

## **CONTROLLING THE SUPPLY SIDE OF CORRUPTION: Is There Morality In The Business Of Bribe?**

-----

*"It always takes two hands to clap."* - An Indian Proverb

Like the Indian proverb cited above, a "corrupt transaction" requires at least two players- a *'Giver'* and a *'Taker'*. In fashionable management jargon they can be termed as the two "Principal Stakeholders" in this unholy "enterprise of corruption". The person(s) or business entity (ies) who receives the bribe/ inducement is commonly known as the **'Demand side'** of corruption while the one(s), who supplies such unlawful consideration, is termed as the **'Supply Side'**.

Which of these sides is more to blame in the event of detection of such a transaction? The answer is simple, or at least seems simple - *both are to be equally blamed*. The *"giver"* is as guilty as *"receiver"*. The law should punish them equally. Any anti-corruption policy should focus on both the demand and supply side on an equal measure to be an effective tool of deterrence.

The answer to the question of distribution of guilty and liability for consequence between *"Giver"* and *"Taker"* may seem rather deceptively easy. Yet, if one looks closer into the issue and compares with it with the ground reality, he may be in for some nasty surprises and ethical twists. After all, numerous people in many countries are known to pay bribes routinely for securing basic civic amenities like getting driving licences, paying electricity bills, for securing water supply to their houses. Everybody knows about petty bribing at land registration offices of various states. Yet, how often do we hear that the bribe giver is being punished for being an equal participant in the transaction?

Well, you will argue that those people are helpless victims of corruption. Had they got a choice, they would never have succumbed to the demands of those greedy Officers. But, by choosing to pay the bribe, are they not also securing preferential service over their equally unfortunate brethren?

Somehow societies tend to condone the *"giver"* while concentrating their ire on the *"taker"* of the alleged bribe. Somehow, there is a greater degree of tolerance to the *"supply side of corruption"* as opposed to the *"demand side"*. The structure of the anti- corruption policy in many countries does reflect discernable tolerance to the *"supply side"* of corruption.

But the argument of equal justice and equal punishment to the *"giver and taker"* really turns on its head when it is applied to the business dealings *among sovereign nations* of the world. As opposed to intra-country bribery, the inter-country bribery assumes a different dimension where moral ground is often ceded to pragmatic national interest. Consider this hypothetical example. An Indian textile firm with three thousand lowly paid workers bids against a contract in Canada and pays a bribe to a Canadian public officer to secure the contract in his favour. The news gets detected and proven in a Canadian court. The Canadian government takes up their public official promptly and bans the Indian firm. But what should the standing of such a firm inside India, especially from the point of view of Indian Law? Should the Indian Govt. also penalize this firm for perpetrating

an unethical activity such as paying bribe in a Foreign Country? More importantly, are there laws in India that would make such a firm liable for penal action when the firm might have nothing to do with any official or citizen of India? After all can it not be argued that the said Textile company, by securing the contract, has contributed to the national economy of India not to mention providing daily bread for the numerous subsistence workers on it's pay roll? Another interesting argument can also be advanced against meting out any punishment to such a firm in India. It runs like this - If the Foreign multinational are known to pay bribe to secure contracts and projects in our country what is wrong if one of our business person outwits them on their own land? Can the hypothetical entrepreneur of our example be heralded as a saviour to his workforce, one who merely employed "bribe" as a "successful business strategy" in the big, bad world of globalized competition?

You think the example above is too hypothetical to decide the question of global morality? Too unreal to happen? The incident described below reflects a chilling similarity that will make you realize the oft repeated cliché - Truth is often stranger than fiction!

### **The Secret Life of a German Business Executive:**

*It was very early hours of a cold, wintry December morning in Munich, Germany in 2006. As the night was giving way to a calm dawn, Mr. Siekaczek, a senior executive of the famous German multinational Company, Siemens, heard his doorbell ring persistently. Still drowsy and in his night dress, he rushed downstairs and opened the front door. In front him stood six burly German Police men and a suave well dressed Government Prosecutor. In the hands of one was dangling a piece of paper – An arrest warrant for Mr Siekaczek issued by the German court.*

*But there was no shock or awe on the face of Mr Siekaczek. Rather, it was of a kind of strange relief, a curious feeling of serenity that comes when the antagonist of a play approaches his inevitable denouement.*

*"I know what this is about," Mr. Siekaczek told the officers crowded around his door. "I have been expecting you."*

