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Narendar Pani

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Historical insights into modern corruption: descriptive moralities and cooperative corruption in an Indian city

Narendar Pani

National Institute of Advanced Studies, Indian Institute of Science Campus, Bengaluru, India

ABSTRACT
Much of the debate on the relationship between social norms and corruption has been confined to comparisons across countries. But a gap between what is morally acceptable by a society and what is legally correct can exist within individual countries as well. In such cases, it is possible for individual acts of corruption to be seen to be morally justified. This paper explores the emergence of this gap through the imposition of British law on a very different descriptive morality in nineteenth century Indian city of Bengaluru. Drawing from this experience it seeks to identify the dynamics of the process in a way that would allow for it to be used to understand corruption across different societies, and the lessons it has for an effective strategy against endemic corruption.

Introduction

There is a growing body of evidence that corruption tends to follow broad social and cultural patterns. Studies have used data ranging from the parking behaviour of diplomats[1] to more controlled experiments[2] to demonstrate that individuals from countries that are ranked higher in existing scales of corruption are more prone to follow corrupt practices even in other environments. These empirical results would seem to suggest that some sets of social norms are more accommodating of corruption than others. At the same time it could also be argued that the fault lay not so much with the moral weaknesses of some sets of social norms but with perceptions of corruption. If corruption is the abuse of entrusted power, what is considered 'abuse' itself varies across legal and cultural standards.[3] Whichever end of this debate we choose to lean towards, there remains the risk, as Bardhan[4] has pointed out, of becoming tautological: a country accepts corruption because its social norms accept corruption. It is important then to go beyond recognising the gap between what social norms advocate and what the law against corruption permits, to explore the causes of this gap and the dynamics through which it influences the levels of systemic corruption.

CONTACT Narendar Pani ✉ narendar.pani@gmail.com
[1]Fisman and Miguel (2007).
[2]Barr and Serra (2010).
[3]Urinboyev and Svensson (2013).
[4]Bardhan (1997).

Much of this debate on the relationship between social norms and corruption has been confined to comparisons across countries. Consequently the focus has tended to be on international rankings of corruption. But a gap between what is morally acceptable by a society and what is legally correct can exist within individual countries as well. When a colonial power introduces a new legal system in a colony with a different set of social norms there is often a difference between what is morally acceptable in the colony and the requirements of the legal system. This relationship between colonialism and corruption has been shown to exist in Sub-Saharan Africa. Mulinge and Lesetedi have 'examined the role of colonialism in the birth of corrupt practices; and assessed how Africa's colonial past has impacted on the extent of corruption that characterises most nations during the post-colonial period'.[5]

The fact that Indian morality was different from that underlying British law was argued as far back as the last decades of the eighteenth century by Warren Hastings when he was impeached for corruption.[6] Such a gap can also exist when societies go through a revolutionary transformation. It has been pointed out that 'The use of "clans" or social networks/blat, that typifies post-Soviet clientism, nepotism and cronyism, is often not viewed in a negative light'.[7] Even in more leisurely transformations governments could introduce new laws with the purpose of changing existing social norms, thereby creating a gap between existing social norms and the requirements of the new legal regime. This is true of India, which has used changes in its law as an instrument to bring about social change in a variety of areas, including land reform.[8]

In exploring the gap between social norms and legal enforcement, and the role it plays in generating systemic corruption, there is a need to first get a sense of the entire process before we can test the validity of specific elements over a wider area. As this paper focuses only on the first part of this exercise, it confines itself to taking an in-depth view of a single case in order to throw up a theoretical construct that can in later exercises be validated (or rejected) over larger areas. We would ideally need a case where there is a well-established set of social norms on which is imposed a foreign legal system originating from a different set of social norms. The classic cases of such situations are when a colonial power imposes its legal system on a colony with a very different set of social norms. Such historical cases cannot of course be expected to exist unchanged centuries, or even decades, later. But if we go beyond the specifics of such cases and look at the dynamics of the process, the insights they throw up may not be entirely irrelevant to an understanding of the working of twenty-first century systemic corruption.

This paper uses the case of British jurisprudence enforced on the newly colonised south Indian city of Bengaluru (previously Bangalore) in the 1830s to capture the dynamics of the process through which corruption gets institutionalised. It begins with a brief overview of the approaches to corruption, arguing for a distinction to be made between what can be termed 'cooperative corruption' and 'non-cooperative corruption', with the former providing a share of the spoils to sections of the public. It then provides an account of the descriptive morality, and the legal system that enforced that morality, in pre-British Bengaluru. It goes on to outline the experience of the then British Commissioner of Mysore,

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[5]Mulinge and Lesetedi (1998), p 25.
[6]Ala'i (2000).
[7]Bowser (2001).
[8]Merillat (1968–69).

Mark Cubbon, in imposing British jurisprudence on Bengaluru in the 1830s. On the basis of that experience it conceptualises a process through which the gap between legality and descriptive morality leads to the institutionalisation of corruption, resulting in a conceptual framework that could help explain twenty-first century corruption as well.

