

CORRUPTION IN INDIA

By

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Power tends to corrupt, and absolute power corrupts absolutely

—J.E. Edward Dalberg Acton – 1887 (1834-1902)

Corruption in India is a consequence of the nexus between Bureaucracy, Politics and Criminals. India is now no longer considered a soft state. It has now become a consideration state where everything can be had for consideration. Today, the number of ministers with an honest image can be counted on fingers. At one time, bribe was paid for getting wrong things done but now bribe is paid for getting right things done at right time. Due to political influence or for other reasons 96 per cent of the arrested criminals are not in jails¹.

During the last one decade, several cases of corruption have come to public notice due to the vigilant press, efforts of public spirited persons and a proactive judiciary. The Bofors gun, Airbus deal, ABB loco deal, Jain hawala racket, sugar scam, telecom scam, securities scam, urea scam and fodder scam in Bihar are a few instances. The scams which surfaced are only the tip of the iceberg. A majority of the scams relate to “public expenditure” by the Central and State Governments. The basic criteria in detecting corruption in public expenditure is the prevalent market value of the item of purchase, though such a yardstick presents certain difficulties in detecting corruption in defense purchases. The cases of corruption in the collection of “Public revenues” and arrears thereof are not detected on a significant scale. It is not anybody’s case that there is no corruption in the realization of “Public revenues”, the direct and indirect taxes.

Income tax arrears in 1993 stood at Rs.6,000 crores. This is in respect of assessed tax. Under assessed tax accounts for some thousands of crores of tax losses. So is the case in relation to indirect taxes – central excise duties. Another angle of revenue loss relates to non-recovery of bank loans from the industrialists accounting for nearly Rs.50,000 crores. Defaulting on bank loans should be made a panel offence with additional provision of attachment of properties. Yet another angle is corruption and money laundering in the banking sector. The securities scam alone involved a loss of Rs.1,28,534 crores according to the JPC which probed the matter.

The sources to unearth corruption in “public revenue” losses are the various audit reports, the remarks of the Public Accounts Committee of Parliament and also the reports of the Director General, Vigilance and Enforcement. The Bofors, the Kao Oil Scam, the case of Justice *Ramaswamy* of the Supreme Court originated from audit reports. Provisions of Section 13(1)(d) of the Prevention of Corruption Act 1988 are applicable in cases of deliberate loss in “public revenues” as much as it is in the case of similar loss in “public expenditure”. The anti-corruption agencies should probe this angle of abuse of office.

Since 1991, economic liberalization in India has reduced red tape and bureaucracy, supported the transition towards a market economy and transformed the economy, with record growth rates of 9.2% in 2007 and 9.6% in 2006.

1. Bureau of Police Research and Development
(The Hindu, March 18, 2012)

However, though the India economy has become the 6th largest in the world, its growth has been uneven across social and economic groups, with sections of society experiencing some of the highest levels of poverty in the world. Endemic corruption contributes to this uneven distribution of wealth. The cost of corruption, perceptible in public sector inefficiencies and inadequate infrastructure, is undermining efforts to reduce poverty and promote sustainable growth.

Major scandals involving high level public officials have shaken the Indian public service in recent years, with politicians and public servants regularly caught accepting bribes or mismanaging public resources.

This suggests corruption has become a pervasive aspect of India politics and bureaucracy. A report by Global Integrity provides an overview of the major corruption scandals that have hit the headlines over the past years, including:

September 2000: Former Prime Minister Rao was convicted of criminal conspiracy and corruption in the 1993 vote buying scandal and became the first Indian Prime Minister to be convicted in a criminal case. He was acquitted on appeal, however, in March 2002.

March 2001: Following the release by an Indian news website of a videotape showing 31 politicians, high level officials, bureaucrats and army officials taking bribes, the Defense Minister and leaders of the ruling BJP party were forced to resign. Four defense ministry officials were also suspended.

September 2005: Former Railway Minister Laloo Prasad Yadav was charged with misappropriating state funds in the long running "Fodder Scam" while he was the Bihar Chief Minister and of embezzling over US \$ 40 million in state funds intended for the purchase of animal fodder. In total,

170 persons were charged in connection with this scandal.

