

Tackling Corruption and Promoting Accountability

In India, one cannot talk about public service without raising the issues of corruption, lack of transparency and accountability. Without raising esoteric issues on ethics, I would like to focus attention on practical measures to combat corruption and increase transparency and accountability in all facets of public services.

Mark Twain once said, “Everyone talks about the weather, but no one does anything about it”. Corruption has become one such topic of conversation, with few in the establishment or outside really doing something to curb it. The fight against corruption is too important to be left to a few formal institutions or politicians. The people at large have enormous stakes in clean public life and corruption-free services. Experience all over the world showed that determined initiatives with public support can and will succeed in curbing corruption and cleansing the system effectively.

As many scholars like Robert Wade have pointed out, most corruption at the citizens’ level is extortionary, and people have often no choice when faced with the dilemma of having to lose much more in the form of lost money, time and opportunity, not to speak of anxiety, harassment and humiliation if they did not comply with demands for bribes. The only silver lining is, everyone, including those in positions of influence is a victim and no one seems to be exempt from these extortionary demands. We seem to have achieved the ideal of socialism through equal treatment of all citizens in terms of extortionary corruption! With the advent of economic liberalization and delicensing of most industry, the nature of corruption is now undergoing a major transformation. The one-time grand corruption on large private projects – notably in power and other infrastructure sectors – has now become quite common. An even more alarming trend is the shift of corruption from licensing and permits to more dangerous and pernicious areas of sovereign functions of state like policing. The increasing nexus between hardened criminals, rogue policemen and corrupt politicians is one such example. It is clear that the state’s gradual withdrawal from economic activity does not automatically eliminate corruption. Many more practical and institutional initiatives are needed to successfully curb corruption.

It is in this context that civil society’s role is critical. Enlightened public opinion and informed and collective citizen assertion are the very basis of any successful fight against corruption.

I represent the growing non-partisan people’s movement, Lok Satta. Our primary goals are governance reforms and elimination of corruption. Over the past six years Lok Satta has emerged as a leading civil society initiative against corruption with a membership well over 100,000, and a broad support base of about 40% of the population of Andhra Pradesh. We achieved significant successes in our fight against corruption and are now engaged in building alliances across the country for electoral reforms and fight against corruption. I will make a few observations in the light of our experience.

Lok Satta's own experience shows citizens’ initiatives can make a significant and lasting impact. To give an illustration, Lok Satta has largely succeeded in eliminating short delivery of petroleum products in all 1500 petrol stations of Andhra Pradesh. All it took was mobilizing public opinion

and insisting on delivery of petrol into precalibrated measuring jars so that the consumer can compare the meter reading with the actual quantity delivered. Once we launched this effort in October 1998, the legal metrology department of the State was compelled to send its officials all round the State and set right all the meters within a fortnight. Once in a while our activists insist on delivery of petrol in the cans and this simple technique has made short delivery a thing of the past, and the benefit to consumers is of the order of Rs 1 crore a day! Similar, but less spectacular successes have been achieved in curbing corruption in implementation of building regularization scheme, issue of driving licenses and several other public services. In all areas, the basic technique is informed and collective citizen assertion on a sustained basis.

We have also found that if uniform and objective criteria are evolved and public is mobilized we can actually make a dent in criminalization of politics. Lok Satta's by now well-known Election Watch movement in 1999 screened the candidates' record and released a list of 45 candidates of major parties with criminal record. The parties and candidates were forced on the defensive. Their only complaint was that there were another 20-25 candidates whose names were not included in the list by us! They were right. Our response was effective and to the point. We offered to include many more names if parties provided accurate and verifiable information establishing criminal record of those candidates. This screening of candidates electrified the State and attracted national attention. The result was a significant arresting of criminalization of politics though the process has not been reversed. While established politicians with criminal record continue to be nominated by parties, new criminals seeking elective office have been kept out. This is not enough, and a lot more needs to be done in the form of change of law, but this experience shows how much can be accomplished with meticulous, determined and credible initiatives with public participation. Lok Satta's Election Watch work led to the recent Supreme Court judgment on candidate disclosures of criminal and financial details.

In my opinion, there are three broad areas of action to combat corruption involving the state and the civil society. The first is active citizen assertion to curb corruption as illustrated by the examples cited above.

There are several rules and procedures whose only impact on the public is extortionary corruption. There is need for a comprehensive review of the regulatory functions and procedures in every department and agency, with three objectives:

- a) Identify unnecessary regulations and repeal them
- b) Improve, simplify and make transparent procedures in respect of those regulations and services still relevant
- c) Specify levels of responsibility for each official in the hierarchy, so that accountability becomes real and meaningful.