Cooperative and non-cooperative corruption

The first hurdle in exploring the effects on corruption of the gap between legality and morality is the need to deal with a multiplicity of definitions. The term corruption itself means different things to different people, ranging from those who would analyse it as a problem confined to the public sphere[9] to those who would see it as a social pathology[10]. Each of the definitions of corruption in this wide range will in turn have its own set of relevant legal provisions. The concept of morality too is subject to multiple interpretations. The most appropriate definitions for this paper would be the ones that help us examine the underlying argument about the relationship between social norms and corruption. The argument is usually stated in general terms that since moralities vary across cultures, each culture could have very different ideas of what constitutes corruption. It is then possible for an illegal act to be morally acceptable. Indeed, the accepted morality may even encourage illegal behaviour, such as when a culture that places a premium on family loyalty comes up against a law that makes nepotism illegal.[11] It may help our search for precision if we were to restate the same argument not in terms of a justification for certain corrupt acts, but as an ideal in which social norms would not be used to justify corruption. In this form the argument would be that a given morality would advocate a set of rules that would be enforced by the legal system. In the ideal situation, where there is total consistency between the morality and the legal system, any act of corruption that defies the legal system would necessarily also defy the moral system. There would then be no scope for moral justification of an illegal act.

When stated in these terms it is clear that our definition of morality need be concerned not so much with what moral norms *should* be, but rather what they *are*. We can go back to the distinction philosophers make between descriptive and normative morality. As Gert puts it,

> The term 'morality' can be used either (1) descriptively to refer to some codes of conduct put forward by a society or, (a) some other group, such as a religion, or (b) accepted by an individual for her own behavior or (2) normatively to refer to a code of conduct that, given specified conditions, would be put forward by all rational persons.[12]

Since our case is only concerned with the existence of multiple cultures with different concepts of morality and social norms, we can confine ourselves to the descriptive notions of morality. Again, the role of religion and the individual are interesting elements of descriptive morality, but since our focus is on the effect of social norms, we can confine our treatment of descriptive morality in this paper to some codes of conduct put forward by a society.

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[9]Hodgson and Jiang (2007).
[10]Carvajal (1999).
[11]Boulay and Williams (1987).
[12]Gert (2012).

The relevant codes of conduct would be determined by the definition of corruption we use. Among the various classifications of the wide range of definitions of corruption one that has had wide acceptance is that of Hiedenhammer and Johnston (2009).[13] They classify the definitions found in contemporary social sciences into three categories. First, there are the public-office-centred definitions that focus on the norms binding on the incumbents of these offices. Second, there are the definitions based on the theory of the market where the corrupt act is analysed in terms of market behaviour. And third, there are definitions that focus on the harm corruption causes to public interest. These definitions need not be mutually exclusive. In particular, the misuse of public office and the harm caused to public interests could be seen as being essential to a comprehensive definition of corruption. This would lead us to Mark Philp's view that

> we have a case of corruption when: A public official (A), acting for personal gain, violates the norms of public office and harms the interests of the public (B) to benefit a third party (C) who rewards A for access to goods or services which C would not otherwise obtain.[14]

In utilising this definition, though, we would do well to be aware of two possible limitations. First, the restriction of the scope of corruption to a 'public official' could leave out private individuals who are entrusted with power. This could be a serious shortcoming in a situation where private individuals are entrusted with aspects of public policy. This would be true of unofficial advisors who play a role in economies around the world. In countries like India it is hardly unknown for relatives of public officials to act on their behalf.[15] These reasons could have influenced Transparency International's definition of corruption being the 'abuse of entrusted power for private gain'.[16] It would be useful then to refer to not just public officials but anyone entrusted with power. Second, corruption could occur even when all the steps in the process outlined in the definition are not met. For instance, it would be corruption even when a person entrusted with power violates the norms of public office for personal gain without benefiting any third person. It would be useful then to recognise that this definition has at least four separate components: misuse of office for personal gain; knowingly hurting public interest; benefiting a third party who is not entitled to benefit; and receiving a reward for doing so. Each of these elements in itself would constitute an act of corruption. We could then modify Philps' view to state that we have a case of corruption when: A person entrusted with power misuses that power for personal gain and/or knowingly harms the interests of the public and/or benefits a third party by giving that party access to goods or services that he or she would not otherwise obtain, with or without receiving a reward for doing so.

Each of the four components of this definition have been stated in a way that they could cover quite different realities. The misuse of office for personal gain would depend on what a specific descriptive morality considered illegitimate. To have personal work done by someone employed by the public office could be acceptable in one descriptive morality and not in another. Some descriptive moralities can also allow for knowingly going against public interest as when roads are blocked for traffic in order to allow a public official to pass through. Similarly, descriptive moralities that place a great deal of emphasis on

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[13]Heidenheimer and Johnston (2009).
[14]Philp (2006), p 45.
[15]'Charges framed against Bansal's nephew, others in railway bribery case.' The Hindu, March 11, 2014.
[16]Transparency International (2016).

family loyalty may even be willing to accept a family member benefiting when she was not strictly entitled to. And in societies where giving gifts is an acceptable – even respectable – social practice, public servants may well believe they are entitled to receive these rewards for their service.

