

Bringing Probity into Public Life

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1. Probity and its relationship to corruption

Probity is usually regarded as being incorruptible. But probity goes further than the avoidance of being dishonest because it is determined by intangibles like personal and societal values. The dictionary meaning of probity refers to integrity, trust, character, justice, honesty, rectitude and uprightness and the use of the term has increased during the last 100, 50, 10 years as the graphs below show.



View usage over: Last 100 Years

View usage over: Last 50 Years

View usage over: Last 10 Years

Source: <http://www.collinsdictionary.com/dictionary/english/probity>¹

In a democracy probity goes even further to espouse the principles of equality before law and a respect for the rights and duties of leaders towards their citizens. Conversely probity is a societal expectation which citizens demand from decision makers and all those that function as a part of the state's apparatus. In order to judge the extent to which this expectation is fulfilled, standards are prescribed and more often than not, these include three things: "accountability", "transparency" and "responsiveness" and a shared belief that the adoption of these three standards will automatically lead to clean and efficient governance.

¹English Dictionary by Collins, pioneers in dictionary publishing since 1819

Summary

In this paper the wide variations in the understanding of corruption and the differences between perceptions in developed countries and developing countries like India have been made because this is fundamental to understanding the challenges that lie ahead. In doing this there is a need to look at the history of what happened in countries which have accepted the rational -- legal model of governance and to examine whether that process will necessarily be repeated in all countries in the foreseeable future. The preoccupation of international institutions with installing good governance including anticorruption strategies in developing countries and criticism thereof have therefore been discussed. It has to be seen whether the trajectory of developed countries will work automatically in countries which have still to overcome a completely different set of challenges.

Factors that have influenced the expansion of corruption in India, attitudes to acquisition and display of wealth and its utilization, have also been highlighted. The extent of corruption in the public sector in India and the effectiveness or ineffectiveness of constitutional and statutory organisations engaged in the pursuit of containing corruption have been presented .

Thereafter there is a narrative of a public uprising against corruption in India, the involvement of an increasingly influential middle class and the response of the governments at the Centre and in some states who have come to realize the likelihood of corruption becoming a major election issue; also why this may not stay an issue when it comes to actual voting has also been suggested.

Finally, how an analysis of the extent of criminalisation of politics and the steps taken to expose the criminal profile of candidates has helped quantify the extent of the problem, but how this fact alone will not shame political parties from giving tickets to undesirable elements has been brought out. It has been shown how without inner party democratization new people can never rise to the top making it essential to consider new ways of party and election funding to eliminate the present dependency on funding which is conditional, often acquired through illegal sources.

Wide Variations in Perceptions about Corruption

Corruption can take many forms ranging from the basic to the most complex but any discussion rests on the basic tenet of ethical behaviour which is taken as given. Every sector that delivers service to the public is vulnerable to corruption and this applies both to rich and poor countries². Corruption however means different things in different countries depending on the stage of development. Whereas the world view that corruption can and does occur universally is true, there are several ways of describing corruption which depend upon local perceptions about the meaning of corruption.

Generic ingredients of "normal" corruption:

Buying things, procurement processes, issuing contracts etc; appointing personnel; delivering programmes or services; major capital works, controlling activities (licensing/regulations/issuing permits etc); and different forms of administration justice mostly, but also of health, environmental services etc are the most common areas where corruption occurs. (ibid)

Criminalisation of politics and corruption:

But these known areas of generic corruption is confined to everyday corruption and does not touch upon what the second Administrative Reforms Commission of India (ARC) (2009)³ has included within the ambit of corruption. The Commission begins the chapter 'Ethics in Governance' by describing the large scale of criminalisation of politics. The participation of criminals in the electoral process is said to be "the soft underbelly of the Indian political system", leading to "flagrant violation of laws, poor quality of services, protection from lawbreakers on political, group, class, communal or caste grounds, partisan interference in the investigation of crimes, the poor prosecution of cases, inordinate delays lasting over years, the high costs of the judicial process, mass withdrawal of cases, indiscriminate grant of parole are listed as being the most important causes of corruption. The Commission has also spoken of converting policemen from potential adversaries into allies and called this phenomenon "as an irresistible magnet

² Graycar, Adam and Smith, Russell G., **Hand Book of Global Research and Practice in Corruption**, Edward Elgar Publishing Ltd. The Lypiatts 15 Lansdown Road, Cheltenham (UK), and William Pratt House 9 Dewey Court Northampton Massachusetts (USA), 2011

³ Report of the Administrative Reforms Commission "ETHICS IN GOVERNANCE", May, 2009

that draws criminals to politics”. Referring to political parties the Commission has drawn attention to how votes can be secured through the use of money and muscle power and pointed to the large, illegal and illegitimate expenditure on elections as being the root cause of corruption. Against this background, the ARC classified offences that need to come under the Prevention of Corruption Act to include:

- gross perversion of the Constitution and democratic institutions amounting to wilful violation of the oath of office
- Abuse of authority by unduly favouring or harming someone
- Obstruction of justice
- Squandering public money.

These prescriptions are on an altogether different plane compared to the generic acts of everyday corruption. While neither addresses the question of who will take cognizance of such acts of corruption given that the people who take decisions may be a part of the problem, the divergence in the scope of corruption must be taken note of.

Perceptions of OECD countries:

OECD research based on public documents has shown that the maximum number of OECD countries placed “impartiality”, “neutrality” and “objectivity” at the first position on a scale of 8 qualities that matter⁴. OECD’s Principles for managing Ethics in Public Service⁵ (PUMA) has listed several maxims that are salutary in their own place but which appear to be soft and simplistic seen against the backdrop of what the ARC (India) has alluded to. These maxims related to ethical standards in public service operate in a framework which primarily makes political leaders responsible for maintaining high standards of propriety in the discharge of their official duties. Commitment is expected to be demonstrated by example and by creating legislative and institutional arrangements that reinforce ethical behaviour and create sanctions against wrong doing. In fact there is an expectation that political commitment to ethics is fundamental for strengthening the ethical conduct of public servants.

⁴ Trust in Government: Ethics Measures in OECD Countries(2000)

⁵ Puma Policy Brief No.4 , “*Principles for Managing Ethics in the Public Service*”, Submitted/Produced at Public Management Service, May 1998

Global Perception Corruption Indices-How Relevant Are they?

The regional standards of OECD and the global ratings of Transparency International and other international agencies are useful but they are mainly addressed to the votaries of ethical behavior. International ratings on the prevalence of corruption seldom permeate to vast numbers of people who have no illusions about how life is played out; in some regions the existence of corruption is taken for granted, tolerated and at times even applauded. In the context of India, more than half the country would be oblivious to the international comparisons about the prevalence of corruption indices or India's rating, leave alone the improvement or decline in ratings. In interior rural areas where more than 70% of Indians live, the rule of law as stipulated by the Indian Penal Code, the Criminal Procedure Code, and the Indian Evidence Act are little understood. Justice is what is meted out by the local leader -- elected or self appointed. Often it is the criminal who delivers speedy justice and far from being shunned and feared, becomes the "Sarkar" (proxy for government) in the eyes of the people. Such criminals build on local acceptance and support and instead of operating behind the scenes by supporting party candidates, eventually become emboldened enough to enter politics. An elected position gives the criminal protection against law and his support base and ill gotten wealth enable him to negotiate a political office eventually. He can then control both state funds and public functionaries.

Many political parties welcome the entry of such criminals because their ability to win a seat is secure. The Election Commission of India had not long ago lamented that one in six legislators faced grave criminals charges. Large, illegal and illegitimate expenditure on elections has been noted by the ARC to be the "root cause of corruption." The report also refers to ubiquitous corruption altering the very nature of political and administrative power so undermining trust and democracy. According to the ARC report, cleansing elections is the most important route to improving ethical standards in politics so as to curb corruption and rectify maladministration.

Corruption perception indices are unlikely to have looked at the all pervasive nature of the criminalisation which is at the heart of corruption in India. Respect for the rule of law is too narrow an understanding of this phenomenon. The irony is that most voters may not perceive the illegal use of money power as corruption. Therefore international

perception indices play but a limited role in projecting what is the most important factor in the context of some countries.

