

Fighting Corruption How Serious is India?

Radha Vinod Raju

Former Director General, National Investigation Agency (NIA), India

Parliament gets adjourned repeatedly due to the furore of the opposition on the issue of corruption. Telecom scam is the latest issue, and was preceded by the alleged scam in the CWG. But is this the first time that the Parliament was adjourned over the issue of corruption? The Defence related scams, money for questions in Parliament scam, Urea scam, the fodder scam, JMM scam, Jain Hawala scam, Bank scams, Bofors' scam and so goes the list of scams. Each of these scams has generated heat, sound and fury in the Parliament. The question simply is what is the result of all this noise?

The most serious discussion in Parliament on the subject of corruption took place in the early sixties when Shastri was the Home Minister. Under his direction a committee headed by K. Santhanam, Member of Parliament was constituted to study corruption and to suggest measures to control this menace. The anticorruption infrastructure that we have in the country today is the result of the study and recommendations made by the Santhanam Committee in Parliament and consists of the CBI, the Central Vigilance Commission and the Vigilance mechanism in central government departments, and the Directorates of Vigilance and Anti-corruption in the states. The sixties, seventies and early eighties saw this anti-corruption infrastructure perform with a certain degree of professionalism, though the scale of corruption was yet to reach the heights that it has achieved today.

The Administrative Reforms Commission set up in the mid-sixties, had similarly recommended creation of the Lok Pal and Lok Ayukta, at the centre and in the states respectively to check corruption at the apex levels in government. The Lok Pal Bill is yet to see the light of day on the issue of bringing the Prime Minister within its ambit. A few states have set up the Lok Ayukta, but there is no uniformity in their functioning and

except in Karnataka, the Lok Ayuktas are toothless organizations. This would perhaps show the seriousness, or lack of it, in the attitude of the political establishment to the issue of corruption.

Initially penal sections to tackle corruption consisted of a few provisions in the Indian Penal Code. It was in 1947 that the need was felt that there should be a special law to tackle corruption, which had by then grown to serious proportions. This saw the birth of the Prevention of Corruption Act of 1947. This law was later, in 1988, made more comprehensive. Yet, corruption has not shown any sign of decline; it has on the other hand become rampant and pervasive. The anti-corruption infrastructure today includes special courts for speedy trials of corruption cases. The intention was to ensure speedy justice. But what is the situation on ground?

The Santhanam Committee had rightly identified the involvement of Ministers in corrupt practices as one of the reasons for the growth of corruption. Unless corruption is tackled at the top, there is no way we can curb or control this scourge. If the ratio of the number of cases registered annually throughout the country against junior and lower government staff to those against senior officers and Ministers is taken, it will weigh heavily in favour of lower and junior staff.

Let us take some examples of actions taken under the Prevention of Corruption Act by the central and state governments. This will help us take a view of the current anticorruption infrastructure and its strength to tackle corruption. In 1984, two cases were registered against Nar Bahadur Bhandari, former Chief Minister of Sikkim, one for possession of disproportionate assets, and the other for involvement in an alleged water scam. Bhandari was chief minister of Sikkim from 1979 to 1994, except for a brief while in 1984. The two cases ended in conviction; the disproportionate assets

case in 2007 with a sentence of one month's simple imprisonment and the second case in 2008. In spite of the registration of the two cases in 1984, Bhandari continued as chief minister, won the election in 1989 and continued to be Sikkim's Chief Minister till 1994. Now he is the Pradesh Congress Committee Chief! The number of years it has taken to secure the two convictions is 23 and 24 years respectively. Neither the registration of the two cases of corruption, nor the two subsequent convictions have adversely affected the political fortunes of Mr Bhandari. Have we tried to find out why this is so?

