "Corruption in India and Mechanism to Control: A Study," Radix International Journal of Research in Social Science 1 no. 12 (2012):1–10. Real-time tracking suggests that this figure has increased to 128, some twenty five percent of Indian legislators. *available at* <http://www.mibazaar.com/indianpolitics.html> (last accessed on March 1, 2016.).

Chatterjee, Shibashis and Roychoudhury, Sreya Maitra. Institutions, Democracy and 'Corruption' in India: Examining Potency and Performance. Japanese Journal of Political Science. (2013).

Co, Edna Estifania. Challenges to the Philippine Culture of Corruption. Available at https://static-content.springer.com/lookinside/chp%3A10.1057%2F9780230590625_6/000.png (last accessed April 15, 2016).

Glaeser, Edward, Saks, Raven. Corruption in America. Journal of Public Economics October 2005. Available at http://projects.iq.harvard.edu/files/gov2126/files/glaesersaks_2006.pdf (last accessed April 2, 2016).

Krisnan, Jayanth. Scholarly Discourse, Public Perceptions, and the Cementing of Norms: The Case of the Indian Supreme Court and the Plea for Research. *available at* <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1311&context=facpub> (last accessed March 31, 2016).

Miklian, Jason and Carney, Scott. Corruption, Justice and Violence in Democratic India, SAIS Review vol. XXXIII no. 1 (Winter–Spring 2013).

Nye, Joseph. "Corruption and political development", *American Political Science Review*, vol. 61, no. 2, (1967)417-427

O'Connell, Fiona & McCaffrey, Ray. Judicial Appointments in Germany and the United States *available at* <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2012/justice/6012.pdf>

Pepys, Mary Noel.. Comparative Analysis of Judicial Corruption. *available at* http://assets.cambridge.org/97805217/00702/excerpt/9780521700702_excerpt.pdf (last accessed April 2, 2016).

Quah, Jon. "Curbing Asian corruption: An impossible dream?" *Current History-New York Then Philadelphia*, 105 (2006):176

Singh, M.P. Securing the Independence of the Judiciary: the Indian Experience *available at* <http://mckinneylaw.iu.edu/iiclr/pdf/vol10p245.pdf> (last accessed April 21, 2016).

Tummala, Krishna, Political Corruption in India: Coalition Dharma?!? Available at <http://journals.sfu.ca/ipmr/index.php/ipmr/article/viewFile/82/82> (last accessed April 27, 2016).

Wagner, Daniel and Tupaz, Edsel. Monkey Business as Usual in the Philippines, *available at* http://www.huffingtonpost.com/daniel-wagner/monkey-business-as-usual_b_1967520.html (last accessed April 2, 2016).

Online Sources/News Articles

Barnes, Robert.. Supreme Court will review corruption conviction of former Va. governor Robert McDonnell *available at* https://www.washingtonpost.com/politics/courts_law/supreme-court-will-review-corruption-conviction-of-former-va-governor-robert-mcdonnell/2016/01/15/e281ede0-b3c8-11e5-a76a-0b5145e8679a_story.html (last accessed April 5, 2016).

Damicog, Jeffrey. Ombudsman charges Corona over misdeclared SALN. *available at* <http://www.mb.com.ph/ombudsman-files-raps-vs-corona-over-misdeclared-saln/> (Last accessed April 5, 2016).

Diola, Camille. SC upholds order vs Arroyo Midnight Appointments *available at* <http://www.philstar.com/headlines/2015/06/16/1466577/sc-upholds-order-vs-arroyos-midnight-appointments> (Last accessed April 5, 2016).

Doronila, Amando, “WB report targets Erap administration”, Philippine Daily Inquirer, 8 November, 1999.

Cayabyab, Marc. Deluge of pork scam cases lowers Sandigan’s disposal rate. *available at* <http://newsinfo.inquirer.net/697827/deluge-of-pork-scam-cases-lowers-sandigans-disposal-rate>. (last accessed April 21, 2016).

Chua, Yvonne . and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. *available at* <http://verafiles.org/pork-by-any-name/> (last accessed April 2, 2016).

Eliason, Randell. Federal Prosecution of State and Local Corruption: From Sea to Shining Sea. *available at* <https://rdeliason.com/2015/03/30/federal-prosecution-of-state-and-local-corruption-from-sea-to-shining-sea/> (last accessed April 5, 2016).