History of Corruption

Progression of Corruption in different systems.

It is important to look at historical factors and the stage of development of a country before applying maxims which may be before time under certain conditions. Defining the economic role defined by caste and tradition in India's economy the operation of traditional caste based silos that exist in a country like India, there is a description of how the pursuit of certain vocations is conferred by caste alone. The patrimonial system has been distinguished from the traditional system in which, rulers do not distinguish between personal and public life and treat state resources "as a personal affair ". (ibid) Extracting resources from the population is integral to the patrimonial system and not considered violative of societal behaviour. This supports the idea that when the people have no expectations of a merit based administration, corruption is not seen as an aberration.

The third system i.e. the rational – legal system the organization takes precedence over the "role incumbents" leading to impersonality and goal orientation. This impersonality translates into hiring on the basis of competence and certification and promotions being made on the basis of ability and productivity. "Yet this form of economic and social organization only emerged in the past 200 years or less in Europe and in most of the world did not really begin to spread until after 1950". The rational-legal form is only beginning to emerge in many parts of the world.(ibid). In a country like India there are 2 divergent sets of standards at work. One determined the rule of law, the application of rules and instructions and the other which is impervious to even to basic tenets of probity in public dealings.

In India precisely because most of the country has not evolved to the rational legal stage - it is a serious dilemma for senior civil servants how to convince the political executive (Central Ministers and State Chief Ministers) that merit and ability must surmount considerations of patronage and caste obligation. This is perhaps the biggest obstacle to establishing a healthy Minister-civil servant relationship as most political bosses consider talk of merit and competence as irrelevant to the process of exercising power which is treated as a right conferred by having attained a political office. Prescriptions based on the rational-legal system become incongruous and while a small elite group of civil servants who deal with international agencies respond to the principles enunciated and adopted by developed countries owing to their own education, exposure

and training they often fail to convince their Ministers who consider talk about merit and impartiality as irrelevant, even though they may appear to agree in keeping with accepted norms of modern behavior.

History of overcoming corruption

In the developed world

Britain, Europe and North America underwent enormous transformation in their socio-economic and cultural traditions in the wake of the Industrial Revolution⁶. The rules that governed society changed completely and the system of functioning through patronage, rent seeking, kinship and trust was replaced almost entirely. The large-scale production of standardised goods necessitated measurement of output; thus responsibility could be fixed when things went awry. The vagaries caused by nature and ill health were largely overcome with the advent of technological and medical solutions. Accountability could be extracted through a professional bureaucracy whose job it was to supervise performance judged by accepted standards of measurement.

But prior to the 19th century and before the Industrial Revolution, Britain was administered through a system of patronage and the selection of an individual who could be trusted to perform his duty. Loyalty was the only criteria used in that society for hundreds of years.

“Patronage worked during this time because it required small centralised governments and small aristocratic leadership. When the Crown granted a high office to a noble, it was a source of great wealth, privilege, rights, and other social benefits given in exchange for loyal service on behalf of the patron. What policed the behaviour of the office holder was the threat of expulsion from the aristocracy, loss of the benefits of office, and the loss of other investments if caught or suspected of acting outside the interests of the patron. To be accused of malfeasance and being cut off from society was of social death sentence. Offices assigned through patronage often did not contain the right of resale. An individual who was found untrustworthy could be punished through ostracism where all social standing was lost. Hence a servant given a patronage office had a strong incentive to avoid bad behaviours.”(ibid) (Page 16)

⁶ Marcus Felson, Handbook of Global Research and Practice in Corruption, **Corruption in the Broad Sweep of History** Cheltenham; Northampton, MA : Edward Elgar, 2011.

The emergence of Europe from a feudal system created opportunities for trade, exploration and production. In order to exploit these opportunities, nations required a strong rule of law and the ability to protect the rights of citizens. Prior to the Industrial Revolution neither were these requirements of relevance and nor was it possible to measure anything given the vagaries of nature, time, ill-health and a host of other factors. Therefore, in the pre-modern world patronage was accepted and respected, whereas today in modern societies it is considered inappropriate and often illegal. Merely transplanting an inappropriate institution even if it works well in a in a modern, low variance economy may not work without an understanding the micro-level environment. (ibid)

India's Feudal Mindset.

Taking the case of India, the country accepted and introduced all the trappings of modern society in Western countries. But leave aside places where the elite, highly educated people function in the public and private sectors where there is a complete understanding of the need for objectivity and merit-based decisions, most of India is nowhere near that level of understanding –in fact comparisons cannot be made as the two worlds stand apart. Feudal mindsets, patronage, landlordism and money power is entrenched in the functioning of rural, agrarian societies that account for a very large proportion of India's population. There the ability to exercise patronage and display power and pelf is regarded very highly and cannot be changed only through laws and rules. Much of the political class and the provincial bureaucracy hold these attributes in high regard and systems operate on those considerations. The political class is very largely a product of that social ethos and when elected, the need to exercise patronage cannot suddenly be replaced with adages about merit, transparency and accountability simply because these have been the cornerstone of governance in developed countries. When the voters have no such expectations, no member of the political class would espouse these notions of “good governance” merely because they sound correct. The question arises, should there be attempts to change the rules which govern the selection and election of political candidates or should one chase after good governance in isolation of the milieu under which societies function. It is no use decrying the absence of “good governance” without understanding the ethos of the political class and social structures operating in most of India.

Anthropological Angle on Corruption

The notion of “public office” is essentially a Western concept and in many developing countries, the holders of public office derive their administrative and professional legitimacy from training in modern European administration. But their social legitimacy requires conformity with different social and cultural expectations. Corruption⁷ is an ambiguous phenomenon often causing contradictory understandings among scholars, policymakers and practitioners requiring a broader understanding of corruption. The intention of the author “is not to excuse legal action by providing an explanation by culture” (ibid) but to show that the borders of acceptable behaviour are not universal. Unless corrupt practices are seen as unacceptable by the practitioners, attempts at reform may be difficult to implement and anticorruption strategists must be alive to this.

Mutually Enhancing Collusion is a part of the process of development

Historically India’s economic structure once had the wealthy princes on top whose income were based on inherited wealth and land; a tiny middle class; and a huge mass of a poor. The poor were always there but billionaire businessman and a huge middle class were not⁸. “Many of India’s billionaires (India has the fifth largest concentration of dollar billionaires in the world and the single largest concentration of the poor) who have grown through a process of collusion with the other 2 actors – politicians and bureaucrats” and “have come together to share the spoils from land, natural resources and air ways”. India is only an example of ‘mutually enhancing collusion’ which was witnessed in the U.S. in the 19th Century and in Japan in the 50’s, South Korea and Taiwan in the late 60s and China today. There is no historical record of a society that rapidly move from a rural to urban, from agrarian to industrial stage of development without corruption marking the process of transformation. Rapid economic growth is accompanied by entrepreneurial energy as well as corruption”. (ibid)

⁷ Sissener, Tone Kristin, ” *Anthropological Perspectives on Corruption*”, **Paper No. WP 2001:5**, Submitted / Produced at Chr. Michelsen Institute, Postterminalen, Norway,

⁸ Varshney, Ashutosh, “ State of Civil Society”, in **The Indian Express**, 11th June, 2011.

The International Business of Anti- Corruption

There are four types of international actors who do not always agree on strategies to curb corruption⁹.

1. The first category includes International Financial Institutions, such as the World Bank and bilateral donors with a stake in proper utilization of aid.
2. The second category consists of organizations that are directly connected with civil and criminal law enforcement across borders.
3. The third is a diverse group of non profit institutions with an anti-corruption and good governance agenda, including organizations that support investigative journalism and freedom of the press. Transparency International is one such institution and the Extractive Industries Transparency Initiative (EITI) is another. They gather and organize country-level data, expose corruption and other forms of wrongdoing, and operate as pressure groups that seek to put corruption on the reform agenda. They act as information providers that put domestic reform efforts in an international context and publicize both positive and negative results.
4. Finally there are international Chambers of Commerce or trade associations which promote a code of ethical conduct and promote anti-corruption policies.