For example, widespread petty corruption was eliminated by repeal of the Hackney Carriages Act in mid 70's when cyclists were exempted from obtaining licenses. Similar steps could be taken in respect of all private motor vehicles now. A body of experts from government and civil society should be set up to undertake this complex but vital exercise of deregulation and simplification of rules and procedures. The government would be inclined to take it up as it is politically popular. What is required is the momentum to break the inertia which funding agencies can provide.

Apart from these and other deregulation efforts, citizens need effective tools for collective action. **Right to information** on all matters of governance with very few specific, limited exceptions in the interest of national security etc., should be enshrined in law. Article 19 of the Constitution and several Supreme Court judgments recognize right to information as a fundamental right. We need to codify this right by law, and evolve fair and objective procedures for its enforcement. The recent draft legislation of Government of India leaves much to be desired. There are too many vague exemptions; no penalties are provided for non-compliance, and there is no independent appeal mechanism. A sensible, citizen-friendly law needs to be quickly enacted and strictly enforced.

For some years now, **Citizen's Charters** are being released by various departments. A true Citizen's Charter should fix responsibility on individual public servants, specify performance standards, and provide compensation to citizens for delays. No Citizen's Charter conforms to these standards. As a result, these charters are full of shibboleths and pious intentions without any impact on corruption or quality of services. Under Lok Satta's pressure, Govt of Andhra Pradesh has recently released a Citizen's Charter in respect of certain municipal services, and probably for the first time in India a compensation of Rs 50 a day for delay in services is provided for, and this amount is to be recovered from the public servants responsible for delay. Another such citizen's charter for panchayats covering twenty services, and providing for a compensation of Rs 10 per day's delay is on the anvil. We need such effective charters for all public services with compensation and clear penalties for non-performance.

Similarly **Wards Committees** need to be constituted in accordance with the letter and spirit of Article 243-S of the Constitution, and these Committees serving small areas of about 25000–50000 population should be empowered to collect municipal taxes and provide basic services. Such local accountability will reduce corruption. Wherever stake-holders of public services can be clearly identified, they should be legally empowered to take responsibility for those services. ***These and many other simple, practical steps will promote transparency and accountability and give citizens the required tools for effective action against corruption.***

The second broad area of action is in respect of tightening the anti-corruption laws and creating independent and effective agencies to curb corruption. The 161st report of the Law Commission made valuable recommendations in respect of the Vigilance Commission and CBI. The Supreme Court in Jain Hawala Case gave specific directives and suggestions. Sadly, the Union government is still to act. And we understand that the 'Single Directive', by which prior permission of the government is required to investigate charges against officials of the rank of Joint Secretary and above are sought to be restored by law. We need independent, honest and fearless agencies to fight corruption. The Law Commission recommendations should be accepted and a law should be enacted. The CVC and Vigilance Commissions in States, which have been created by executive orders in 1964 in the wake of Santanam Committee report should be given statutory status and given freedom to act. Lok Pal Bill has now been pending for over three decades, and even where Lok Ayuktas exist in States, they have no effective role. We need to create strong anti-corruption agencies modelled after Hong Kong's successful Independent Anti-Corruption Commission until 1997. Penalties for corruption should be made far more stringent as proposed by the Law Commission in its 166th report. Anti-corruption and crime investigation must be insulated from

partisan political control. Without such fair, impartial, independent and strong agencies, there will be no real success in increasing the risks of corruption and minimising the rewards.

Finally, we should all recognize that the roots of corruption lie in the exorbitantly high, illegitimate and illegal election expenditure. Lok Satta estimates that about Rs 7000 crores is spent in a block of five years for the Parliament and State Assembly elections. In most constituencies, the actual election expenditure is several times the ceiling prescribed by law. Much of this expenditure is not only illegal, but is also illegitimate, and is incurred to buy votes, bribe officials and hire hoodlums. This unaccounted expenditure necessitates a ten fold return to the political class, which in turn results in a hundred fold extortion by the bureaucracy, leading to Rs 700,000 crore corruption in five years. The citizens pay a much heavier price on account of anxiety and uncertainty. If we wish to curb corruption, we should together launch a movement for electoral and political funding reform. Lok Satta is now building alliances across the country for a people's movement for democratic reforms. **Electoral funding reform should be the centre-piece of our strategy to fight corruption.**

