

Combating Corruption – The First Steps

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For decades, Indians have been living with ubiquitous corruption. But the recent events have shaken even the most complacent or cynical Indian. A spate of scams rocked the nation – Adarsh housing, Commonwealth Games, 2G spectrum, mining leases – mobilized public opinion against corruption as never before. The Commonwealth Games, which ought to have been a triumph for a resurgent India, became an acute embarrassment and a proof of corruption, bungling and ineptness. While China hugely gained on the global stage in terms of prestige, brand image and economic opportunities with its impeccable conduct of Beijing Olympics, India became the laughing stock of the world as it shoddily managed the Commonwealth Games.

The facts of 2G spectrum are now too well-known to need elaboration. Corruption is rampant in the distribution and allocation of precious natural resources like mining licenses. A study released in November, 2010, by the Washington-based Global Financial Integrity estimated that India lost close to half a trillion dollars in illegal outflows from the country between 1948 and 2008. More than \$94 billion of this wealth was lost between 2004 and 2008. The earlier reports and conjectures regarding Indian money stashed away abroad may have been somewhat exaggerated; but this recent report is well-researched, carefully documented, methodical, and credible. It is clear that a large chunk of these illegal outflows are corruption proceeds. And only a small portion of the corruption money is stashed away abroad; the bulk of it remains in India as the ill-gotten, concealed assets of many present or former public servants.

The pertinent question that we need to ask is why is corruption so rampant in India? Some of the popular, simplistic answers provided for such a complex question include that corruption is a “global phenomenon,” corruption pervades every democracy and “Indians, as a lot, are corrupt”. Sections of Indian middle class believe that corruption is the scourge of democracies, and dictatorship is the panacea. But the facts prove otherwise. Most mature democracies are remarkably honest, while most dictatorships are utterly corrupt. Nor are Indians specially lacking in moral values. Studies on the nature of Indian population have revealed that Indians are as honest as anybody else on earth. In a global survey, 85% of Indians returned lost mobile phones or wallets to owners, a degree of honesty comparable to the best in the world. Then why do we tolerate corruption? And why are we burdened with a kleptocratic government at all levels.

William Gladstone said “The purpose of a government is to make it easy for people to do good; and difficult to do evil”. However, today, governments have abandoned that purpose. We have simply not made it easy for citizens to get the most basic services. A birth certificate, tax assessment, water or electricity connection, or driving license – obtaining any of these is excruciatingly painful in most states. We have not made the

best use of technology and transparency, and the vast bureaucratic leviathan makes every interaction with government an ordeal. Wherever government has been removed from service delivery, and wherever competition and choice have been introduced, corruption has been brought under control. Telephones are an excellent example of curbing corruption through competition and choice. Similarly, corruption in railways reservation and some basic services has declined as computerization and e-seva have been introduced. Once technology and transparency have been harnessed, the citizen becomes more self-reliant and empowered, and arbitrary exercise of power can be curbed.

All these only show that we are not a particularly corrupt people, and corruption is a result of the way we have organized our public affairs. There in lie grounds for optimism in dealing with corruption. Large segments of Indian economy have now been liberated from the clutches of state mandarins, as economic freedom is restored to citizens, and license-permit-quote raj has been dismantled. And in those areas of competition, the citizens and consumers are increasingly assertive, and both price and quality are improving. The issue of corruption is essentially one of institutional arrangements and incentives, and above all one of the quality of political leadership and the nature of political process that throws up the leadership. A purely moralistic approach is bound to fail. We need moral fervour combined with institutional reform and an effective system of incentives and disincentives.

One issue needs to be addressed before we can proceed further. Millions of citizens in India are forced to give bribes to service providers, regulators and tax collectors for no fault of theirs. On a day-to-day basis, the hapless citizens are subjected to extortion for myriad services. A birth certificate, a ration card, a nativity certificate, registration of a sale deed, house building plan approval, water, electricity or sewerage connection – all these often are delayed and denied if the citizen does not comply with extortionary demands for bribes. The citizen has a cruel choice: he can comply with the bribe demand and get the work done quickly; or he can resist the demand and suffer delays, uncertainty, inconvenience, loss, harassment, and sometimes missed opportunity. In these cases no favour is bestowed and the citizen is entitled to the service, and he is an innocent victim of extortionary corruption. In such a situation, citizens are racked by guilt and an oppressive feeling of moral compromise. What we need is a concerted effort to build institutions and practices to ensure prompt delivery of these services without having to resort to bribes. Citizen's charters with penalties for non-delivery of services, computerization, transparency, and empowerment of local communities and stakeholders will give the citizen a greater measure of control over the situation, and bribery can be eliminated. Moral judgment of hapless victims of bribery, and equating the bribe giver in such a case with bribe taker, will only undermine public morale, and make the task of fighting corruption more difficult.