The gap that this paper seeks to explore is the one that arises between a given descriptive morality and the way in which corruption is interpreted. And a society interprets what can be considered corruption through its laws. It is the laws that determine when entrusted power is legally taken to be misused; when knowingly hurting public interest is illegal; when benefiting a third party who is not strictly entitled to that benefit is illegal; and when receiving a reward is illegal. In situations where the gap between the descriptive morality and the laws to prevent corruption is wide it is possible that there is moral pressure to, in fact, break the law. In such cases the category of those benefiting from a corrupt act, when they are not legally entitled to benefit, would be quite large. Indeed, we could treat the existence of a large group of persons breaking the law as an indication of a wide gap between the descriptive morality of that society and its laws.

In order to capture the extent of such corruption it would be useful to distinguish between what can be termed 'cooperative' and 'non-cooperative' corruption. Non-cooperative corruption would be cases of those entrusted with power generating illegal private gain from tasks that are *legal* in themselves. When a government official asks for a bribe to give you a legal birth certificate, it would be a case of non-cooperative corruption. Cooperative corruption would be cases of those entrusted with power generating illegal private gain by carrying out *illegal* acts for a client. In such situations there could be pressure from the client on those entrusted with power to carry out such illegal acts. And when such clients seeking illegal acts form a significant proportion of a society's population, it would be a reflection of a wide gap between the descriptive morality of that society and its laws governing corruption.

The popular reaction to the two forms of corruption can be different. As non-cooperative corruption is a burden on the citizen with no benefit, it can be expected to generate popular anger. This anger may not always be expressed, particularly when it is believed that such reactions would do little to change the situation. Those who find it repulsive to be drawn into the illegality of giving a bribe may well prefer to just hand over the task to a middleman. Such a middleman, who spares the bribe-giver the ignominy of actually handing over a bribe, may even be respected; it can't be assumed that all middlemen will be reviled.[17] But in specific situations, such as mass mobilisations against corruption, this anger can be expressed. When the India Against Corruption movement gathered momentum in 2011 and 2012 there was no dearth of bribe-givers willing to express their anger on public platforms. The then Economic Advisor in the Finance Ministry of the Government of India even argued that for a class of bribes, the act of giving a bribe should be treated as legal.[18]

In contrast, in the case of cooperative corruption the citizen also has a share in the benefits accruing from the illegal action. When cooperative corruption is widespread it may even be supported by the existing descriptive morality. Alena Ledeneva in fact

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[17]Schaffer (1986).
[18]Basu (2011).

argues that it is misleading to refer to *blat* in the Soviet Union as a corrupt practice 'for neither *blat* nor corruption has a clear or single meaning, nor are these terms independent of moral judgement'.[19] The nature of this interaction between a descriptive morality and a contrarian legal system, and its consequences, can perhaps best be understood by looking at a case in greater detail. And the efforts of the British colonial power to impose its jurisprudence on the very different descriptive morality of Bengaluru in the 1830s provides several interesting insights into how this conflict can work itself out, in the process leaving lasting consequences for the levels of corruption.

The descriptive morality of pre-British Bengaluru

Choosing Bengaluru to trace the historical roots of corruption has the advantage of picking a city that did not have any significant British influence before it came under colonial rule. It was an important centre in the kingdom of Mysore which had had some military success against the British in the second half of the eighteenth century. The first two Mysore Wars in 1767–69 and 1780–84 respectively, had seen the British being forced back before Tipu Sultan had to surrender half his kingdom in 1792 at the end of the Third Mysore War and was killed in the Fourth Mysore War in 1799, bringing the state under colonial rule. It was not that Mysore was entirely isolated from European influence in its pre-colonial years. As a part of his strategy of building alliances against the British, Tipu had been wooing the French. But this influence was limited and did not have any significant impact on the social norms in Bengaluru.

The Bengaluru that came under the control of the British in 1799 consisted of a *peté*, or market, and a fort to its south, with the whole area surrounded by a dry moat and high walls. As Francis Buchanan noted in some detail in his record of his visit to Bengaluru in 1800, the *peté* was home to a flourishing textile industry, producing a range of cloths from superior silks to coarse cotton varieties. This production system was divided along caste lines with individual castes focusing on specific occupations. Even within textile manufacture, castes specialised in specific types of cloth such as the *Togataru* making only coarse thick white cloth.[20] The map laying out the lines of attack Cornwallis led on Bengaluru in 1791 reveals a city that had a set of almost parallel roads, including *Doddapeté* or big market, running from north to south and a series of roads running from east to west.[21] Each pocket created by the intersection of these sets of roads was home to a particular caste, and was named either after the caste, as in Nagarathpeté, or after the commodity the caste traded in, as in Akkipeté or rice market. The castes had hereditary headmen

> supported by the officers of government, who punish such of his followers as do not give him the customary obedience. His judicial authority, however, is not arbitrary. All his proceedings are open; and he cannot act contrary to the advice of his council, which consists of all the old and respectable men of the cast … [22]

[19]Ledeneva (2009).
[20]Buchanan (1870).
[21]Map titled 'Plan of Bengaluru (with the attacks) Taken by the English Army Under the Command of the Rt. Hon. Earl Cornwallis, 22nd March 1791.
[22]Buchanan (1870), p 166.