In January 2006: The BJP's alleged corruption in a military contract to buy six submarines from two French companies, claiming that the Government overpaid by approximately US\$ 113 million and used the excess to pay middle men that helped secure the deal.

In January 2009: Satyam Computer Services Ltd was barred by the World Bank from bidding for contracts for eight years and top officials were arrested after a major financial fraud over several years was disclosed.

In August 2010: The IPL scam and Madhu Koda Scam early this year and now common Wealth Games Scam. And 2G spectrum scam is proved how it affects our economy.

Impact on economy:

Corruption in public life and administration is fatal to economic growth. Corruption also erodes the authority of the state, promotes crime and violence, undermines the rule of law and the very foundations of a democratic polity. Unchecked corruption in medical and health services, in the agencies in charge of controlling pollution and implementation of the Drugs and Cosmetics Act, 1940, will endanger the public health and safety. Since poor public revenues result in inadequate defense outlay, national defense will be jeopardized.

Administration of Law:

- There are several constraints in the administration of the PC Act 1988. The first constraint is that the heads of the CBI/ACB are appointed by the PM as the case may be. There is no functional autonomy. There is no financial autonomy too. The

organizations are understaffed. There is limited talent in the investigating team. A major portion of officers are drawn on deputation from the civil police of the State concerned. It cannot cover even 10 per cent of the prevalent corruption.

- ❑ There are serious limitations in proceeding against the big fish in administration and public life. No head of CBI or ACB can proceed against the PM or a CM except under Court orders. The CBI cannot proceed to “enquire” against the CM of a State or a member of his Cabinet, even if the PM wishes to do. Under Section 6 of the Delhi Special Police Establishment Act, 1946, Prior consent of the State Concerned is necessary if the CBI wants to step in their jurisdiction. Without the consent, there will be no enquiry. However, a commission of enquiry can be appointed by the PM on any matter of public importance including corruption charges against a CM or a Minister under the Commission of Enquiry Act, 1952. The findings of such a commission lead to the dismissal of State Governments but not prosecutions and conviction by a Court of law. Since the appointment of such commissions of enquiry and the dismissal of State Governments are selective, they did not help in arresting corruption at higher levels.
- ❑ The senior officers have protective armour. Both at the Centre and in the States, executive instructions exist requiring the CBI and ACB to take prior permission of the Government if they want to enquire against certain level of senior officials. So much so, no serious enquiry is possible against this creamy layer of bureaucracy. This strikes at the root of the matter. The preamble of the PC Act 1988 as well

as its predecessor, the PC Act 1947, states that the legislation is meant to eradicate corruption more effectively. But the executive instructions defeat that purpose. At any rate it is good to know the reasons behind these rules. It is anything but honest. It leads to a straight conclusion that the heads of the Governments will protect senior officers from enquiries by the CBI/ACB and they will in turn cover up the dishonest motives/acts of the political executives having been discharged without even framing charges, not to speak of conviction, for want of evidence. As the social laws become innovative, so also the ingenuity of its violators.

- ❑ Granting that there has been permission from the Government to enquire to enquire against a particular senior official, such enquiry reports have to be approved by the Government for the registration of an FIR and further investigation and furthermore the Government has the final authority in taking a decision on the investigation reports of CBI/ACB. Here the Government can modify a recommendation to prosecute, either for departmental action or even drop further action. During the year 1995-96, in one I.A.S. officer's case in A.P. though he was in possession of 12 lakhs of disproportionate assets and was recommended for prosecution, the case was closed by the Government. This is only one example.
- ❑ The Government has the power of withdrawal of criminal cases under the relevant provisions of Cr.PC 1973 even though they are in the final stages of hearing in a Court of law on grounds of ‘public purpose’. In the case of two former CMs of Bihar and Orissa, the Supreme Court on a challenge by

public spirited persons about the legality of withdrawal of prosecution, upheld the provision by a majority of 3:2. There is no review of the above judgment. So much so, hundreds of cases were withdrawn since 1990 in Andhra Pradesh alone. What is the 'public purpose' that the State advances in withdrawing corruption cases is left to the judgment of the reader.