This overall demarcation helps to categorise the anti-corruption and good governance players. Among them the international financial institutions and the non-profit anti-corruption institutions listed at 1 & 3 above has been critiqued in different ways and there is a need to be alive to the limitations and criticism of their roles.

World Bank: Governance Agenda.

It is interesting to note how much an institution like the World Bank has invested in trying to contain corruption by backing anti-corruption measures in a wide range of countries. Several strategies have been introduced using the umbrella term “good governance.” The 14 year history of these initiatives is recounted below.

⁹ Ackerman, Susan Rose, “*Anti-Corruption Policy: Can International Actors Play a Constructive Role?*”, **Research Paper No. 440**, Submitted / Produced at John M. Olin Centre for Studies in Law, Economics and Public Policy, Yale Law School, 2011

- (i) The World Development Report 1991, *The Challenge of Development*, in which a chapter was devoted to the management of the public sector and the issue of corruption.
- (ii) In 1992, the Bank's Task Force on Governance published a report on *Governance and Development* that justified the Bank's involvement in matters of governance, including the rule of law, transparency, corruption and military expenditure.
- (iii) In November 2000, the World Bank published a strategy paper *Reforming Public Institutions and Strengthening Governance* focusing on 'core public institutions'.
- (iv) In World Budget Report 2004 *Making Services Work for Poor People* the Bank examined the role of citizens in the improvement of government services. *Strengthening World Bank Group Engagement on Governance and Anticorruption* (World Bank 2007) was a sequel to that.

Critiques of anti-corruption efforts based on western examples

Several anti-corruption initiatives have reportedly failed¹⁰ "because *they are non-political in nature whereas most of the corruption in developing countries is inherently political*"¹¹ "What is labeled as corruption in developing countries mirrors the distribution of power within societies. Few anticorruption campaigns dare to attack the roots of corruption in such societies as these roots lie in the distribution of power itself." (ibid)

The Politics behind Good Governance

The intuitive appeal of the concept of good governance has grown rapidly to become the pivot around which countries struggling for economic and political

¹⁰ Jan Isaksen, Odd-Helge Fjeldstad, "Anti-Corruption Reforms: Challenges, Effects and Limits of World Bank Support", (Background Paper to Public Sector Reform: Evaluation of World Bank Support), **IEF Working Paper 2008/7**, Submitted / Produced at The World Bank, Washington D.C., 2006(source : Anti-corruption Reforms: Challenges Effects and Limits of World Bank Support) available at http://siteresources.worldbank.org/EXTPUBSECREP/Resources/Fjeldstad_anticorruption.pdf.

¹¹ Corruption : Diagnosis and Treatment, Alina Mungiu Pippidi, Journal of Democracy, July 2006, Vol 17, No 3, page 86

development spin themselves¹². Putting governance right has become the major aspect of development assistance and a significant portion of the development agenda is related to good governance. The inflation of the idea of good governance and with it concepts like community development, basic needs, participation, sustainability and appropriate technology have been questioned. (ibid)

Good governance generally refers to a list of admirable characteristics of government as carried out by Sweden or Denmark ..." the dimensions of good governance -- participation, fairness, decency, efficiency, accountability and transparency are quite evocative. The U.K.'s Department for International Development (DFID) has consistently talked of what government should do -- ensure voice, macroeconomic stability, policies that positively affect the work, and accountable government." (ibid) The concept of good governance proved an important fig leaf for resolving a dilemma. Essentially it allowed international agencies to discuss and become more engaged in politics. (ibid)

It has shown how development practitioners led by international development agencies have focused on reducing the role of the state in development and somewhat later in advocating for "strengthened civil society". Encouraging action against corruption in public affairs, encouraging the development of organizations to monitor government action and political activities, increasing the relevance of citizen voice in political decision making, speaking out against leadership failures were strategies which were supported despite the charters of international organizations requiring restraint in political matters.(ibid)

The World Bank declared that corruption was "the single greatest obstacle to economic and social development," and accountability and transparency emerged as weapons in the battle against corruption leading to the growth of civil society organizations which became actively engaged in the inner workings of government. That required encouraging action against corruption in public affairs by encouraging the development of organisations that took on a role which was antagonistic and critical of the role of the state. (ibid)

International organisations could not openly dabble in the internal affairs of a country -- much less at the micro level in a large number of sectors. Civil society

¹² Grindle, Merilee S., "Good Governance: The Inflation of an Idea", **CID Working Paper No. 202**, Submitted / Produced at Harvard University Oct. 2010.

had to be propped up and the concept of good governance provided just the opening that was needed. Between 2002 to 2007 the World Bank loaned \$22 billion for projects related to public sector governance. Civil society entered the realm of human rights, environmental preservation, sustainability, empowerment of women, community management of forest, land-use planning, legal aid for the poor, anticorruption measures and a variety of other conditions all in the name of good governance. Good governance then became a pre-condition rather than an ancillary process for development to take place. (ibid)

India: Attitudes towards Ethical Behavior

Ethics is a set of standards that society places on itself and which help guide behaviour, choices and actions. Standards do not, by themselves, ensure ethical behaviour: which requires a robust culture of integrity and probity in public life. The crux of ethical behaviour does not lie only in standards, but in their adoption in action and in issuing sanctions against their violation.

In the context of India, the ARC has listed four important factors that have aggravated the abuse of office :

- First, there is a colonial legacy that those in authority can exercise power in an unchallenged way.
- Second, there is enormous asymmetry of power. Nearly 90% of the people work in the unorganized sector.
- Two thirds of the remaining work in the organized sector having job security and regular monthly wages and are employees of the state either directly or indirectly. According to the ARC it is this asymmetry of power that has reduced societal pressure to conform to ethical behaviour.
- Historically and as a conscious choice, the Indian government in the early decades after Independence chose a set of policies whose unintended consequence was to put the citizen at the mercy of the State. Over regulation, restrictions on economic activity, dependency on state monopolies and scarcity of essential commodifying induced corruption which became a way of life.

The Commission¹³ has pointed out how the most important determinant of the integrity of a society or the prevalence or absence of corruption is the quality of politics. Noting that when politics attracts and rewards men and women of integrity, competence and with a passion for the public good, society benefits. But when honesty is incompatible with survival in politics, and if public life attracts undesirable and corrupt elements seeking private gain, then abuse of authority and corruption become the norm.

Large, illegal and illegitimate expenditure in elections has been termed to be the root cause of corruption and hence cleansing elections has been ranked the most important step towards improving ethical standards in politics. This one step alone can curb corruption and rectify maladministration. How far this is being addressed is discussed later in the paper.

Acquisition of Money, Gold and Jewellery

But unclean politics is but a symptom of what society respects. While there is no country and very few societies where wealth creation and ownership is irrelevant, the manner in which wealth is flaunted in India signifies the value of spending to gain social standing. Indians have a strong desire for display of material wealth which outweighs considerations about quality of life, a clean environment and even education- unless the latter multiplies earnings.

This needs to be understood because it is one of the root causes of corruption and propels the collection of money for purposes other than directly funding electioneering.

The Parallel Economy

A phenomenon which occurs in India and other developing countries is one where no taxes are paid for a substantial part of the monetary transactions cutting across all sectors of the economy.¹⁴ Fictitious accounts, double ledgers and account books are routinely maintained by all businessmen. A major part of the black

¹³ Report of the Administrative Reforms Commission "Ethics in Governance" May 2009.

¹⁴ Arun Kumar "The Black Economy in India" (1999/2002)

investment goes into real estate, gold, flight of capital and illegal activities. In India illegal incomes can also be earned from legal activities. (ibid)

A part of production in the manufacturing sector is not shown in the books and products enter the market without payment of income tax, sales tax and excise. In the developed world's most people are largely employed in the organised sector. In India more than 90% of the employment is in the unorganised sector. No taxation is possible when no records are kept. "Black money" or unaccounted wealth generally ends up supporting various purposes - some legal and some illegal.

Havala (Money Laundering) is a system through which funds can be sent abroad and ploughed back into the country through banking channels. Drug trafficking and smuggling are also two activities which require large investments to be sent out of the country and brought back. This informal credit market is completely outside the Central Bank policies and escapes scrutiny except through the Enforcement Directorate which is able to investigate a fraction of such cases. Parking such money in tax havens abroad has become a major issue in India and is among the programmes being pursued by different anti-corruption activists.