The working of this council – the panchayat – was elaborated by Mark Wilks, the then Acting Resident of Mysore, in his report to the Governor General in Council in 1805. Beginning with a literal translation of the term panchayat as a 'Commission of five', he argued that the public nature of the hearings was 'considered to afford an important security against irregular or partial proceedings'.[23] The formation of the Panchayat in civil disputes explicitly took on board the possibility of bias resulting from the social background of the litigants. 'In cases where both parties are Hindoos, the Panchaet is usually composed of Hindoos; where the parties are of different sects, the Panchaet is formed of two persons from the sect of each party and a fifth from the sect of the defendant'.[24] The working of this traditional system remained deeply entrenched in the early nineteenth century with Mark Cubbon, the then Commissioner of Mysore, confirming its existence more than three decades later, in 1838. Cubbon noted that there was a prior commitment on both sides to accept the decision of the Panchayat. In cases where large amounts were involved this commitment was taken in writing. The cases were, to use Cubbon's words, 'decided viva voce'.[25] There was no written account of the proceedings, with only the final agreement given in writing to both parties. There was usually no appeal against the final order of the panchayat.

This process of dealing with civil disputes was closer to arbitration, rather than a trial in which one view was held to be valid and the other rejected. The agreements that were finally arrived at could involve both parties giving up a part of their claims. The members of the panchayat were not quite the equivalent of judges of a trial court, as their verdict too had to be seen to be fair by the general public. These differences were bound to influence the judicial process itself. The litigants had to make their case in a way that persuaded not just the members of the panchayat, but also the members of the public present at the meeting.

In understanding this traditional Indian judicial system, which relied heavily on persuasion, there is much to be gained by beginning with the claims of some Greek classics, particularly the writing of Aristotle who saw rhetoric as modes of persuasion. The importance of persuasion in the traditional Indian judicial system prevalent in Bengaluru in the precolonial period was consistent with Aristotle's belief that 'Rhetoric is useful … because things that are true and things that are just have a natural tendency to prevail over their opposites … '[26] But the system in pre-British Bengaluru was less sanguine about this natural tendency being realised than the Greek philosopher. Aristotle took the somewhat extreme view that 'if the decisions of judges are not what they ought to be, the defeat must be due to the speakers themselves, and they must be blamed accordingly'.[27] The system in pre-British Bengaluru was more sceptical about blaming the speakers alone for any failure on this count. The members of the panchayat were chosen because they were believed to be knowledgeable and wise. And the public nature of the hearings ensured their wisdom and fairness would be judged by a larger audience.

This mechanism of evaluating the judges further influenced the choice of specific modes of persuasion. Even as the litigants worked towards convincing the members of

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[23]Wilks (1805), p 25.
[24]Wilks (1805), p 25.
[25]Cubbon (1838), para 6.
[26]Aristotle (date unknown), p 6.
[27]Aristotle (date unknown), p 6.

the panchayat, they were aware of the need to also make their case to the larger public present at the panchayat meeting. And addressing a popular audience had its own rhetorical demands. To fall back on Aristotle again,

> before some audiences not even the possession of the exactest knowledge will make it easy for what we say to produce conviction. For argument based on knowledge implies instruction, and there are people whom one cannot instruct. Here, then, we must use, as our modes of persuasion and argument, notions possessed by everybody … [28]

The litigants then had to make their case in a way that reached out to more than one audience, each requiring a different mode of persuasion.

It would appear that the approach in pre-British Bengaluru was consistent with Aristotle's view that there were three modes of persuasion provided by the spoken word. 'The first kind depends on the personal character of the speaker; the second on putting the audience into a certain frame of mind; the third on the proof, or apparent proof, provided by the words of the speech itself'.[29] There is evidence to suggest that each of these modes of persuasion found place in the working of the panchayat. There was a role for the character of the speaker in influencing how his arguments would be received. Wilks noted that 'members of the Panchaet, their assessors, or witnesses called for the purpose, depose to matters of general notoriety'.[30] As the character of the litigants was dealt with in some detail it allowed considerable space in the arguments for matters that would otherwise have been considered extraneous to the case.

In utilising the second mode of persuasion – putting the audience in a certain frame of mind – the boundaries within which the litigants had to work was clearly defined. The calling of a panchayat consisting of locally respected individuals to come up with a verdict that the public would consider to be fair set the tone for the rhetoric. The general frame of mind of the audience would be built around expectations of a decision that would be seen to be fair. Any plea by the litigants had then to be designed to appeal to this sense of fairness. In this process the speakers could be expected to use all the facts they thought were relevant, including previous injustices, real or perceived. Such an appeal would necessarily be influenced by the values the society held at that time, that is, the prevailing descriptive morality. In an unequal society the respected members of the panchayat would typically be those who benefited from that inequality, and this in turn could reinforce the existing descriptive morality. This is not to suggest that the descriptive morality would not change over time, but only that such change was likely to be a slow and long drawn out process.

The working of these two modes of persuasion was bound to influence the significance of the third, that is, the proof, or apparent proof, provided by the words of the speech. The statement of the bare facts of the case would be seen through the lens of the other two modes of persuasion. Even if the locally respected members of the Panchayat were influenced by the bare facts of the case they would have had to take on board, and to have been seen to be taking on board, the information provided in the other two modes of persuasion. Wilks noticed that

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[28]Aristotle (date unknown), p 6.
[29]Aristotle (date unknown), p 8.
[30]Wilks (1805), p 26.