Flores, Helen. SWS: Binay approval rating slides further *available at* <http://www.philstar.com/headlines/2015/04/14/1443618/sws-binay-approval-rating-slides-further> (last accessed April 1 2016.)

Gentleman, Amelia. ‘Thin Ray of Light Shines on Dark Ocean of Graft ’, International Herald Tribune , 18 January, 2008 p. 2 .

Gumala, Ruben. Evolution of the Pork Barrel System in the Philippines. *available at* <http://www.up.edu.ph/evolution-of-the-pork-barrel-system-in-the-philippines/> (last accessed April 2, 2016).

Ifran, Hakeem. Too Many Corruption, Too Few Convictions. Available at <http://www.dnaindia.com/india/report-too-many-corruption-cases-too-few-convictions-1910308> (last accessed April 17, 2016).

La Julian, Peter. “P100M lost to graft every day—Desierto”, Philippine Daily Inquirer, 10 July 1999.

Marcelo, Elizabeth. Graft raps filed vs. Junjun Binay. *available at* <http://www.gmanetwork.com/news/story/555904/news/nation/graft-raps-filed-vs-junjun-binay-other-makati-officials-before-sandiganbayan> (last accessed March 20, 2016).

Mahapatra, Dhananjay. Raja used wife’s a/c to stash bribe in Mauritius and Seychelles. *available at* <http://timesofindia.indiatimes.com/india/Raja-used-wifes-a/c-to-stash-bribe-money-in-Mauritius-and-Seychelles/articleshow/7607294.cms> (last accessed April 12, 2016).

Meruenas, Mark. Profile: Who is Sandiganbayan Justice Gregory Ong? Available at <http://www.gmanetwork.com/news/story/380756/news/nation/profile-who-is-sandiganbayan-justice-gregory-ong> (last accessed April 2, 2016).

Rajagopla, Khrinadas, Karnataka cites Mathematical error in High Court Verdict *available at* <http://www.thehindu.com/news/national/tamil-nadu/jayalithaa-disproportionate-assets-case-karnataka-cites-arithmetic-errors-in-high-court-verdict/article7347802.ece> last accessed December 1, 2015

Nogralas, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the ‘Pork Barrel, available at http://www.congress.gov.ph/download/14th/pork_barrel.pdf (last accessed April 1, 2016).

Santos Jr., Reynaldo. Anti-Graft Court's Top 10 cases involve billions of pesos. *available at* <http://www.rappler.com/newsbreak/51-fast-facts/62401-anti-graft-court-top-10-cases-billions-pesos> (last accessed March 21, 2016).

Tan, Kimberly Jane, COMELEC allows Erap to run for president in May 10 polls *available at* <http://www.gmanetwork.com/news/story/182015/news/nation/comelec-allows-erap-to-run-for-president-in-may-10-polls>. (Last accessed at April 15, 2016).

Laws

The 1987 Philippine Constitution.

The Indian Constitution.

Republic Act 3019, Anti-Graft and Corrupt Practices Act

The Revised Penal Code of the Philippines

Republic Act 6770 or the Ombudsman Act of 1989

Prevention of Corruption Act 1988 of India

The Indian Penal Code

Prevention of Money Laundering Act of 2002

Republic Act 7975, An Act to Strengthen the Structural and Functional Organization of the Sandiganbayan

Hobbs Act, 18 U.S.C. § 1951

Republic Act No. 1405, Sec. 2, Bank Secrecy Act.

Judges Inquiry Act 1964 of India.

Local Government Code, Republic Act No. 7160

Cases

Estrada v. Desierto, GR Nos. 146710-15, March 2, 2001

Chavez v. Public Estates Authority. G.R. No. 133250, July 9, 2002.

United States v. Evans 504 US 255 (1992).

United States v. Turkette, 452 U.S. 576, 589 [1981])

H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239-240 [1989]

Chuidan v. Sandiganbayan, GR No. 156383, January 19, 2001.

Abakada Guro Party List v. Purisima, G.R. No. 166715, August 14, 2008

Belgica v. Executive Secretary, G.R. No. 208566, November 19, 2013.

FASAP v. PAL, G.R. No. 178083, July 22, 2008.

V.S. Achuthanandan vs. R. Balakrishna Pillai & Ors (2011) 3 SCC 317

Others:

Bribery and Corruption: Ground reality in India, A survey by EY Fraud Investigation & Dispute Services Action *available at*

[http://www.ey.com/Publication/vwLUAssets/Bribery_and_corruption:_ground_reality_in_India/\\$FILE/EY-FIDS-Bribery-and-corruption-ground-reality-in-India.pdf](http://www.ey.com/Publication/vwLUAssets/Bribery_and_corruption:_ground_reality_in_India/$FILE/EY-FIDS-Bribery-and-corruption-ground-reality-in-India.pdf) (last accessed April 2, 2016).