Persons who keep large amounts of black money besides using it to support elections and building electoral alliances use it extensively to buy jewellery and gold. More than any other item, gold is the investment of choice in India because its value only appreciates and is always acceptable like money. No other nation shows such a preference for gold. A considerable part of the black income is invested in gold in the form of biscuits and bricks. If there is devaluation of the rupee, there is inflation within the country but the value of gold appreciates.

An article 'The Untouchable' describes a "diamond-bedecked chief minister (in India) reportedly spending 100 million taxpayer rupees (roughly \$2 million) on a lavish birthday party where a 110-pound cake, 100,000 *laddoos* -- a traditional Indian sweet -- more than 13,000 pounds of marigolds, 5,000 bouquets of flowers, and decorations mimicking a classic Bollywood movie set during the Mughal Empire " as a part of the celebrations. The same Chief Minister was also reported to have been garlanded With currency notes valued at \$400,000 and \$2 million."¹⁵

¹⁵ [Foreign Policy titled the 'Untouchable Sadanand Dhume](#)

The reference is only indicative of how ostentatious display is a part of a culture of showmanship and such indulgences are frequently seen and reported upon in the reportage of weddings, ceremonies and functions organised not only for the elected representatives but equally for businessmen and film stars.

How, When and Why Corruption has become an Issue for India

The scale of corruption which has permeated a host of programmes implemented by the Ministries and organizations of the Central Government as well as the State Governments in India have been reported from 1948 (year after Indian Independence) until 2011¹⁶. Despite the growing number of corruption cases, it was not until 2010 that a Section of the Indian public began to react. Once the 2G and the Commonwealth Games scams (both 2010)highlighted in the table below became widely known, the issue of corruption took centre-stage.

Table 1: List of Major Scams Reported in Media and Values

Scam	Year	Reported Value in Current Prices (Rs Crores)
Jeep Purchase -K Menon	1948	0.80
Cycle Purchase Bribery	1951	-
BHU Funds	1956	0.50
Haridas Mundhra	1957	1.24
Teja Loans	1960	22.00
Nagarwala	1971	0.64
Kuo Oil Deal	1976	2.20
Antulay and Cement	1982	30.00
HDW Submarine	1987	32.55
Bofors	1989	64.00
Airbus Deal	1990	120.00
Harshad Mehta	1992	4,100.00
Indian Bank	1992	762.92
Palmolein oil imports in Kerala	1992	2.32
Sugar Import	1994	650.00

¹⁶ Debroy, Bibek and Bhandari, Laveesh, **Corruption in India: The DNA and the RNA**, Konark Publishers Pvt. Ltd.: New Delhi, November, 2011.

SNC Lavalin in Kerala	1995	374.50
Housing	1996	65.00
Urea	1996	133.00
Sukhram and Telecom	1996	1,200.00
Fodder in Bihar	1996	950.00
Chain Roop Bhansali CRB	1997	1,031.00
Jain Hawala	1997	5,000.00
UTI	2001	9,500.00
Ketan Parekh	2001	3,218.00
The Barak Missile	2001	400.00
Home Trade Cooperative Banks	2002	1,200.00
Kargil Coffins	2002	6.50
The Taj corridor	2003	175.00
The PDS Scam in Arunachal	2004	1,000.00
Natwar Singh Oil for Food Scam	2005	8.00
Scorpene Submarine Deal	2006	16,000.00
Dalmia DSQ	2006	595.00
Telgi Stamp Papers	2006	30,000.00
cash for votes	2008	50.00
Satyam	2008	14,000.00
Madhu Koda and Mining	2009	4,000.00
2-G	2010	176,379.00
Commonwealth Games	2010	36,000.00
Adarsh Housing Society	2010	200.00
Ambati Andhra Land Scam	2010	10,000.00
Fake Housing Loans	2010	1,000.00
Belekiri Port in Karnataka	2010	60,000.00
Foodgrains in Uttar Pradesh	2010	200,000.00
Bellary Mines	2011	16,085.00
ISRO Spectrum Allocation	2011	not valued

Table 2: Growth in Reported Scams

Decade of	Cases	Value in Current Rs Crores	Value in 2009- 10 Rs Crores
1940	1	0.8	32.0

1950	3	1.7	62.8
1960	1	22.0	694.4
1970	2	2.8	34.9
1980	3	126.6	989.1
1990	12	14,388.0	31,546.8
2000	14	80,152.0	100,095.7
2010	9	499,664.0	461,548.6
Annualized Growth Rate			112 percent

Exchange rate in 2011 was Rs 50= \$ 1

Indian Corruption Watchers

Effectiveness of the Comptroller & Audit General (CAG - Supreme Auditor)

The Comptroller and Audit General is completely independent of the Government. The reports of the CAG which have been tabled from 2010-2012 have led to the arrest and prosecution of Ministers, permanent Secretary level officers and influential company executives almost for the first time in the history of independent India. The CAG's reports are behind much of high visibility that has been conferred on the subject of corruption. It shows how much can be achieved by a single institution and even if parliamentary processes are long, on the basis of the reports, the Courts have directed investigating agencies to proceed with investigation and prosecution. CAG's reports to Parliament fall in three broad categories:

- i) Those relating to financial audit (verification of the account statements and disclosures)
- ii) Compliance audit (verification of the compliance of the rules and regulations by the executive), and
- iii) Performance audit (overall assessment of a programme or an organization).

During the last two years, the CAG of India has tabled 74 Audit Reports (32 in 2010 and 42 in 2011) in respect of the Central Government in the Parliament. The CAG reports created an understanding that corruption impedes economic development, undermines stability and erodes trust in public institutions. The enormity of the findings coupled with TV coverage and social media revelations have raised public expectations about the new to curb corruption.

It is the Performance Audit reports which evaluate programmes and their outcomes that have attracted the most attention because they have covered diverse areas of public interest, like the administration and collection of taxes, safety in railway travel, management of waste, police modernization efforts, environment, management of defence lands which go beyond unraveling processes and omissions which was the trend somewhat earlier.

Key Reports that attracted widespread attention.

- By far the most important was the report on the allocation of telecommunication spectrum to private agencies, in which the CAG reported a presumptive loss of INR 1.76 lakh crores (US\$ 32 billion at current prices.) (Exchange rate was Rs 50= \$1.)
- The CAG Report on Adarsh Cooperative Housing Society, Mumbai dated 2011-12 was tabled in Parliament in August 2011. The concerned agencies are reported to have pooled their strengths not for a common national cause but for personal benefit to grab apartments built on prime Government land in the heart of Mumbai (Bombay). It is an example of how a group of powerful elite from the State Government, its agencies, the armed forces and Members of Parliament and the State Legislature and other politicians and bureaucrats were able to effectively collude and subvert rules and regulations for personal benefit.
- The CAG report on the deal between the Department of Space and a private company relates to a new commercial service. It brought into focus how selected individuals were able to successfully propel the agenda of a private entity by abrogating powers which they were not legitimately authorized to exercise.

Other Reports that have captured public and media attention include those relating to petroleum exploration contracts, hosting of the XIX Commonwealth Games etc.

Unquestionably the Reports of the CAG have shaken the public and forced investigating and enforcement agencies to respond without waiting for the parliamentary committee (Public Accounts Committee) from reaching its conclusion.

The Indian Central Vigilance Commission: (CVC)

The Central Vigilance Commission (CVC) was set up by the Government in 1964 and the institution has given statutory status relatively recently. The CVC has to investigate complaints of corruption under the Prevention of Corruption Act, 1988 against senior civil servants of the Central Government, just below Board level officers in public sector undertakings and senior functionaries working in banks and insurance companies.

At one level the CVC is dreaded institution. An adverse comment can foreclose the chances of promotion of senior bureaucrats. But when it comes to actually punishing those found guilty of misconduct the outcomes do not seem to have much deterrent value. In other words the apex anti-corruption body vested by a statutory status acts as a gatekeeper for the honest but has been able to do little in respect of corruption when it has been found to have taken place.