In recent times, the political and governance system has shown signs of sensitivity responding to this challenge. Five major initiatives have been taken in the past one year. The Election Commission responded to years of Lok Satta's informed advocacy on improvements in voter registration, and has decided in principle that post offices will be the nodal agencies for voter registration. This will make the voter registration process citizen-friendly and accessible, making it easy to curb polling irregularities, and along with voter identity cards will make it difficult to indulge in bogus voting. The disclosure norm put in place, forcing candidates for elective office to file affidavits revealing their criminal antecedents, if any, and the financial record of family members, is a step in the direction of promoting transparency and better candidate choice. The amendments to the RP Act, 1951, incorporated in September, 2003 are by far the most far-reaching legislative provisions reforming our political campaign finance. All contributions for political activity, individual or corporate, will get 100% income tax exemption. All contributions of Rs 20,000 and above will be disclosed to the public. The infamous Explanation 1 under Section 77 of the RP Act, 1951, which made nonsense of the election expenditure ceilings has been repealed. Most important, free time can now be allotted in private electronic media, including cable networks, recognized parties and candidates for political campaigning. This will drastically cut down campaign costs, and alter the very nature of elections in future.

The fourth reform enacted is the amendment to the Tenth Schedule of the Constitution, thus altering the anti-defection provisions. Through this amendment, no split in a legislature party is recognized, and all members violating a whip will be disqualified. Finally, through the 97th amendment of the Constitution, the size of the Council of Ministers has been pegged at 15% of the membership of the lower house, thus reducing distribution of ministerships, and meeting the longstanding demand for reform.

All these reforms will certainly help improve the political process, and make it easy for honest persons to raise resources for legitimate campaigning purposes. However, in India, much of the election expenditure is both unaccounted and illegitimate, leading to a vicious spiral of corruption.

In a well-functioning democracy, the political process ought to find answers to such governance problems. It is through the process of elections that a democratic choice is exercised on solutions to be adopted for various governance problems. Every election holds a promise for peaceful change. People in India have been voting for change time and again. But the political process is locked into a vicious cycle, and has become a part of the problem. There are six factors complicating the political process, perpetuating status quo. First, election expenditures are large, unaccounted and mostly illegitimate. For instance, expenditure limit for assembly elections in most major states was Rs 600,000 until recently, when it was revised to Rs 1 million. In reality average expenditure in most states is several multiples of it, sometimes exceeding Rs 10 million. Most of this expenditure is incurred to buy votes, bribe officials and hire musclemen. Such large, unaccounted expenditure can be sustained only if the system is abused to enable multiple returns on investment. Rent seeking behaviour is therefore endemic to the system.

Most of this corruption is in the form of control of transfers and postings, which in turn sustains a system of retail corruption for a variety of routine services, regulatory functions and direct transfer of resources through government programmes. Large leakages in public expenditure, and collusion in contracts and procurement are extremely common. The economic decision-making power of the state is on the wane as part of the reform process. But as the demand for illegitimate political funds does not decrease, corruption shifts to the core areas of state functioning, like crime investigation. Robert Wade studied this phenomenon of corruption, and described the dangerously stable equilibrium that operates in Indian governance. This vicious chain of corruption has created a class of political and bureaucratic 'entrepreneurs' who treat public office as big business.

Second, as the vicious cycle of money power, polling irregularities, and corruption has taken hold of the system, electoral verdicts cease to make a difference to people. Repeated disappointments made people come to the conclusion that no matter who wins the election, they always end up losing. As incentive for discerning behaviour in voting has disappeared, people started maximizing their short-term returns. As a result, money and liquor are accepted habitually by many voters. This pattern of behaviour is responsible for converting politics and elections into big business. As illegitimate electoral expenditure skyrocketed, the vicious cycle of corruption got further strengthened. With public good de-linked from voting, honesty and survival in public office are further separated.

Third, this situation bred a class of political 'entrepreneurs' who established fiefdoms. In most constituencies, money power, caste clout, bureaucratic links, and political contacts came together perpetuating politics of fiefdoms. Entry into electoral politics is restricted literally, as people who cannot muster these forces have little chance of getting elected. While there is competition for political power, it is often restricted between two or three families over a long period of time; parties are compelled to choose one of these individuals or families to enhance their chances of electoral success. Parties thus are helpless, and political process is stymied. Absence of internal democratic norms in parties and the consequent oligarchic control has denied a possibility of rejuvenation of political process through establishment of a vicious cycle.

Fourth, in a centralized governance system, even if people wisely use the vote, public good cannot be promoted. As the citizen is distanced from the decision-making process, the administrative machinery has no capacity to deliver public services that are cost-effective and of

high quality. A climate that cannot ensure better services or good governance breeds competitive populism to gain electoral advantage. Such populist politics have led to serious fiscal imbalances.