There were allegations of corruption even against Ministers in Nehru's cabinet in the fifties. One of the first scandals in independent India was in the purchase of jeeps for the war in Kashmir soon after independence. It was alleged that the jeeps were purchased without following rules. The government decided to close the case in spite of stiff resistance from the opposition benches, inviting them to make it into an election issue! Obviously corruption was not a major election issue, and people did not realise its significance.

Several persons who were Ministers and Chief Ministers have been booked by anticorruption agencies under the Prevention of Corruption Act in the last 30 years. Jayalalitha faced criminal prosecution in the late nineties, but had no problem in returning to power in the following election. After the initial brouhaha, most of these Ministers have staged a comeback and once again occupied the same or similar positions. Let us take the three latest cases. Ashok Chavan, the Maharashtra CM was dropped, Suresh Kalmadi was made to resign from a party position in Parliament, and A Raja had to resign from the central cabinet. Only time will tell whether the cases that have been registered will be taken to their logical conclusion; and the guilty will get their just deserts. If previous practice is an indication, the respective political parties are likely to go by their utility in politics, rather than their alleged

In the majority of corruption cases, accused are influential, and are able to command the best legal brains to assist them in courts. Even during investigation of cases, their lawyers try to stall proceedings through stays, and other interlocutory petitions, resulting in delays. Trials of corruption cases get bogged down in courts on various grounds.

involvement in corruption. All three are therefore likely to make a comeback in due course of time.

Investigation of corruption cases, especially those pertaining to amassing wealth disproportionate to known sources of income and of abuse of official position with dishonest intention; takes more time than ordinary cases. Collection of evidence of collusion between the bribe giver and bribe taker is not easy, as both of them have benefitted from this illegal transaction, and would not speak against each other.

In the majority of corruption cases, accused are influential, and are able to command the best legal brains to assist them in courts. Even during investigation of cases, their lawyers try to stall proceedings through stays, and other interlocutory petitions, resulting in delays. Trials of corruption cases get bogged down in courts on various grounds. And this is not a new phenomenon. I recall a disproportionate assets case registered against one of the most senior and influential bureaucrats in 1969 when I was in college. Though it was investigated thoroughly and meticulously, it ended in acquittal 14 years later, in 1983. I was about to join the CBI branch as a Superintendent of Police at this time. Similarly, a disproportionate assets case against a senior bureaucrat registered in my branch when I was the Superintendent of Police, in February 1988, ended in conviction in June, 2002. This does not take into account the appeals that lie in the High Courts and the Supreme Court. Thus in most of the cases of corruption, there is no fear of any immediate punishment.

It would be interesting to check how many corruption cases were finally heard in the Supreme Court, and how many Class I senior officers and Ministers landed in jail to serve terms. It would also be educative to find out recovery of assets after the trial proceedings in corruption cases throughout India in the last 3 decades. My guess, after having worked in the most important anticorruption units at the centre and in Jammu & Kashmir, is that it would be negligible. No wonder then that the anticorruption infrastructure in India has failed to act as a deterrent against corruption. A cost benefit analysis of the investment made by our country in setting up this anticorruption infrastructure would show very poor, if not negative returns!

Let me cite a case which was investigated by me to prove my point. This happened in Jammu & Kashmir in the late nineties. The Urban Development Minister of the day had won on a

Congress ticket, but had joined the cabinet of the National Conference which was ruling the State. The Congress was in the opposition. Though he had won on a Congress ticket, it must be added that he was a Shia leader, and there were sizeable number of Shias in his constituency who would ensure his victory, whichever party he represented. A Delhi based private firm had entered into a commercial deal with the Jammu Development Authority, with the Minister playing a prominent role. This firm was to advance 150 crores to the JDA for setting up a satellite township near Jammu Tawi. But even before a formal deal was entered into by the firm with the JDA, the two Directors of the firm who were negotiating the deal, asked the JDA for a bank guarantee of 4.75 crores. This amount was worked out as interest at 9.5 % of 50 crores which was the first annual instalment of the loan of 150 crores that the private firm had offered JDA. The JDA had sizeable deposits in the Jammu & Kashmir bank, and under pressure of the Urban Development Minister, a bank guarantee for 4.75 crores was issued, with the bank undertaking to honour the guarantee on its being invoked. In no time, the Jammu & Kashmir bank got to know that the bank guarantee of 4.75 crores had been used by the Delhi firm and they notified the JDA. The firm, on the other hand now asked for a guarantee of 50 crores to cover the first annual instalment of the loan to the JDA, and again the Minister brought considerable pressure on the JDA for issuing the guarantee. Very soon the JDA and the Delhi firm got into arguments, resulting in an FIR for attempt to cheat against the Delhi firm. The case came to the State Crime Branch, and immediately got into action mode.