According to the latest report (2010) available on CVC's website, as many as 222 government organisations or departments had reportedly not acted on the advice given for over six months involving over 2300 corrupt officials. The Indian Railways had not taken action against 321 of its officers despite the CVC's advice. 305 officers of the Central Board of Excise & Customs and 174 officers of the Central Board of Direct Taxes were also reported as not having been acted against by the respective organisations despite the CVC's advice. The report admitted that such anticorruption measures were not proving effective enough to quell public anger and called "for stronger mechanisms to fight graft".

The CVC's Annual Report Stated, "Ineffectiveness of current anti-corruption efforts in containing corruption affecting the common man has resulted in citizens losing faith in the system and the institutional mechanisms available." Out of 262 officers prosecuted for corruption, only 99 had to actually lose their jobs. All others were allowed to continue in service with 895 corrupt officials facing relatively smaller penalties which would not have the effect of removing them from the organisation.

The CVC's report also states, "There were instances where the advice tendered by CVC was diluted considerably," adding that the organisation's Annual Report to parliament does not reach its logical conclusion as there is little debate and discussion for eliciting preventive and corrective actions required. "General

public apathy towards vigilance activities and a higher tolerance for corruption in society emboldens the corrupt. Increasing complexity of fraud and corruption poses new challenges," the CVC report adds.

The comparison of the CAG and the CVC shows the difference between the effectiveness of constitutional body which works independent of the Government and an organization which only occupies an advisory role as is the case of CVC.

The conclusion is that given assured independence conferred by the constitution and the law, institutions do work in India and to that extent there is a case for giving an independent status to important institutions like the CVC and the proposed Lokpal. If given final authority to deal with cases of malfeasance and corruption without having to report to the Government, the system is strong enough to act and the superior courts have been generally supportive of such efforts.

The Rise of Civil Society

In India the year 2011 signifies a turning point in attitudes towards corruption. This is because several cases involving large-scale corruption surfaced in 2010. Among them the spectrum allocation and the Commonwealth Games got the maximum attention. Refer Table I.

Anna Hazare's Relevance

Until the year 2011, no one of any importance ever went to jail leave alone faced prosecution. But in 2011 rather unexpectedly an anticorruption movement was spearheaded by a 74-year-old social activist from a village in western India – Ralegan Siddhi. The question arises as to what brought this man to the forefront in his quest to set up a Jan Lokpal – (People's Ombudsman) to act against corruption, systemic or localized, but armed with enough investigating and prosecuting authority to ensure punishment.

The Lokpal idea had its roots in the first Administrative Reforms Commission (1967), but never before did it become an issue over the last 45 years. The Jeevan Reddy Commission (2001)¹⁷ had urged that the institution of

¹⁷ **Report of the National Commission to Review the working of the Constitution (Probity in Governance).**
August 21, 2001 Member –in Charge : Justice Shri B.P.Jeevan Reddy

the Lokpal should be set up soon giving the history of what happened to the Lokpal Bill which was introduced in 1968 and 1971, reintroduced in 1977 with other versions in 1985, 1989, 1996 and finally in 1998. The issue of whether the Prime Minister should be included or excluded took most of the time and a new bill titled the Lokpal Bill 2001 covering the Prime Minister was introduced in the Lok Sabha in 2001. That Bill too would have been relegated to the archives of the Parliament but for the resurrection of a much more draconian model by Anna Hazare.

Hazare first began an indefinite fast in April 2011 demanding the establishment of a Joint Committee of representatives of the Government and his supporters be set up to draft a stronger anti-corruption Bill having stringent penalties and greater independence vested in the *Lokpal* and *Lokayuktas* (Ombudsmen to be set up in the states).

Three days later the Government accepted the demand and issued a notification in the Gazette of India forming a Joint Drafting Committee with five Ministers of the Union Government and five nominees of “civil society.” Five of the most influential Ministers of the union Government holding the portfolios of Finance, Home Affairs, Law and Justice, Human Resource Development and Communication and Information Technology represented the Government. That day Anna Hazare ended his 98-hour hunger strike and set a deadline of 15th August to pass the Bill and warned that if that did not happen, he would call for a mass nation-wide agitation.

Although hundreds of revelations about big ticket scams involving all major sectors like defence, power, banking, the stock exchange, the allocation of spectrum and terrestrial space, had been exposed the interest until then had been short-lived. Exposés about bribes paid to politicians caught on camera, sleaze, murders, proximity of the political elite to underworld dons and the reported flight of capital to tax havens abroad had never received as much attention prior to 2011.

With the CAG’s reports exposing one scam after another, the media supporting Anna Hazare on all TV channels (though not in the English print media), Anna's movement signified a rallying point to force the government to confront corruption. The people who joined the movement were largely middle-class citizens living in the metros and cities in India. Tired of paying bribes, commissions and facing delays and extortion to get even normal work done they found in Anna a “savior”. Because of incessant TV coverage, at first hundreds and then thousands

congregated to watch the spectacle and to hear the anti-corruption rhetoric spewed by Anna and his supporters. The most educated Indians exchanged e-mails saying that at last a saviour had been born. People from Delhi and the national capital region congregated to be a part of the melee. When asked what they had come for, they said they were tired of corruption and wanted to be a part of the “historic change”.

But after nine meetings, the engagement of the Government with the "civil society team" led by Anna Hazare was terminated and the government tabled its own bill in Parliament. Anna Hazare announced another fast from 16th of August which again brought multitudes to the streets.

The Government then convened a special session of Parliament according to normal practice the bill was referred to the Standing Committee of Parliament. There several dissenting notes were filed by the MPs. The bill was reintroduced in the winter session of Parliament rejecting 34 amendments suggested by Anna Hazare’s team. The protests continued but the house was prorogued leaving the bill "neither here not there".

The events described above have been unprecedented -- no Central Ministers ever share a platform with activists and never to draft a Government Bill. The fact that a joint panel of Anna Hazare supporters, and Cabinet Ministers of the Central Government sat on the same table to discuss the issue was unprecedented. Until now anti-corruption had never been a priority for any Government at the centre or the states.

The Growth of Indian Middle Class

A 2011 report¹⁸ by National Council for Applied Economic Research's (NCAER) has found that by 2015-16, India will be a country of 53.3 million middle class households, translating into 267 million people falling in this cohort Further ahead, by 2025-26 the number of middle class households in India is likely to more than to 113.8 million households or 547 million individuals.

¹⁸ Economic Times : India's middle class population to touch 267 million in 5 yrs, http://articles.economictimes.indiatimes.com/2011-02-06/news/28424975_1_middle-class-households-applied-economic-research

Until 2011 the middle class in India was not interested in social causes and political movements. But now the middle class has grown hugely, pays taxes and has begun demanding a stake in getting returns from taxes paid to the state. At Annexures 1 and II there is a table and an explanatory note provided to the author by the Ministry of Statistics and Programme Implementation, Government of India which shows a doubling in size of monthly consumer expenditure from 1999-2000 to 2009-10, both in rural and urban areas. This growth of the middle class has made it a powerful, educated section living mostly in urban areas and its influence and impact has had to be factored in. Until recently, most politicians ignored this group which firstly did not vote and secondly was not amenable to being swayed by considerations of caste, culture or religion for the greater part. But the size of the segment and its anger against corruption need a political response.

Response to Middle Class Anger

There is now a realisation that the issue of corruption had finally come on centre-stage. Triggered by the reports of the CAG who had exposed a wide range of collusive decisions which led to public funds being diverted to enrich personal ends, the Anna Hazare movement and the media coverage aimed at middle-class citizens living in Metros and cities, primacy began to be given to the issue of corruption. It is noteworthy that the citizens of rural India neither took any overt interest in the anti-corruption movement nor showed any reaction to the CAG reports or the Anna Hazare movement. The outreach of private TV Channels does not cover a large part of rural India. But in the metros, cities and towns the reaction of the middle class was vociferous. Seeing the growing influence of the middle-class whose voice had begun to matter, the Government responded by showing its seriousness about containing corruption. This response was unprecedented looking at the forgoing six decades (1950-2010) when efforts to legislate on anti-corruption were few and far between.