> … the panchaets are anxious for the examination of collateral facts, of matters of general notoriety, and of all that enters into circumstantial evidence: and their decisions are infinitely more influenced by that description of proof, than is consistent with the received rules of evidence, to which we are accustomed, or could be tolerated in the practice of an English Court.[31]

The importance of multiple modes of persuasion encouraged litigants to introduce as many facts as possible. And the possibility of convincing a less demanding popular audience would have tempted them to also introduce exaggerations, if not outright perjury. This in turn forced the members of the panchayat to begin with a very sceptical view of the evidence. They tended to disbelieve what a witness was saying until it was supported by other evidence. And the widespread acceptance of this approach to evidence was clear when Mark Wilks

> conversed with the Dewan,[32] and with the most intelligent members of these Panchaets, on the subject of this new principle in the reception of evidence: and none of these persons have hesitated to defend the rule, and to avow, as an abstract proposition founded on experience, that the presumption is definitely stronger against the veracity, than in favour of the truth, of a witness.[33]

A system of justice which had a prominent role for multiple modes of persuasion targeted at different audiences in which proceedings were not recorded is unlikely to appear infallible. And it would appear that there was no widespread expectation that it was so. This element of doubt apparently influenced the attitudes to the judgements generated by this process. It was not unknown for the shame associated with a conviction to be temporary. Cubbon appears to have been somewhat surprised that the harshness of punishment could be matched by its temporariness:

> The Amils were sometimes confined in irons for corruption, or neglect of duty or summoned to the Hoozoor,[and] exposed before the Palace with their faces covered with mud, [and] with pincers on their ears they were also occasionally flogged to the extent of one hundred lashes or until they gave security for the balances against them; *yet such men were not by any means looked upon as disgraced, but were frequently reappointed to the office*, and some of the talook servants now in employ are said to have formerly suffered such inflictions.[34] (emphasis added)

Such a system would have its own responses to the four elements drawn from the definition of corruption this paper uses: misuse of office, knowingly hurting public interest, benefiting a party not entitled to benefit, and being rewarded for one or more of the three previous acts. There are systems where the misuse of public office could be identified independently of the other elements. This would be the case when public office is limited in scope and there are clearly defined rules that those in public office must follow. But in the traditional pre-British system of governance in Bengaluru both these conditions were not easily met. The means that could be used by those entrusted with power was wide-ranging. With power also being hereditary the authority to use it too was widely accepted.

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[31]Wilks (1805), p 26–27.
[32]The Dewan was the prime minister of the kingdom and later princely state of Mysore.
[33]Wilks (1805), p 26.
[34]Cubbon (1838), para 59.

And since there were few clearly defined rules to be followed, tracking the misuse of power in itself was bound to be difficult.

The misuse of power was then only evident when it was linked to the second element in our definition: knowingly hurting public interest. When those entrusted with power knowingly hurt public interest it was interpreted as a misuse of power. In this case too there was no predefined set of rules to decide what constituted knowingly hurting public interest. This also was subject to a situational evaluation. But, if we were to go by popular mythology and folk tales in the region, it would seem that when those entrusted with power were seen to have betrayed the trust placed in them, the descriptive morality in the system would view it very harshly.

The third element in our definition of corruption – diverting benefits to those who were not entitled to benefit – would also have to be assessed keeping in mind the types of entitlements that were traditionally accepted. In the traditional descriptive morality of pre-British Bengaluru, a great deal of emphasis was laid on the family. The members of a family were expected to stand together through good times and bad. As Cubbon noted, 'The wives and families of thieves were also commonly taken up and imprisoned with their husbands, notwithstanding that there was no pretence for including them in the charge'.[35] When families were expected to go to prison for the fault of individual members, they could righteously claim to be entitled to the benefits that accrue from a member being entrusted with power. But there was a clear idea of those who were not entitled to benefit. Among the charges of corruption against an Amildar in Mysore in the first half of the nineteenth century was one that he gave paddy belonging to the government to a dancing girl.[36]

Once the entitlements of the descriptive morality of pre-British Bengaluru are understood, it is possible to identify rewards gained from providing benefits to those who are not entitled to benefit. Another Amildar in Mysore during the same period was charged with receiving bribes of varying values ranging from a double string of pearls with a pendant of rubies and diamonds to a velvet umbrella with a silver fringe.[37] The descriptive morality that prevailed in pre-British Bengaluru cannot then be seen as being inherently more accepting of corruption. The scope for corruption – and righteous anger against it – was not limited, as long as one understood the descriptive morality that determined what was morally considered corrupt.

The coming of British jurisprudence

When the British defeated and killed the Muslim ruler Tipu Sultan in 1799 they were wary of taking over direct control of Mysore. As a kingdom they had fought four wars with, they could not expect the population to be favourably inclined towards their rule. They also knew little of the internal systems used to govern the territory. In the face of these uncertainties they decided to go in for a period of indirect rule. They placed on the throne a young boy who was a descendant of an earlier Hindu dynasty that had ruled Mysore. They then retained Tipu Sultan's Dewan, or prime minister, Poornaiah, in his position.