*As the news of Mr Siekaczek's arrest got splashed over the global media, the curtain came down on the drama of one of the largest organized bribery in corporate history. As Mr Siekaczek was being led to prison, Siemens was preparing to pay more than \$2.6 billion ( Rs 13000 Crores) to clear its name: \$1.6 billion in fines and fees in Germany and the United States and more than \$1 billion for internal investigations and reforms.*

*But, who was Mr. Siekaczek?*

*Mr. Siekaczek was a mid-level executive in Siemens AG with an uncanny skill in one area – The organization and distribution of bribes. Yes, bribes but with a difference - to be paid not to anybody inside Germany but to private and public officials of foreign countries who awarded contracts to Siemens! His domain knowledge was in accounting but he had mastery in supervising and managing this intricate underworld of international bribery. His expertise was a crucial determinant in ensuring the so called "competitiveness" of Siemens in global business. It added meat to the company's bottom-line in a period of inexorable global recession and rampaging joblessness in the western world.*

*But it was the very nature of the duty that Mr. Siekaczek had been discharging for his company that raises twisted questions of morality and ethics in international bribery. Could it be that scope of application of morality be different in international business?*

*In his the Siemen's Telecommunication unit, Mr. Siekaczek's duty was to efficiently manage his annual "Budget of Bribes". According to court documents, from 2002-2006, Mr. Siekaczek supervised an annual dispensation of a bribe budget of the order of \$40 million to \$50 million per year.*

*According to the interview given by Mr. Siekaczek after his arrest, each year, Mr. Siekaczek said, managers in his unit set aside a budget of about \$40 million to \$50 million for the payment of bribes. For Greece alone, Siemens budgeted \$10 million to \$15 million a year. Bribes were as high as 40 percent of the contract cost in especially corrupt countries. Typically, amounts ranged from 5 percent to 6 percent of a contract's value.*

*The most common method of bribery involved hiring an outside consultant to help "win" a contract. This was typically a local resident with ties to ruling leaders. Siemens paid a fee to the consultant, who in turn delivered the cash to the ultimate recipient.*

*Siemens has acknowledged having more than 2,700 Business Consultant Agreements, so-called B.C.A.'s, worldwide. Those consultants were at the heart of the bribery scheme, sending millions to government officials.*

*Mr. Siekaczek's telecommunications unit was awash in easy money. It paid \$5 million in bribes to win a mobile phone contract in Bangladesh, to the son of the prime minister at the time and other senior officials, according to court documents. Mr. Siekaczek's group also made \$12.7 million in payments to senior officials in Nigeria for government contracts.*

*In Argentina, a different Siemens subsidiary paid at least \$40 million in bribes to win a \$1 billion contract to produce national identity cards. In Israel, the company provided \$20 million to senior government officials to build power plants. In Venezuela, it was \$16 million for urban rail lines. In China, \$14 million for medical equipment. And in Iraq, \$1.7 million to Saddam Hussein and his cronies.*

***But here is the twist!*** *Although he supervised the Bribe Supply Chain fro Siemens with clinical efficiency, he never personally benefited from it. German prosecutors say they have no evidence that he personally enriched himself, though German documents show that Mr. Siekaczek oversaw the transfer of some \$65 million through hard-to-trace offshore bank accounts. It was clearly different from the Enron Scandal of USA where the executives of the company were the biggest beneficiary when the company sunk. Indeed, Siekaczek considers his personal probity a point of honour. He describes himself as "the man in the middle," "the banker", "the master of disaster." But, he said, he never set up a bribe. Nor did he directly hand over money to a corrupt official.*

*So did he feel any remorse while arranging those illegal payments? No, he said in an interview later. Those payments were vital to maintaining the competitiveness of Siemens overseas, particularly in his subsidiary, which sold telecommunications equipment.*

*"It was about keeping the business unit alive and not jeopardizing thousands of jobs overnight," he said in that interview*

*"It had nothing to do with being law-abiding; because we all knew what we did was unlawful." Mr. Siekaczek said. "What mattered here was that the person put in charge was stable and wouldn't go astray." That job, Mr. Siekaczek had done with due diligence. It is as*

*if his act might seem to be unlawful from outside but not unethical or immoral from the point of view of survival of his company*

*It was an economic necessity economic necessity. If Siemens didn't pay bribes, it would lose contracts and its employees might lose their jobs.*