Central Government Introduces 10 Anti Corruption Bills in Parliament

The list of Bills is given below which shows unprecedented priority having been accorded to containing corruption. When and in what form Parliament will pass 10 bills which have been introduced is a different question. For the time being it is apparent that the Government and the political parties have understood the

growing size and significance of the middle class in urban areas and the sudden sport for anticorruption laws seems from a realisation that the issue will come up when the next general elections are held by 2014.

Table 3: Some Key Pending Bills related to Corruption and Delivery of Public Services (as of June 2012)

Bill	Date of introduction	Status Lok Sabha ¹⁹	Bill description
The Lokpal* and Lokayuktas** Bill, 2011	22 Dec 2011	Passed by Lok Sabha on 27 Dec 2011, Referred to Rajya Sabha Select Committee on 21 May 2012	The Bill seeks to establish the office of the Lok Pal at the centre and Lokayuktas in states to investigate and prosecute cases of corruption.
The Whistle Blowers Protection Bill, 2011	26 Aug 2010	Passed by LS on 27 Dec 2011; Pending in RS	The Bill seeks to protect whistleblowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.
The Benami *** Transactions (Prohibition) Bill, 2011	18 Aug 2011	Pending with Standing Committee on Finance	The Bill prohibits all persons from entering into benami transactions. “ Benami refers to transactions in fictitious names.)
The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011	25 Mar 2011	Standing Committee Report on 29 Mar 2012	The Bill makes it an offence to accept or offer a bribe to foreign public officials and officials of public international organizations in order to obtain or retain international business.
The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011	20 Dec 2011	Standing Committee granted time upto 30 Jun	The Bill seeks to confer on every citizen the right to time bound delivery of specified goods and services and provides a mechanism for grievance redressal.
The Electronic Delivery of Services Bill, 2011	27 Dec 2011	Standing Committee granted time upto last week of Monsoon Session 2012	The Bill provides that the central government, the state government and public authorities shall deliver all public services through electronic modes, except those that cannot be delivered electronically.
The Prevention of Money-Laundering (Amendment) Bill, 2011	27 Dec 2011	Standing Committee Report on 9 May 2012	The Bill seeks to amend the Prevention of Money Laundering Act, 2002. It links the provisions of Indian law with the laws of foreign countries. It widens the definition of money laundering; provides for attachment of proceeds; and presumes (unless proven otherwise) that proceeds of crime under the Act were related to money laundering.

¹⁹ Lok Shabha refers to the House of the People equivalent to House of Commons

* Lokpal refers to the equivalent of an ombudsman

**Lokayukta refers to the equivalent of an ombudsman at the state level

***Benami refers to transactions in fictitious names

The National Identification Authority of India Bill, 2010	3 Dec 2010	Standing Committee Report on 13 Dec 2011	The Bill seeks to establish the National Identification Authority of India (NIAI) to issue unique identification numbers (called 'Aadhaar') to residents of India. (The aim is to identify the correct beneficiary of government programmes to prevent corruption in delivery of Good and services.
The Judicial Standards and Accountability Bill, 2010	1 Dec 2010	Standing Committee Report on 30 Aug 2011, Passed by Lok Sabha on 29 Mar 2012; Pending in Rajya Sabha	The Bill requires judges to declare their assets, lays down judicial standards, and establishes processes for removal of judges of the Supreme Court and High Courts.
The Public Procurement Bill, 2012	14 May 2012	Standing Committee to report within 3 months <i>w.e.f.</i> 28 May 2012	The Bill regulates award of government contracts of above stated financial limit with the object of ensuring "transparency, accountability and probity".

Sources: Respective Bills, PRS Legislative Research Centre for Policy Research²⁰

Indian Government signs the United Nations Convention against Corruption (UNCAC)

In an effort to tackle corruption, India has finally ratified The United Nations Convention against Corruption (UNCAC) in 2011. This signifies an effort to tackle corruption and stem the flow of illicit capital flight which has been estimated at US dollars 104.1 billion during 2000-2008.

The Convention addresses both the public and private spheres and provides a set of comprehensive agreed-upon obligations and provisions to criminalize corruption and enhance transparency and accountability. In order to monitor the progress in the implementation of the Convention, Member States have agreed to conduct "peer-review mechanisms" among themselves, for which UNODC acts as a Secretariat.²¹

In May this year (2012) the Department of Personnel and Training (DoPT) invited expressions of interest from Indian law schools, law firms, academic and research organisations to undertake a self-evaluation study of India's status of compliance of the provisions of the Convention. This step signifies that the issue of corruption has been noted and action which was not taken for years has seen some fruition which is a healthy development.

State Governments too have been active on the Anti-Corruption Front.

In a completely independent movement four of India's 30 States have actually gone a step further and enacted their own anti-corruption bills considered

²⁰ [PRS Legislative Research Centre for Policy Research](http://www.prs.org.in)

²¹ <http://www.unodc.org/southasia/frontpage/2011/may/indian-govt-ratifies-two-un-conventions.html>

by many to be a positive deterrent against corruption. The State Bills relate to the acquisition of assets which are unaccounted for. Orissa, Rajasthan, Jharkhand and Bihar have enacted their own Special Courts Act. These Acts provide that the state government may authorize the public prosecutor to attach the property of the alleged corrupt official even during the investigation stage, if it has reasons to believe that the property was acquired through corrupt means. Before confiscating the property, the state government has to give a notice to the accused person asking him to explain his source of income and property.

- The Orissa government enacted the Orissa Special Courts Act in 2006. The text of the Act is available at <http://orissa.gov.in/govtpress/pdf/2007/1948.pdf>
- The Bihar government enacted the Bihar Special Courts Act in 2009. The text of the Act is available at <http://vigilance.bih.nic.in/docs/Bihar-Special-Court-Bill-2009-EN.pdf>.
- The Patna High Court upheld the constitutional validity of the Act in *Sanjay Kumar v The State of Bihar* decided on February 23, 2011; 2011(59)BLJR 1373. The case is available here <http://indiankanoon.org/doc/1078909/>. The Supreme Court had also declined to stay the law. The proceedings are still pending and notice has been issued to the state government. <http://www.hindu.com/2011/05/23/stories/2011052363070700.htm>.
- The Rajasthan Special Courts Act was passed in 2012. <http://www.thehindu.com/news/states/other-states/article3308278.ece>
- The Jharkhand government has promulgated an ordinance known as the Jharkhand Special Court Ordinance, 2012. It has been sent to the Governor for his approval. <http://www.indianexpress.com/news/jharkhand-to-enact-antigraft-law-to-rein-in-corrupt-public-servants/943858/>

Table 2: Population of Orissa, Rajasthan, Jharkhand and Bihar

S.No.	State	Population
1.	Orissa	20,745,680
2.	Bihar	49,619,290
3.	Rajasthan	33,000,926
4.	Jharkhand	16,034,550

Why anti-corruption legislation and enforcement will not be enough

Corruption may not become an Issue for Elections

While undoubtedly corruption has become a public issue it has to be seen whether this actually influences of voter behaviour. A recent example illustrates this vividly. Andhra Pradesh is a coastal state in peninsular India. The Chief Minister Mr. YSR Reddy was killed in a helicopter crash in (2009). His son Jagan Mohan Reddy staked claim to become the Chief Minister which was turned down by the party high command whereupon Jagan (as he is called locally) started his own party. Ever since his father died, he has been under investigation for amassing a colossal fortune during his late father's Chief Ministership. He was in jail pending investigation when crucial by-elections were held in the state. Ever since the Election Commission announced the by-elections, the only factor that dominated the electioneering was the issue of corruption. Despite being in jail and the other two contesting parties (Congress and TDP) focusing entirely on Jagan's corruption and ill-gotten wealth, as the main election issue, Jagan's party secured nearly 47 per cent of the total votes polled in the by-elections, more than the combination of the votes polled by the other two parties (Congress got 21.84 per cent votes) and (TDP 24.23 per cent votes)²².