[35]Cubbon (1838), para 57.
[36]Sastri (1932), p 307.
[37]Sastri (1932), p 308.

This arrangement worked till 1811, when the British resisted Poornaiah's efforts to turn his office into a hereditary one. The removal of Poornaiah saw real power moving closer to the hands of the young king. For a variety of reasons this shift in power saw Mysore moving into a period of misrule. And when the misrule reached a crisis the British decided to take over the administration, in 1831, thus beginning half a century of direct rule.

The choice of direct rule at first had more to do with the maladministration of the king, rather than any belief that the British should transform the systems of governance in Mysore into a British one. The initial effort was to take control of local institutions rather than replace them. As Lewis Rice was to note, the Governor General had instructed the Madras Government that 'the agency under the Commissioners should be exclusively native; indeed, that the existing native institutions should be carefully maintained'.[38] But the task of restoring order to the governance of Mysore meant that things could not be left as they were. This required a dilution of the diktat requiring the British officers to carefully maintain existing institutions. It was decided instead to try to stick *as far as possible* to the old systems and not to introduce new systems that could not be worked later by the local population.

The need to be sensitive to local descriptive morality had already been recognised elsewhere in British India and indeed in other areas under British colonialism. When working out the legal system to be enforced the British took care to ensure that some aspects of the local law, particularly personal law, were left largely untouched. As Brian Tamahaha notes when looking at British colonialism as a whole, this led to a system of legal pluralism:

> In many locations, what resulted was a dual legal system with various complex mixtures and combinations, and mutual influences. Coexisting within the ambit of an overarching legal system were state court processes and norms instituted by the colonising power that applied mainly to economic activities and government affairs, while officially recognised customary or religious institutions enforced local norms.[39]

And yet the imposition of British jurisprudence was very substantial. The broad contours of the legal system that was to be introduced in India had been worked out by 1793. To follow Bernard Cohn's outline of this system,[40] the British had decided, among other things, to establish courts in the parts of the country controlled by them that would decide a variety of matters, including civil and criminal cases. The procedure in these courts was to be based on those followed in British courts, necessitating the creation of a legal profession. All disputes of ownership and rights in land were to be brought under the civil courts. In revenue matters the regulations the British had brought about were to be established, and the revenue and judicial functions in the administration were to be separated.

Among the early priorities for Mark Cubbon, when he took over as Commissioner of Mysore in 1834, was reform of the judicial system. By the end of October that year he issued draft rules for the establishment of Courts of Justice in Mysore. In doing so his sensitivity to the local descriptive morality pushed him to go beyond the norms that the British had worked out for the districts they directly controlled. Cubbon believed that

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[38]Rice (1897), p 430.
[39]Tamanaha (2008), p 384.
[40]Cohn (1961), p 614.

the local community had institutions that were best suited to their descriptive morality. He argued that

> … the natives would in general prefer with all the risk of occasional partiality and informality, prompt justice administered on the spot, by officers well acquainted with the parties, to a reference to a distant tribunal where the judge is incapacitated by want of the same information from forming a correct decision.[41]

He recognised that 'The best [and] most efficient judge in such a community is … the one who from his situation has the most intimate knowledge of those between whom he is called upon to decide'.[42]

Cubbon's response to the challenge of introducing courts, based loosely on British jurisprudence, in a descriptive morality that did not suit them, was to compromise on some of the provisions the British had earlier worked out. Among the major deviations of the rules in Mysore from those norms was his decision not to separate the revenue from the judicial functions. The Bengaluru Town Munsiff had, in addition to the power of the revenue powers of the Amildar, the power to decide all suits for property not exceeding Rs 1000.[43] Cubbon repeatedly defended the need to keep the revenue and judicial functions with the same official. He cited a variety of examples to strengthen his case, going right down to the role of the village accountant, or a Shanbogue.

> The Shanbogue may appear at first more a [revenue] than a police officer but his intimate acquaintance with the circumstances [and] resource of all classes of the community, his title to fees in grain from almost every inhabitant within his range [and] finally his office as public notary render him a very useful adjunct to the police.[44]

The draft rules also reflected a distrust of lawyers, or *vakeels*. They were not recognised by the courts and were even otherwise discouraged. Cubbon was to argue later, when opposing the abolition of the institution fee (court fee), that

> … the chicanery of the vakeels and the mischievous propensities of the abandoned [and] immoral classes of the inhabitants had discovered in the liberal provision of Govt. [i.e. the abolition of institution fee] an easy weapon against their more peaceable and upright fellow citizens.[45]

The rules also allowed for the courts to convene a panchayat in cases that involved landed property or were intricate. But these panchayats had to function as if they were a court.