Fifth, fiscal health can be restored only by higher taxes, or reduced subsidies or wages. The total tax revenues of the union and states are of the order of only 15 percent of GDP. Higher taxation is resisted in the face of ubiquitous corruption and poor quality services. Desubsidization is always painful for the poor who do not see alternative benefits accruing from the money saved by withdrawal of subsidies. A vast bureaucracy under centralized control can neither be held to account, nor is wage reduction a realistic option.

Sixth, elected governments are helpless in changing this perilous situation. As the survival of the government depends on the support of legislators, their demands have to be met. The legislator has thus become the disguised, unaccountable executive controlling all facets of government functioning. The local legislator and the bureaucrats have a vested interest in denying local governments any say in real decision making. The vicious cycle of corruption and centralized, unaccountable governance is thus perpetuated.

This vicious cycle can be addressed by three fundamental systemic reforms:

a) Political party reform: Political recruitment has suffered a great deal, and bright young people are no longer attracted to politics. Centralized functioning of parties is imposing enormous burden on leadership to manage the party bureaucracy, leaving little time for evolving sensible policies or governance. Party leaders are helpless in candidate selection, and the choice is often between Tweedledum and Tweedledee. An important reform to improve the quality of politics and restore credibility would be a law to regulate political parties' functioning, without in any way restricting leadership choice and policy options. A law needs to be enacted to regulate political parties in four key aspects.

Membership and disciplinary action would be a crucial focus area ensuring internal party checks. Leadership choice by regular, secret, democratic ballot is the second key feature. This will be accompanied with formal processes to challenge the party leadership without fear of retribution. The third suggested reform would be transparency and public auditing of party funds and expenditure. Finally, choice of candidates for elective office to be decided by members or their elected delegates through secret ballot. The provisions can be similar to Article 21 of German basic law and federal law to regulate parties.

b) Proportional representation: The first-past-the-post (FPTP) system that India has adopted led to several distortions, given the passage of time and ingenuity of legislators. Politics of fiefdom at constituency level has forced the parties to rely on local strongmen. As a result, the political parties and independent candidates have astronomical election expenditure for vote buying and other illegitimate purposes. This has led to a significant weakening of the party platform and ideology, reducing elections to private power games. In many states, national parties have been marginalized where their voting percentage falls below a threshold. Following from this, regional parties have occupied center stage in several pockets, holding larger interests at ransom.

All these failings find expression in bigger and long-term predicaments. The inability of all political parties to attract and nurture best talent is the primary issue. Difficulties of minority

representation leading to ghetto mentality, backlash, and communal tension form another facet of the problem. Lastly, leadership is undermined by permanent reservation of constituencies (or regular rotation) in order to provide fair representation to SCs. The solution to this flawed system is adoption of mixed system of election combining FPTP system with proportional representation. This will be broadly based on the German model. The key features of the suggested system are as follows:

- The overall representation of parties in legislature will be based on the proportion of valid vote obtained by them.
- A party will be entitled to such a quota based on vote share only when it crosses a threshold, say 10% of vote in a major state, and more in minor states.
- 50% of legislators will be elected from territorial constituencies based on FPTP system. This will ensure the link between the legislator and the constituents
- The balance 50% will be allotted to parties to make up for their shortfall based on proportion of votes.
 - eg 1): If the party is entitled to 50 seats in legislature based on vote share, but had 30 members elected in FPTP system, 20 more will be elected based on the party list.
 - eg 2): If the party is entitled to 50 seats based on vote share, but had only 10 members elected in FPTP system, it will have 40 members elected from the list
- The party lists will be selected democratically at the State or multi-party constituency level, by the members of the party or their elected delegates through secret ballot.
- There will be two votes cast by voters - one for a candidate for FPTP election, and the other for a party to determine the vote share of the parties.

It needs to be remembered that PR system can be effective only after internal functioning of political parties is regulated by law. Otherwise, PR system will give extraordinary power to party leaders and may prove counterproductive. However, the PR system has one more advantage, which needs to be reiterated. PR system, more than FPTP system, ensures better representation of women in legislatures.

c) Direct election of Head of government in States and Local Governments: The other systemic reform that is needed to isolate the executive from unwanted influences, as has been pointed out, is to ensure direct election of Head of Government in States and Local Governments.