Briefer: The Judicial and Bar Council *available at* <http://www.gov.ph/about/gov/judiciary/sc/briefer-jbc/> (last accessed February 12, 2016).

Combating Corruption in the Philippines: An Update, *available at*

<http://www1.worldbank.org/publicsector/anticorrupt/FlagshipCourse2003/PhiliCombatCorruptUpdate.pdf> (last accessed April 15, 2016).

Corruption is Rampant in the Lower Courts. *available at* <http://www.outlookindia.com/magazine/story/corruption-is-rampant-in-the-lower-courts/281457> (last accessed April 2, 2016).

Corruption Perceptions Index. *available at* <http://www.transparency.org/cpi2015> (last accessed April 25, 2016).

Corruption Laws in India, PRS Legislative Research *available at*

http://www.prsindia.org/administrator/uploads/general/1302844978_PRS%20Note%20on%20corruption%20laws.pdf, last accessed December 1, 2015.

Daily Chart: American Corruption, *available at* <http://www.economist.com/blogs/graphicdetail/2012/03/daily-chart-10> (last accessed April 5, 2016).

Equitable VP: Erap signed as Jose Velarde, *available at* <http://www.philstar.com/headlines/157654/equitable-vp-estrada-signed-jose-velarde> (last accessed February 5, 2016.)

Former Philippine President Pardoned. *available at* <http://uk.reuters.com/article/uk-philippines-estrada-idUKMNB0007120071025> (last accessed February 5, 2016.)

Fact Sheet: The U.S. Global Anti-Corruption Agenda *available at* <https://www.whitehouse.gov/the-press-office/2014/09/24/fact-sheet-us-global-anticorruption-agenda> (last accessed April 5, 2016).

Honorable Justice P. Sathasivam. Speedy Disposal of Corruption and Vigilance Cases. *available at* <http://www.tnsja.tn.nic.in/Article/Corruption%20SD-PSJ.pdf> (last accessed April 17, 2016).

Indian media 2G Scam Probe *available at* <http://www.bbc.com/news/world-asia-india-30140856> . (last accessed April 2, 2016).

The Role of the Judiciary in Combating Corruption in Nigeria citing His Lordship, Hon. Justice Dahiru Musdapher Keynote Speech at the SERAP Roundtable on 9th February 2012, *available at*

<http://www.premiumtimesng.com/opinion/101606-the-role-of-the-judiciary-in-combating-corruption-in-nigeria-by-tayo-oyetibo-san.html> (last accessed on April 1, 2016).

The Cultural Foundation of Corruption, *available at* <http://www.mb.com.ph/the-cultural-foundation-of-philippine-corruption/> (last Accessed April 16, 2016.)

The Tuwid na Daan Myth, *available at* <http://www.manilatimes.net/the-tuwid-na-daan-myth-2/200725/> last accessed April 3, 2016.

Transparency International India 2007. 'Indolence in India's Judiciary', in *Global Corruption Report 2007*. Cambridge: Transparency International and Cambridge University Press, pp. 214 – 217.

Top Indian Official Convicted of Corruption. *available at* <http://www.aljazeera.com/news/africa/2014/09/india-jayalithaa-jayaram-corruption-20149275234775133.html> (last accessed February 15, 2016).

Ombudsman, Sandiganbayan plummets performance in 2014. *available at* <http://www.rappler.com/nation/82945-ombudsman-sandiganbayan-performance-plummets-2014>. (last accessed April 2, 2016).

Philippine Democracy Assessment: The Rule of Law and Access to Justice. Available at http://www.idea.int/publications/philippine_democracy_assessment/upload/SoD-Philippines_chapter5.pdf (last accessed April 20, 2016).

Policy & Research Dept., Transparency International, Report on the Transparency International Global Corruption Barometer 2006 at 14, <http://www.transparency.org/index.php/policy-research/surveys/indices/gcb/2006> accessed April 20, 2016; copy on file with Journal of Appellate Practice and Process).

available at <http://www.thehindu.com/news/national/tamil-nadu/new-judge-to-hear-jayalithaa-case/article8078144.ece>, last accessed February 1, 2015.