Thus, the Government is the final arbiter not only in the matter of enquiry and investigation but also in the case of prosecution and termination of trial of the case. While the power permitting or not permitting prosecution and the termination of trial by way of withdrawal of prosecution, though selectively abused, is derived from the relevant provisions of the PC Act 1988 and the Code of Criminal Procedure, the power of withholding enquiry and investigation is not derived from any legal provision. Understanding this subtle distinction is vital. The whole of anticorruption work is frustrated by the iron curtain of enquiry and investigation, a function illegally exercised by the Government.

Causes of Corruption

The causes of corruption are many and complex, following are some of them.

- Nexus between Criminals, Politicians, bureaucrats, Corporates for corruptive practices.
- Corruption is caused as well as increased because of the change in the value system and ethical qualities of men who administer. The old ideals of morality, service and honesty are regarded as anachronistic.
- Tolerances of people towards corruption, complete lack of intense public outcry against corruption and

the absence of strong public forum to oppose corruption allow corruption to reign over people.

- Vast size of population coupled with widespread illiteracy and the poor economic infrastructure lead to endemic corruption in public life.
- In a highly inflationary economy, low salaries of Government officials compel them to resort to the road of corruption. Graduates from IIMs with no experience draw a far handsome salary than what Government secretaries draw.
- Complex laws and procedures alienate common people to ask for any help from Government.
- Election time is a time when corruption is at its peak level. Big industrialist fund politicians to meet high cost of election and ultimately to seek personal favour. Bribery to politicians buys influence, and bribery by politicians buys votes. In order to get elected, politicians bribe poor illiterate people, who are slogging for two times meal.
- Though India is signatory to the UNCAC, nothing concrete could be achieved in that direction to curb corruption².

Measures to combat corruption;

Is it possible to contain corruption in our society? Corruption is a cancer, which every Indian must strive to cure. Many new leaders when come into power declare their determination to eradicate corruption but soon they themselves become corrupt and start amassing huge wealth.

There are many myths about corruption, which have to be exploded if we really

2. United Nations Convention Against Corruption ratified by India on May 9, 2011.

want to combat it. Some of these myths are: Corruption is a way of life and nothing can be done about it. Only people from underdeveloped or developing countries are prone to corruption. We will have to guard against all these crude fallacies while planning measures to fight corruption.

- Foolproof laws should be made so that there is no room for discretion for politicians and bureaucrats. The role of the politician should be minimized. Application of the evolved policies should be left in the hands of independent commission or authority in each area of public interest. Decision of the commission or authority should be challengeable only in the Courts.
- Cooperation of the people has to be obtained for successfully containing corruption. People should have a right to recall the elected representatives if they see them becoming indifferent to the electorate.
- Funding of elections is at the core of political corruption. Electoral reforms are crucial in this regard. Several reforms like: State funding of election expenses for candidates; strict enforcement of statutory requirements like holding in-party elections, making political parties get their accounts audited regularly and filling income-tax returns; denying persons with criminal records a chance to contest elections, should be brought in.
- Responsiveness, accountability and transparency are a must for a clean system. Bureaucracy, the backbone of good governance, should be made more citizen friendly, accountable, ethical and transparent.
- PC Act should be amended so as to provide a fixed time limit for granting

of sanction to prosecute public servants as observed by the Supreme Court in *Vineet Narayan v. Union of India*³

- More and more Courts should be opened for speedy and inexpensive justice so that cases don't linger in Courts for years and justice is delivered on time.
- Local bodies, independent of the Government, like Lokpals, Lok adalats, CVCs and Vigilance Commissions should be formed to provide speedy justice with low expenses.
- A new Fundamental Right viz., Right to Information should be introduced, which will empower the citizens to ask for the information they want. Barring some confidential information, which concerns national and international security, other information should be made available to general public as and when required. Stringent actions against corrupt officials will certainly have a deterrent impact.

Conclusion

Corruption is an intractable problem, It is like diabetes, can be controlled, but not totally eliminated. It may not be easily possible to root out corruption completely at all levels in a country like India, but it is possible to contain it within the tolerable limits. Honest and dedicated people in the public life, control over electoral expenses, strict enforcement of anti-corruption laws, stringent punishments, non interference of politicians could be the most important prescriptions to combat the corruption. Corruption has a corrosive impact on our economy; it worsens our image in the international community, and leads to loss of overseas market opportunities. Corruption is a global problem that all countries have to join hands to combat it.

3. AIR 1998 SC 889