As election costs have skyrocketed, candidates spend money in anticipation of rewards and opportunities for private gain after election. Legislators perceive themselves as disguised executive, and chief ministers are hard pressed to meet their constant demands. Postings, transfers, contracts, tenders, tollgates, parole, developmental schemes, and crime investigation - all these become sources of patronage and rent seeking. No government functioning honestly can survive under such circumstances. While the legislators never allow objective and balanced decision-making by the executive in the actual functioning of legislation, their role has become nominal and largely inconsequential. This blurring of the lines of demarcation between the executive and legislature is one of the cardinal features of the crisis of our governance system.

Therefore, separation of powers, and direct election are necessary in States and local governments. At the national level, such a direct election is fraught with serious dangers. Our

linguistic diversity demands a parliamentary executive. Any individual seen as the symbol of all authority can easily become despotic, given our political culture. But in states, separation of powers poses no such dangers. The Union government, Supreme Court, constitutional functionaries like the Election Commission, UPSC, and CAG, and the enormous powers and prestige of the Union will easily control authoritarianism in any state. This necessitates adoption of a system of direct election of the head of government in states and local governments. The fundamental changes suggested find mention as under:

The legislature will be elected separately and directly while the ministers will be drawn from outside the legislature. The legislature will have a fixed term, and cannot be dissolved prematurely except in exceptional circumstances (sedition, secession etc) by the Union government. The head of government will have a fixed term, and cannot be voted out of office by the legislature. Any vacancy of office will be filled by a due process of succession. The elected head of government will have no more than two terms of office. Even though these changes may not be panacea to all evils in the present structure of legislature and executive, it will certainly encourage more healthy and vibrant democracy and democratic processes. Further, clear delineation of functions between Union and States, and among various tiers of local governments is also a necessary condition for a vibrant democracy. It is only a true federal structure that can ensure unity in this multi ethnic and multi religious society.

To sum up, four broad strategies are required to curb corruption. First, we need comprehensive electoral reforms to make funding transparent and accountable, to curb criminalization and polling irregularities, to eliminate political fiefdoms and transform politics from big business to public service, and to ensure that honesty and survival in public office are compatible. Second, we need to empower local governments and stakeholders in a way that there are clear links between citizens' vote and public good, taxes and services, and authority and accountability. Third, we need instruments of accountability in the form of right to information, citizen's charters, independent crime investigation and independent anti-corruption agencies. Fourth, we must increase the risks of corrupt behaviour to an unacceptable level by ensuring speedy justice, exemplary punishment and confiscation of assets.

This is clearly a vast agenda for action. But it is both necessary and possible. The recent economic reforms have certainly helped promote competition and reduce corruption through license-permit-quota raj. But the incentive structure in our governance structure is still perverse. Our political system has inexhaustible appetite for illegitimate funds. The supply of such ill-gotten money in economic sphere is dwindling on account of economic reforms. But the demand continues unabated in the face of unchanging political rules of the game, thus forcing open newer, and more dangerous avenues of corruption. The telgi stamp scam, the organized leaks of CAT and other examination papers, the brutal murder of Satyendra Kumar Dubey, and the sting operation exposing the corruption of a judge in Gujarat are all not accidents. Corruption is now shifting into more dangerous areas from where the state cannot withdraw, and criminalization of our politics, economy and society is on the rise. Organized crime and systematic abuse of office are flourishing. These require serious institutional responses.

The time for action is now. The national mood is ripe. People are disgusted with endless corruption and are restive. The business class, which was earlier happily paying bribes to get

favours in return for monopoly and assured profits is now realizing that corruption in a competitive world kills industry. The unprecedented agitation (2001) of small industrial entrepreneurs in Andhra Pradesh led by Lok Satta against the extortion of Central Excise officials is a sign of increasing resistance to corruption. Politicians are increasingly recognising that the present chain of corruption is unsustainable. Many nations went through phases of high corruption. They eliminated corruption through systematic, effective, practical steps. The proactive steps of the High Court of Bombay to remove 150 corrupt judges, followed by similar steps in Rajasthan and West Bengal show what can be accomplished with determination and good sense. We Indians are no more venal and corrupt than the rest of the world. We only created conditions in which honesty is not adequately rewarded, and is in fact discouraged. Corruption is not only left unpunished, but is rewarded consistently and extravagantly. We need to alter this state of dangerous equilibrium feeding the cycle of corruption. The people are ready for fundamental changes. What we need are practical steps to empower citizens and make public servants accountable. People are ready to act. What we need are tools for informed citizen assertion. I am confident all of us here and elsewhere have the vision, will and courage to take those practical and enduring steps required to launch an all-out struggle against corruption. There is no room for cynicism or despair. The task is big, but achievable. As Margaret Mead said "Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever did". In this war we will surely succeed. But what we need is fewer words and more tangible action.

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