Therefore the question remains whether the anger and apparent disgust against corruption that seems to have been registered and which has caused governments to act, will ultimately affect the election prospects of corrupt candidates. Not if Jagan Reddy's example is seen as a n example of ultimate voter behavior. In other words, citizens may register protests and rally around the issue of corruption to the point of pushing Government to legislate in favour of anti-corruption, but when elections are actually held, voter behavior may be influenced by completely different factors-even sympathy for the candidate in jail as has happened in the case of Jagan. Cleaning up corruption is therefore a very complex challenge and there is no known way of reaching out to the interiors of the rural hinterland where NGO's and civil society activists tend not to have a presence.

²²<http://indiatoday.intoday.in/story/graft-slur-failed-to-stop-jagan-wave/1/201318.html>

Accountability Standards for Civil Servants

In the OECD countries there are strong administrative traditions; public servants have full personal responsibility for the lawfulness of their official acts²³. Consequently, they have to answer, in terms of penal law, disciplinary regulations and liability provisions, for any unlawful official act, even if a senior official has approved such unlawful official action. When a conflict arises between loyalty to the law on the one hand and obedience – in complying with instructions of superiors -- on the other hand and public officials have to first inform their superiors of such doubts.

In the same report (ibid) there is a mention of Germany where it is reported that public servants have the overall duty of **remonstrance**: report any reservations regarding the unlawfulness of an official order to the immediate superior without delay. If the superior upholds the official instruction, the public servant to turn to the next highest paid and when the latter confirms it in the public servant concerned must comply unless he/she would commit a criminal offence which violates human dignity. Subsequently, public officials are protected against any ensuing claims under disciplinary regulations or liability provisions but only if they have complied with their duty to remonstrate. Almost half the member countries of OECD oblige their public servants by law to report misconduct or any crime including corruption.

In developing Countries like India this kind of obligation to report wrong doing is not contained in any law or rule governing official conduct. The conduct rules are comprehensive but a situation of getting overruled by the superior and the junior officers having to report the matter to a still higher echelon has not been envisaged. The idea of remonstrance does not exist and is impractical considering the relationship on the contrary a master servant relationship is very much in evidence between the political executive and the civil servant.

²³ *Principles for Managing Ethics in the Public Service* – Janos Bertok, Trust in Government, Ethics Measures in OECD Countries, OECD Publications France, published 6 Oct. 2000

Quantifying the Criminalisation of Politics

The Association for Democratic Reforms (ADR)²⁴ filed a Public Interest Litigation (PIL) in the Delhi High Court asking for the disclosure of criminal, financial and educational backgrounds of candidates contesting elections. The Supreme Court of India in 2002 and 2003 responding to the PIL made it mandatory for all candidates contesting elections to disclose their criminal, financial and educational backgrounds prior to the polls by filling an affidavit with the Election Commission. The first Election Watch was conducted in 2002 and since then Election Watches have been conducted for all parliament Assembly elections.

The ADR Annual Report: extent of criminalisation of politics in India.

- In India parliament consists of a total of 795 seats. The Lok Sabha stands for Lower House and has 545 seats which are contested. The Rajya Sabha is called the Upper House and it has 250 seats. In 2004 The lower house had 215 parties contesting the elections which rose to 368 in the general 2009 elections which reflects huge growth in the number of contesting parties in 5 years. The other findings are summarised below:
- 15% of the candidates (1158) in all had declared that criminal cases were pending against them. The affidavits of 7810 candidates out of 8070 candidates who contested were analyzed and it was found that 608 candidates had serious pending criminal cases like murder, attempt to murder, kidnapping, extortion, etc. pending against them.
- Among elected members of Parliament it was found that out of 543 new MPs, 162 (30%) had criminal cases pending. The percentage of such MPs with pending criminal cases was 24% 5 years earlier.
- Out of 556 women candidates, only 59 managed to win. Hence only 11% of MPs in the current lower to use (Lok Sabha) are women.

²⁴ ADR is a research organization which has been involved in collecting data on the political candidates and filing public interest litigation before various courts with the aim of improving governance and transparency. It was established in 1999 by a group of Professors from the Indian Institute of Management (IIM), Ahmedabad

Electoral Reforms and Party Funding

Feasibility of the State Funding of Elections.

Traditionally, collection of funds in cash is one of the primary ways in which political parties manage their affairs, parking the money outside the country in secret bank accounts. This reduced dependence on workers and disaggregated units and gave enormous power to the top leadership. Quid pro quos and a network of personal connections and unwritten understanding had to be harvested whenever the party/candidate came to power.

Research²⁵ shows that the public funding of elections and/or parties was introduced from the mid – 1950s (Costa Rica 1954, Argentina 1955) and among stable democracies in Germany in 1959. In 1966 party funding was struck down as unconstitutional in Germany, and from 1967 only election funding was permitted to be made directly to parties in the form of reimbursement of a part of election expenses calculated as a fixed amount per vote. However, party foundations continued to receive non-campaign funding from the state, which could be used for political education and information from a party perspective, and other activities. Countries which followed suit were Austria (1963), France (1965), Sweden (1966), Finland (1967), Denmark (1969), Israel (1969), Norway (1970), the Netherlands (1972), Italy (1974), Canada (1974), United States (1976), Japan (1976), Spain (1977) and Australia (1984).

Therefore, comprehensive state funding of elections complemented by the limits on expenditure and reporting and disclosure requirements is expected to if greatly reduce if not eliminate the imperative for corrupt fundraising, and help democratise and make transparent the functioning of political parties. Undoubtedly were state funding of elections and limits on expenditure to be introduced, a large part of the election related corruption would be reduced.

²⁵ Sridharan, E. and de Souza, Peter Ronald, “*India’s Political Parties: Readings in Indian Government and Politics*”, SAGE Publication : New Delhi, Thousand Oaks, London

Regulating Political Parties

Registration and Regulation of Affairs etc. Act 2011

A bill called Registration and Regulation of Affairs etc. has been drafted by a committee chaired by Justice M.N. Venkatachaliah, former Chief Justice of India in which two important issues stand out. One underscores the need for inner party democracy. This includes a democratic process for electing or selecting party office bearers, as well as candidates who are given tickets for contesting elections. The second issue is transparency in the funding of political parties and elections; limits on donations by individuals and corporations; penalties for non compliance; whether funding can be accepted by political parties from banned organizations; and the vexed question of how to deal with support groups that spend money but are officially not part of the candidate's election expenses.

Objectives : The bill aims at the following two crucial objectives.

- A strong need for Inner Party Democracy which included a democratic process for electing party office bearers in general and candidates for elections in particular.
- Transparency and accountability into the funding and financing system in political parties and elections as well as limits to it and penalties for its non compliance.

Other features are given in the Annexure at 3

If this law is adopted, it will cut an important link in the chain of political corruption and to that extent is likely to make a huge difference to the way party funds are managed. More importantly the stranglehold of a small coterie which holds the reins to power would be released and there is a chance that fresh blood may enter the political arena.

Conclusion

This paper has tried to show that corruption is a major issue but tackling it goes beyond simple solutions because of the criminalisation of a substantial part of the political process in countries like India. Without such measures there will be no impact on corruption in high places and cleaning up day- to-day corruption will make only a peripheral difference.

As a first step this needs to be confronted by making election funding accountable with transparency in the acceptance of donations.

Second the need for state funding of elections with limits on expenditure has several precedents in other countries.

Third there is a need to prevent people with a criminal background from entering politics.

Fourth there is a need for regulating the constitution, the functioning, accounts and audit of the funds received by political parties and introducing rules for holding party offices.

Finally there is a need to institute measures which prevent those that fail to adhere to the prescribed rules and norms from contesting elections.

In the international arena the main goal of containing corruption is to see that there is a clean climate for aid disbursement to flow in the right direction. Another important goal is to establish collaborative structures to prevent and pursue financial corruption and drug trafficking.

However quite apart from the above goal which is vitally needed to have a international response to cross-border and international crime, the reported tendency to enter the arena of country affairs in the name of good governance needs to be noted and resisted.

On a conceptual plane, the tendency to import and apply maxims that have worked successfully in a rational legal system need to be revisited when it comes to the inner working of developing countries which have still to evolve to that stage. Aiming the adoption of these maxims to a small elite group of officials at a senior level have little value as there is no difference in the approach. Such adages which have worked in developed countries will always receive enthusiastic acceptance from educated civil servants, civil society and the media but the strategies may

have little ownership and even less impact upon the totality of the spectrum of corruption below the surface.