Despite these compromises with local practice the inherent contradictions between the two systems soon became evident. The very approach to evidence expected of the two systems was quite different. Cubbon was to recall an observation Wilks had made decades earlier: 'It appears to be in the spirit of English jurisprudence to receive as true, the testimony of a competent Witness until his credibility is impeached. It is a fixed rule of evidence in Mysoor, to suspect as false the testimony of every Witness, until its truth is otherwise supported'.[46] The new courts with judges that did not know the litigants personally laid a great deal of emphasis on the witnesses speaking the truth. And the only

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[41]Cubbon (1838), para 94.
[42]Cubbon (1838), para 94.
[43]Sastri (1932), p 255.
[44]Cubbon (1838), para 143.
[45]Cubbon (1838), p 211.
[46]Wilks (1805), p 26.

weapon the courts had to ensure the veracity of the statements of witnesses was cross examination. But this mechanism came up against another aspect of the earlier system. Since the traditional system placed a great deal of emphasis on the character of the witnesses and the litigants, there was a tendency to provide as much information as possible. This left them having to defend statements that were not directly relevant to the case. As Cubbon was to soon realise:

> The consistency of the evidence is frequently no proof of its veracity, for a false case may be got up with great completeness of detail; [and] if there be a proportion of truth mixed with it, cross examination conducted by strangers to the parties, may seem rather to confirm than to refute the falsehood. Nor can its inconsistency on the other hand be considered as a proof of falsehood, for there is a tendency among all natives, even when they are in the right, to go beyond the fact in the hope of bettering a good cause, [and] a skilful opponent might bring discredit on a just cause, by taking advantage of such inconsistencies.[47]

The difficulty in differentiating between pieces of evidence that were true and those that were not, reduced the aversion to perjury. And that possibility brought with it the viability of filing false suits to settle scores. As Rice was to record,

> … the courts of justice became crowded with needy imposters, who, by inciting the people to litigate, and by the institution of false, vexatious and exaggerated suits, carried on the most systematic extortion, and so swelled the files of the courts that no increase of either the Judicial establishments or activity on the part of the judges could keep pace with the demand, or clear the files.[48]

The gap between the legal system and the descriptive morality of the local population had ensured the judiciary could be used as a weapon against the weak.

This gap between the rules of the legal system and the local descriptive morality in pre-British Bengaluru had the potential to affect each of the four elements in our definition of corruption. The introduction of rules meant that there were limits placed on how those entrusted with power used that power. But in a descriptive morality that expected, as we have seen, great distrust of what an individual stated, there would have been a tendency to design the rules in a way that was best suited to prevent any possibility of wrong doing. Given the multiple possibilities of wrong doing, rules designed to prevent them would have been complex. The complexity of these rules necessarily would have made it more difficult for those entrusted with power to carry out functions that would serve public interest. They were then left with the option of either defying the rules or knowingly hurting public interest. If they did the former they would qualify for the first element in our definition of corruption, and if they chose the latter they would meet the requirements to qualify for the second element of our definition. In either event an official strictly following the existing descriptive morality would be a part of a case of corruption; if he broke the rules to favour the public it would be cooperative corruption, whereas if he chose the option of hurting the interests of the public it would be non-cooperative corruption.

The potential for a person consistent with the demands of the local descriptive morality being legally corrupt was enhanced by the fact that the rules were also based on a British descriptive morality that had a much lower role for family, let alone caste. The local descriptive morality in traditional Bengaluru, in contrast, expected those entrusted with

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[47]Cubbon (1838), para 93.
[48]Rice (1897), pp 667–668.

power to take care of their family as well as other members of their caste. Those entrusted with power could then well believe they were only benefiting those who were entitled to benefit. But since the law thought otherwise, they would be breaching the third element of our definition of corruption. And as the beneficiary would require to, tacitly or otherwise, support the illegal actions of the person entrusted with power, this would be a case of cooperative corruption.

In all of the three cases listed above there is the possibility of a reward for the person entrusted with power. If this potential is tapped it would qualify for the fourth element of our definition of corruption, that is, receiving a reward for the illegal act. Here again it is possible for a person who is consistent with the local descriptive morality to meet this element of our definition of corruption. The local descriptive morality in traditional Bengaluru had scope for significant amounts to be paid out to members of the family or caste, especially as gifts on occasions like marriages. Some of those giving out these gifts would belong to the family or caste of the person entrusted with power. If any of them had benefited directly from the public actions of the person they were making the payment to, it could be seen as a reward for the action, thereby qualifying for the fourth element in our definition of corruption.

The gap between the legal rules and the local descriptive morality in traditional Bengaluru could then make it possible for a person who strictly followed the norms of local descriptive morality to, in doing so, meet all the four conditions of our definition of corruption. Indeed, there may even have been social pressure from the family or community on such a person to break the legal rules. This could in turn get institutionalised, if breaking the law to suit the local descriptive morality was so widely accepted that it too became a part of the local descriptive morality. This would be particularly true in cases of cooperative corruption where the practice could benefit significant numbers of the local community. In such situations it is quite possible for the person entrusted with power being looked down upon if she refused to carry out illegal actions that benefited a large number of persons in that community. Conversely, acts like helping a family member or a member of one's caste could then have been seen as a moral act even if it meant breaking the law.