*"We thought we had to do it," Mr. Siekaczek said. "Otherwise, we'd ruin the company."*

### **“Bribing” as “International Business Model” :**

**In Siemens, bribe was just another Line item.** Till as recently as 1999, bribes were even deductible as business expenses under the German tax code, and paying off a foreign official was not a criminal offence. That was also the situation in most other EU countries. It is after the International Anti-Bribery and Fair Competition Act of 1998 (IAFCA) got signed by OECD countries that bribing foreign officials became illegal in most European countries . Germany became a signatory to it in 1999. Before 1998 the only Country that had a law against international bribery was USA – the Foreign Corrupt Practices Act (FCPA) - which had been promulgated in 1977 in the aftermath of infamous Watergate Scandal broke out.

But Siemens skirted the law as usual. Inside Siemens, bribes were referred to as "NA" -- a German abbreviation for the phrase "*nutzliche Aufwendungen*," which means "useful money." Siemens bribed wherever executives felt the money was needed, paying off officials not only in countries known for government corruption, like Nigeria, but also in countries with reputations for transparency, like Norway, according to court records.

Even by 2000, the very next year of Germany ratifying the OECD convention , authorities in Austria and Switzerland were suspicious of millions of dollars of Siemens payments flowing to offshore bank accounts, according to court records.

The court document in this case is very explicit. It shows Siemens bosses even created an internal Vigilance system which never did anything except to give an impression that the anti-bribery law ratified by the host country was being complied with.

### **Why are countries reluctant to punish their home grown Bribe Givers?**

Unfortunately, countries do not tend to penalize their people for bribing officials on foreign lands if they secure lucrative contracts. In fact, according to one particular school of thought, it is the companies patronized by “developed nations” that are responsible for “corrupting” the “Government officials of developing nations”. Rampant bribery by influential western MNCs to secure expensive infrastructure projects has often been cited as the one of the main reasons of continuing misery of Sub Saharan Countries and the opulence of tin-pot dictators and their cronies. These wealthy few, in turn, stash the money abroad resulting in an accelerated “flight of capital” from their national economy. So why the developed nations should not tighten their own companies and help control the Supply Side of Corruption in the developing world ?

So how can we know who bribes more ? It is for this reason Transparency International started compiling a “Bribe Payers Index” from 1999 in two to three years interval. So far four such indices have been published

### **Is the West more Immoral!**

During BPI survey , respondents from lower income countries in Africa, for example, identified French and Italian companies as among the worst perpetrators.

“It is hypocritical that OECD-based companies continue to bribe across the globe, while their governments pay lip-service to enforcing the law. TI’s Bribe Payers Index indicates that they are not doing enough to clamp down on overseas bribery,” said David Nussbaum, Chief Executive of Transparency International. “The enforcement record on international anti-bribery laws makes for short and disheartening reading.”

“The rules and tools for governments and companies do exist,” said Nussbaum. “Domestic legislation has been introduced in many countries following the adoption of the UN and OECD anti-corruption conventions, but there are still major problems of implementation and enforcement.

So, are the rapacious Western Companies less moral than, say, their Asian counterparts? After all, the Chinese, Russian and Indian Companies are also now global players in this game. Do they resist the inherent temptation to bag an offshore contract by resorting to bribery in foreign lands? We can have an idea about the issue by looking at the only reliable data about bribing – The Bribe Payers Index or BPI.

### **East Meets West – Have Money will always bribe!**

The BPI looks at the likelihood of companies from 30 leading exporting countries to bribe abroad. A perfect score, indicating zero perceived propensity to pay bribes, is 10.0, and thus the ranking below starts with companies from countries that are seen to have a low propensity for foreign bribe paying companies from the wealthiest countries generally rank in the top half of the Index, but still routinely pay bribes, particularly in developing economies. But the real surprise is reserved for the companies from emerging export powers India, China and Russia who rank among the worst. In the case of China and other emerging export powers, efforts to strengthen domestic anti-corruption activities have failed to extend abroad.