The argument is not that maxims found useful elsewhere are generally inapplicable in different settings, but to highlight the fact that what works in a given country may not be the most efficient, cost-effective or impactful alternative in countries at a different stage of development. In India some constitutional bodies imbued with legal and financial independence have performed extremely well. Much more can be achieved if some advisory bodies are given the authority to function in right earnest.

In some quarters there is cynicism that in the name of good governance and anticorruption there have been attempts to prop up civil society organisations so that through this mechanism it is possible to enter into the internal affairs of governance and influence action against the organs of the state.

In a country like India the positive feature is that the tipping point has finally come when an educated and growing middle class will not tolerate apathy towards corruption any longer. But this may not necessarily translate into voting behaviour when elections are held as the rural voter and the poor who constitute the largest voting segment are usually influenced by a completely different set of factors-probity in public life being no issue at all. The inevitable conclusion is that for a sense of probity to enter public life there has to be adequate concern about what kind of corruption affects development the most.

Many developed countries had to go through the pain of revolutions which changed the way people thought about issues like equality and equity. In some countries millions of people are still denied the fruit of development including health, education and a decent life. Therefore the aim of preventing corruption has to focus upon the removal of poverty. Unless a realisation comes that growing inequality is the direct outcome of high levels of corruption, a demand for public representatives to be honest will not come. As there are constituencies and votes to be garnered it are unlikely that feudal practices will end automatically..That is why there is a need to change the functioning of political processes and election funding which alone can make room for people with a greater sense of probity.

A country like India has come a long way and many institutions work with exemplary efficiency and independence. The need of the hour is to focus upon those measures which will bring order into the functioning of governments and the

most important goal has to be to have ministers and civil servants who espouse probity not just in their personal dealings but in bridging the huge gaps that exist in the social indices- the only way of judging development.

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**Distribution of Persons and Average Monthly Per Capita Expenditure (MPCE)
for over 10 decile classes (ALL INDIA).
RURAL**

Sl. No.	Decile Classes	ROUND					
		55 th Round (1999-2000)		61 st Round (2004-05)		66 th Round (2009-10)	
		Persons (%age)	Average MPCE	Persons (%age)	Average MPCE	Persons (%age)	Average MPCE
1	D1	10.2	190.98-241.82	9.9	199.53-253.80	10.0	377.06
2	D2	10.0	278.69	9.9	296.64	10.0	495.82
3	D3	10.0	321.04	10.5	342.40	10.0	575.69
4	D4	10.3	360.83	10.2	387.72	10.0	649.25
5	D5	9.7	399.90	9.4	432.06	10.0	724.02
6	D6	10.2	445.49	9.9	481.55	10.0	808.34
7	D7	9.3	496.74	10.2	543.25	10.0	910.15
8	D8	10.3	566.62	10.4	630.40	10.0	1053.30
9	D9	9.9	686.00	9.8	775.00	10.0	1288.78
10	D10	10.0	851.58-1344.76	10.0	999.94-1956.57	10.0	2394.66
11	All	100	486.16	100	558.78	100	927.70
Estimated Number of Persons		691783600	-	733105500	-	761152300	-

URBAN

Sl. No.	Decile Classes	ROUND					
		55 th Round (1999-2000)		61 st Round (2004-05)		66 th Round (2009-10)	
		Persons (%age)	Average MPCE	Persons (%age)	Average MPCE	Persons (%age)	Average MPCE
1	D1	10.2	255.77-327.13	10.1	279.66-368.13	10.0	521.32
2	D2	9.6	389.14	9.8	441.32	10.0	722.31
3	D3	10.1	463.92	10.3	533.24	10.0	869.62
4	D4	9.9	537.22	9.7	625.83	10.0	1027.93
5	D5	10.0	618.61	9.9	730.17	10.0	1207.69
6	D6	10.1	718.67	10.3	858.00	10.0	1420.07
7	D7	10.0	840.53	9.7	1014.27	10.0	1687.74
8	D8	10.0	1009.67	10.2	1226.39	10.0	2051.45
9	D9	10.1	1286.19	9.9	1594.41	10.0	2680.52
10	D10	10.0	1692.16-3074.27	10.0	2157.21-4235.64	10.0	5673.16
11	All	100	854.92	100	1052.36	100	1785.81
Estimated Number of Persons		232393100	-	248505100	-	282200900	-

Source: 55thRD: Tab. 5R, p-A-233; Tab. 1(R/U)pg. A-17 & A-34, report 457.

61st RD: St. 2R,p-46; St. 2U, p-47; Tab. 5Rp-A-240, 5U, p-A-276, report-508.

66th RD: Tab. 1A.R and 1A.U, report: 538 Ministry of Statistics and Programme Implementation, Govt. of India (Findings of Table given in Annexure 2)

Findings from Table at Annexure 1

- In Rural India, the average MPCE of 70% persons, after excluding bottom 20% and top 10% persons, was between Rs. 321 to 686 during 1999-2000. During 2004-05 and 2009-10, it was between Rs. 342 to 775 and between Rs. 576 to 1288 respectively. The number of such persons during 1999-2000 was 48,42,48,520, during 2004-05 it was 51,31,73,850 and during 2009-10 the same was 53,28,06,610.
- In Urban India, the average MPCE of 70% persons, after excluding bottom 20% and top 10% persons, was between Rs. 464 to 1286 during 1999-2000. During 2004-05 and 2009-10, it was between Rs. 533 to 1594 and between Rs. 870 to 2681 respectively. The number of such persons in urban India during 1999-2000 was 16,26,75,170, during 2004-05 it was 17,39,53,570 and during 2009-10 the same was 19,75,40,630.
- At all-India level, 70% persons during 1999-2000, 2004-05 and 2009-2010 were 64,69,23,690 persons, 68,71,27,420 persons and 73,03,47,240 persons respectively. There has been an increase of 13% between 1999-2000 to 2009-10.
- At all-India level, the average Monthly Per Capita Expenditure (MPCE) in urban area was almost double of that in rural area during all the three time periods.
- In rural India, about 60% of population was below the average MPCE in all the three time periods. However, in urban India, about 70% of population was below the average MPCE in all the three time periods.
- The average MPCE in both rural and urban India has almost doubled from 1999-2000 to 2009-10.

Features of the Political Registration and Party Funding Bill

1. The Executive Committee and local committees shall take decisions and elect their office bearers on the basis of simple majority vote. The voting shall be by secret ballot.
2. No political party shall sponsor or provide ticket to a candidate for contesting election if he was convicted by any court for any offence punishable with imprisonment for a term of five years or more.
3. No political party shall distribute or get distributed any private goods to the electorate or any section thereof during a period of three months immediately preceding the date when the term of the House/local authority is to expire and thereafter till elections are held.
4. The funds of a party shall be kept in a scheduled bank. The number of the account or accounts in banks shall be intimated to the Registrar within a month of opening the account or accounts.
5. A political party may accept donations or contributions voluntarily offered to it by any company, association, organization or person except from foreign nationals or foreign governments, organizations or associations registered outside the territory of India, donations from corporate bodies and companies except in accordance with the provisions of the Companies Act, 1956, communal or anti-national sources, Union Government or State Government including companies, corporations and other organizations owned or controlled by or receiving grant-in-aid from, the Government
6. For every amount received by the party including membership fee receipt shall be issued by the Treasurer of the party. Similarly every expenditure shall be supported by a voucher. Receipt and voucher books shall be maintained.
7. all donations and sources of funding to a political party shall be made public. All donors, whether the donations are by cheque, in cash or kind, shall disclose their Permanent Account Number (PAN).
8. A political party which does not contest elections to either House of Parliament or legislature for more than one general election, or does not secure a prescribed minimum percentage of votes polled shall be liable to be de-registered and made ineligible to contest elections for such period as the Registrar may specify and which may extend to 5 years.
9. A political party shall be deemed to be a public authority for the purposes of the Right to Information Act, 2005 (Act 22 of 2005).
10. No suit, prosecution or other legal proceedings shall lie against the Central Government, State Government, the Registrar or any person acting under the directions of the Central Government, State Government or the Registrar in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or order made there under.