The set of cases that meet our criteria for being considered corrupt in a given legal regime can then be split into those cases of corruption that were consistent with the local descriptive morality and those cases that were not. The very existence of cases of corruption that are consistent with the local descriptive morality affects the overall situation of corruption in two ways. First, such cases reduce the moral abhorrence of corruption. This would be particularly true in cases of cooperative corruption when there are a large number of beneficiaries of corruption within that local society. Second, it is typically difficult to ensure that the social acceptance of corruption that is consistent with the local descriptive morality is confined to such cases alone. In a discourse where no distinction is made between corruption that has moral support and corruption that does not, the social acceptance of one kind of corruption can easily spill over on to the other. And if there is insufficient distinction made between these illegal acts that are consistent with the local descriptive morality and those acts of corruption that are not, it could create a general ethos where corruption is no longer taboo.

There is reason to believe such an acceptance of corruption had been initiated in nineteenth century Bengaluru. Among the cases of corruption in the regime of the Maharaja of

Mysore in 1835 was one in which the Amildar had taken a variety of irregular steps to reduce the taxes on the local community.[49] He had altered the instrument used to measure the produce in kind that was to be paid to the government. Where possible he had reduced the amount claimed by the government. And when needed, he had altered the official accounts. Such acts of corruption were however beneficial to the local community. To the extent that the support of the local community was needed for this exercise it would be a case of cooperative corruption. It is also conceivable that his actions were perfectly consistent with the local descriptive morality in that they were designed to help the local population. Over time such actions may well have made the descriptive morality less unforgiving of what was legally considered to be corruption.

Towards a conceptualisation of the social dynamics of corruption

The relevance of the gap between the descriptive morality and the legal system in nineteenth century Bengaluru cannot obviously lie in the details of that experience. Even in that city neither the descriptive morality nor the legal system has remained unchanged over a period of more than 175 years. The details could also border on being completely irrelevant to other societies. The value of this exercise would depend on whether the dynamics of the process in nineteenth century Bengaluru helps us understand the interaction between descriptive moralities and legal systems in other societies where the two are not consistent. In order to see if this is indeed the case it would be necessary to first develop a more abstract picture of the relationship between descriptive morality and legal enforcement based on the lessons of nineteenth-century Bengaluru.

Such an abstract construction could be seen as a sequence of four steps. In the first step a gap emerges between the descriptive morality and the legal norms. This could be because a new legal system has been imposed on an old descriptive morality; because social transformations have caused the emergence of a new descriptive morality that is inconsistent with the law; because the law has been changed; or for any other reason. Second, when the gap remains for a period of time, the descriptive morality generates a moral justification to defy the law. This defiance can take the form of protests to change the law, or when that is considered to be too difficult, it can consider various means to work around the law. Third, when there is a widespread effort to work around the law the effectiveness of the legal system is seriously impaired. Fourth, this encourages a more widespread distrust of the law, leading to even greater willingness to ignore it, so that breaking the law becomes the norm.

This process encourages corruption by enabling each of the four elements in our definition of corruption. There is little respect for the rule of law on the part of those entrusted with power. Without the oversight of an effective legal system, there is no pressure on those entrusted with power to be committed to public interest. The freedom provided by a dysfunctional legal system will allow those entrusted with power to also grant benefits to those who are not entitled to receive them. And a dysfunctional legal system will also allow for those entrusted with power to demand rewards from both those who are not entitled to receive benefits as well as those who have a right to them.

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[49]Sastri (1932), p 307.

Any evidence of the existence of this dynamic in other societies, with a gap between the descriptive moralities and the legal system, would point to at least three lessons in the development of an anti-corruption strategy. First, the existence of such a gap enables individuals to be perfectly consistent with the existing descriptive morality even as they follow practices that are legally corrupt. The existence of such morally acceptable corruption sooner or later reduces the abhorrence for all corruption. A meaningful strategy to fight corruption would then remove all scope for a difference between what is legally corrupt and what is morally corrupt. Anyone carrying out a legally corrupt act cannot then claim any moral cover. Second, the dynamics generated by the gap between the descriptive morality and legal norms can create disruptive practices that become deeply entrenched. This would be particularly true when it generates practices such as the acceptance of perjury. In such cases efforts to reform the legal system through administrative measures alone may be insufficient. It may also be necessary to address the larger jurisprudence and the descriptive morality in a way that reduces the gap between the two. Third, the ability of the legal system to combat corruption is influenced by the relative dominance of cooperative and non-cooperative corruption. Corruption of the non-cooperative kind is confined to those entrusted with power, and can be fought by mobilising the rest of the community against this group. But when corruption is of the cooperative kind, there is a wider constituency that benefits from it. When this constituency is large enough, it can successfully resist the enforcement of the law. And giving in to this pressure and granting one-time pardons only creates an environment where there is even less pressure to follow the law.

A meaningful strategy against endemic corruption would then be to reduce the distance between the descriptive morality and legal enforcement by reviewing both ends of this gap. While the legal system has to be made consistent with the descriptive morality this cannot be done either by giving in completely to a perverse descriptive morality or by enforcing a law that is not consistent with the acceptable elements of the existing descriptive morality. What is needed then is a review of the descriptive morality to identify the ways in which it can be transformed to make it consistent with the requirements of a just society. The legal system can then be transformed in a way that is perfectly consistent with this evolved descriptive morality, thereby removing all scope for a moral justification of a legally corrupt act.

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