Collusive corruption, however, is different. In awarding a contract, transfer of officials, recruitment in public services, grant of a mining lease, alienation of land or interference in crime investigation, often both bribe-taker and bribe-giver act in collusion and severely undermine public interest. Competition is eroded, public resources are swindled, injustice is done or criminals are allowed to escape, and often monopolies are created in such acts of collusive corruption. In such cases, both bribe giver and bribe taker are equally guilty. And the damage done by collusive corruption in undermining

public interest is immense. We need to treat collusive corruption on a higher footing and institutionalize mechanisms to firmly curb it, and treat it as a graver offence and impose rigorous punishments.

The recent spate of scams has served a vital purpose of awakening people and building pressure on the political system to bring about serious reforms. The young people, middle classes and media have formed a strong coalition against corruption. If this energy and angst are properly channelized, they could be engines of serious systemic reform to curb corruption. If one part of the equation in fighting corruption is to make it easy for people to do good, then the other part is to make it difficult for evil to triumph. Clearly, we need swift and sure punishment of the corrupt, and we must ensure that they do not benefit from corruption.

A few weeks ago, there were news reports about an Indian couple in the US, Dr Arun Sharma and Kiran Sharma. They both defrauded the American healthcare system for about three decades in the state of Texas, and amassed millions. Recently, a Boston federal court sentenced them both to fifteen years in prison, and confiscated all their ill-gotten assets acquired over a lifetime, amounting to \$43 million. It is such punishment ensuring that the corrupt will pay, and will not benefit from their actions, that will keep potentially-erring public servants on the straight and narrow path. If every year a hundred most corrupt politicians and senior officials at the national level and in each state are given a jail term and all their properties are confiscated, the incentives in public office will be dramatically altered, and corruption can be significantly curbed. An honest political and civil service leadership in turn can enforce probity in public life at lower levels.

The Lokpal Bill, (Bill No: 39 of 2011) as approved by the Union Cabinet, has some strong and useful provisions to curb corruption, but does not go far enough. Appointment of Lokpal by a collegium and removal only on a reference to a Supreme Court Bench will ensure autonomy of Lokpal. After the Supreme Court verdict on CVC appointment all appointments by a collegium would be justiceable, and the government cannot arbitrarily veto minority views if they are supported by evidence and sound logic. Lokpal is empowered to investigate any case suo moto, can have its own investigative machinery, can order prosecution, appoint special prosecutors, and seize properties. Lokpal can also recommend constitution of special courts, and its budget will be charged directly to the Consolidated Fund of India. These are certainly salutary provisions.

There is dispute on jurisdiction over higher judiciary and the Prime Minister. Regarding higher judiciary, a National Judicial Commission is in the pipeline. Lok Satta and Foundation for Democratic Reforms have requested Justice VR Krishna Iyer, and Chief Justices M N Venkatachalaiah, and J S Varma – three of the most distinguished jurists of our time known for rectitude, propriety, scholarship, and wisdom, to help evolve a framework for judicial accountability. These eminent jurists have labored for several months, and have unanimously recommended creation of a National Judicial Commission headed by the Vice President to recommend appointments, and if the Parliament agrees, removal of erring judges after due enquiry. They have also recommended creation of an all-India Judicial Service for recruitment of judges of quality at subordinate level. This report has been shared with the government and

opposition, and the government has initiated the process to amend the Constitution suitably and create a National Judicial Commission. This, along with the Judicial Standards and Accountability Bill before Parliament would address issues of judicial accountability and corruption.

Regarding Prime Minister, there are two views regarding the best means of enforcing accountability. One view is to bring Prime Minister under Lokpal. Another view holds that the Prime Minister is the leader of the nation, and the lynchpin of the government in our Parliamentary system. Therefore it is best to bring Prime Minister's office under Lokpal, and subject a former Prime Minister to Lokpal jurisdiction, and the Prime Minister himself should be accountable only to Parliament. We all agree that no one should be above scrutiny. At the same time the dangers of destabilization by subjecting the Prime Minister to roving enquiries are real. The present Bill provides for a Prime Minister being subjected to Lokpal's jurisdiction after demitting office. This contentious issue is perhaps best left to the wisdom of the Parliament.