### **BRIC Countries as Emerging Bribe Powers**

When the Bribe Payers Index was first published 1999, only 22 exporting countries had been surveyed for their bribe paying propensity. India was not included and therefore did not feature in the first two lists. China was the worst Bribe Paying nation in this list. In the next survey of 2002, the top briber trophy went to Russia followed by China. But in the next list of 2006, India featured and straight away claimed the top position. That year, Indian business men had surpassed their Chinese and Russian counterpart in the fine art of bribe giving as the table below shows. **So, what happened to the famed “Asian values” or the “Morality of the mystic East” ? Is morality after**

**all a matter of convenience for nations with the underlying rule that have money will always bribe to thrive!**

Rank	Country/Territory	Average score (0-10)	Percentage of global exports (2005)	Ratification of the OECD Anti-Bribery Convention	Ratification of <u>UNCAC</u>
1	Switzerland	7.81	1.2	Yes	No
2	Sweden	7.81	1.2	Yes	Yes
3	Australia	7.59	1.0	Yes	Yes
<b>Highest ranked Bribe Paying Nations</b>					
28	Russia	5.16	2.4	No	Yes
29	China	4.94	5.5	No	Yes
30	India	4.62	0.9	No	No* (as on 2006)

\* India finally ratified UNCAC in 2011

[Ref BPI Indices in TI Website]

**The Circle of Poison:** Many think, that now the developing countries are using the same method that used be practiced by the MNCs of developed nations. They now have not only learnt this method but are even perfected it to go a notch above their counterparts in developed world. Some argue that there is little point in crying hoarse about the dirty tricks played by the emerging nations like China, Russia and India in bagging contracts in developed countries and asking them to join Anti-Bribery Convention ( Except Brazil none of the BRIC Countries have signed these treaty). Some say that the “Circle of Poison” has now turned full circle and reached the shores from which it originally flowed.

### **The Consequence of Competitive Corruption in global business:**

While addressing the challenge of international bribery in July 2004 , the then Undersecretary , Department of Commerce , International Trade Administration spoke vividly on how the US Companies lost to their European Counterparts for observing fair play because the FCPA ( Foreign Corrupt Practice Act) in USA. The executive summary of the minutes prepared on that occasion lists the effect of honesty and restraint for US business in rather vivid terms as quoted below :

” Based on information available from a variety of sources, we estimate that between May 1, 2003, and April 30, 2004, the competition for 47 contracts worth US\$18 billion may have been affected by bribery by foreign firms of foreign officials. Although this represents an increase over last year's report of 40 contracts, the value of the contracts dropped, from \$23 billion to \$18 billion. U.S. firms are known to have lost at least eight of the contracts, worth \$3 billion. Enforcement of the anti-bribery convention remains uneven. Apart from the United States, South Korea and Sweden, the department said it was unaware of any other country in which a conviction had been obtained for bribery of a foreign public official. Canada, France, Italy and Norway have initiated investigations or legal proceedings in some cases, but many other countries "have been slow to apply enforcement resources to address translational bribery," the department said.

In the more than two decades of FCPA Act and until 1998 , US companies had consistently complained to Federal Government about loss of business and demanded an “equal freedom to bribe” as their EU counterparts

## **So what is the Moral of the Story? *Game Theory for Trust and Betrayal***

The situation that can result when each nation thinks it will lose the contract because others will gain is akin to the famous “Prisoners Dilemma” of Game Theory. This fascinating theory , perfected by the enigmatic American Mathematician John Nash who got a Nobel for the same , has been applied to diverse situations – from Cold War era Super Power Negotiation to Bandwidth auctions in US and Evolutionary Biology . It predicts that in a game of mutual betrayal all players eventually lose. “Equal trust” is always better than “equal betrayal”. As was succinctly summed up by Huguette Labelle of transparency International ““*Bribing companies are actively undermining the best efforts of governments in developing nations to improve governance, and thereby driving the vicious cycle of poverty* ”. The Companies who bribe public officials whether from developed nations or emerging economic powers do not distinguish whom the bribe – in USA or in Uganda. Bribe knows no geographical boundaries.

So let not any country drag its national interest to claim a sovereign right to bribery. Bribery in any form is against humanity. Let us listen to the sound of both hands when we hear a clap!

**S.K.Sadangi, CVO, Kolkata Port Trust**

### ***Reference:***

1. *Game Theory : Analysis of Conflict* by Roger B. Myerson
2. *Executive Summary of the sixth annual report of Department of Commerce, USA , presented in July 2004 while Addressing the Challenges of International Bribery and Fair Competition.*
3. *BPI published in the Website of Transparency International, Germany*
4. *Report about Siekaczek role in Siemens Scandal published in Newyork Times in 21-12-2008.*
5. *Court Documents cited by Department of Justice, USA in the Siemens Bribery Scandal*