But the creation of a Lokpal, however strong the institution is, does not really address the challenge of corruption in vast areas of government. States have an increasing role over citizens' lives, and they control 85% of employees and officials of government, and a vast number of elected legislators and local governments. Any law which excludes states and local governments is a fraud on the gullible people. The United Nations Convention Against Corruption (UNCAC) has been ratified by India on May 1, 2011. With this, under Article 253 of the Constitution, Parliament is empowered to legislate on matters of corruption in respect of states and local governments. Sadly, the Union is dithering on the specious plea that some Chief Ministers are opposed to Union legislation on corruption! Once Parliament has the power, it has duty to act now, instead of finding alibis for inaction. It cannot be anybody's case that there is no corruption in states. In fact most corruption relating to land, mines, coastal resources, forests, transfers and postings, and crime investigation is in states.

It is imperative that the Lokpal Bill provides for Lokayuktas and local ombudsmen for local governments with identical powers, provisions and protection as Lokpal. Just as the Right to Information Act, 2005 has been enacted to apply to Union, state and local governments in all areas, we need a comprehensive legislation applicable to all tiers of government simultaneously. At the same time, the Chief Ministers, who are the lynchpins of administration in states should be brought under Lokpal to ensure fair, firm and equitable action in all cases.

In addition, two more arrangements are needed in the Lokpal–Lokayukta legislation. The Vigilance Commissions existed at the Union and state levels since mid-60s, in the wake of Santhanam Committee report. Lokpal and Lokayuktas must of necessity have direct jurisdiction over elected MP, MsLA, MsLC, and all officials above a certain rank. If all the 20 million public servants are brought directly under Lokpal–Lokayuktas, it will dilute the impact of these institutions and will be counter-productive. It is best if elected legislators and senior officials are directly under Lokpal-Lokayukta jurisdiction. All local governments can be brought under Local Ombudsmen crated in the same legislation for every district. The Vigilance Commissions should, of necessity, deal with corruption in the rest of the machinery. But Lokpal – Lokayukta and the vigilance Commissions cannot function in isolation, and there must be coordinated action. Therefore, it is

advisable to make CVC at the national level and VC at state level the ex-officio members of Lokpal and Lokayukta respectively. The appointment and removal, and powers of CVC and VC should be identical to the Lokpal and Lokayukta. Then CVC and VC will be able to act effectively against corruption, and there will be seamless continuity and coordination between Lokpal-Lokayukta and Vigilance Commissions.

Finally the CBI and State ACBs should be made autonomous, accountable only to Lokpal–Lokayukta and Vigilance Commissions. Investigative agencies need to be completely free from political interference of any kind, and they need to be made effective and accountable. In 1924, Ramsey Mydonald Government in Britain directed Scotland Yard to withdraw prosecution of John Ross Campbell, who was accused of espionage. The Campbell affair led to the fall of British government and dissolution of House of Commons. Since then, no government minister, or legislator dared to interfere in crime investigation. Nixon could be driven out of office, and Clinton could be prosecuted only because crime investigation is independent, and obstruction of justice is regarded unacceptable. That is the essence of rule of law. Therefore, we need to make CBI, and ACBs fully autonomous, and make them accountable only to Lokpal/Lokayukta. For this purpose, the anti-corruption wing of CBI can be separated from investigation of other crimes. In Vineet Narain case, the Supreme Court held that crime investigation should be autonomous and free from political control. It is time we institutionalized mechanisms to insulate crime investigation in respect of corruption cases as a first step. Such a mechanism should from part of Lokpal – Lokayuktas act.

A lot more needs to be done to curb corruption. We need to empower local governments, eliminate all forms of discretion and arbitrariness in governance, promote competition and choice wherever feasible, give voice to the citizens and communities in an institutionalized manner, and above all engineer political reforms to promote probity and integrity. But a strong, independent, effective empowered Lokpal – Lokayukta institution in the Union and all states, and effective integration with Vigilance Commissions and autonomy of CBI and ACBs are the first important steps in our quest to build a society free from corruption.

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