We found that the Delhi based firm (let us call it Firm A) had created documents to show that they had purchased construction related material to the tune of 4.75 crores from another Delhi based firm (let us call it Firm B) for the Jammu satellite township project. We found that Firm B was created only on paper, with one of the Directors of Firm A as its proprietor. These fictitious bills of 4.75 crores were then used by Firm A to raise finance through a Bangalore based firm, with the support of the bank guarantee of 4.75 crores that had been issued by Jammu & Kashmir bank. The Bangalore firm had an account with ICICI bank, and the documents were discounted through this account. Before discounting the bills, the ICICI bank had checked with the Jammu & Kashmir bank whether they would honour the guarantee, and the Jammu & Kashmir bank did confirm that the guarantee would be honoured. After deducting their commission, the ICICI bank credited the Bangalore firm's account with about

India should, without delay, ratify the UN Convention on Corruption, and work with the countries in whose banks our countrymen have accumulated their ill-gotten wealth so that we get back these funds

4.50 crores. The Bangalore firm in turn gave about fifty percent of this amount to Firm A. And out of this amount, we found that the Firm A had paid about fifty lakhs into an account in a Delhi bank in the names of the Minister's children and children of his brothers. And while these transactions were taking place, the Minister was exerting pressure on the Jammu Development Authority officials to favour Firm A! We believed we had an open and shut case of kickbacks against the Minister. We wanted to get the Minister's side of the story, and therefore, summoned him to meet the investigating officer. By then, under his pressure, a Commission of Enquiry headed by a retired High Court judge had been set up by the government to look into the JDA's deal with the Firm A, and taking cover behind this enquiry, the Minister refused to meet the investigating officer. We therefore finalized the investigation, and sought sanction for prosecution of the Minister along with others.

Before this, the Minister had been dropped from the cabinet by the Chief Minister, in December, 1999, on the basis of our investigations and findings. A little over two years later, the Minister was re-inducted in the cabinet with an eye on the elections which were due in August, 2002. Sanction for prosecution was not, however, given. In the meanwhile, the Minister left the Congress and joined the National Conference. The National Conference lost the elections and the Peoples' Democratic Party formed the government, with the support of the Congress. Even though the new government made war on corruption one of its important planks, sanction for prosecution of the ex-Minister still did not come. A couple of years later, this ex- Minister left the National Conference and joined the ruling Peoples' Democratic Party in a senior position. In this way, the case of kickbacks against the Minister became a football in the State's politics. Why should any political leader fear corruption charges so long as he can continue to fool the people of his constituency, and keep his seat safe? In an era of coalition politics, each seat becomes important, and the politician knows that. The ICICI bank, which had discounted the documents against the Jammu & Kashmir bank's guarantee, lost the money, as they could not invoke the guarantee on the ground

that the documents they had discounted represented a fictitious transaction, as no goods had actually been purchased by the Firm A from Firm B. The ICICI's loss was the gain of the Minister (50 lakhs), and the Delhi and Bangalore firms (over 2 crores each)! The manager of the ICICI bank who had handled the case lost a promotion, and its accountant lost his job! In the last days of the Congress led government in 2008, the case file was forwarded to the Governor for sanction, and returned with the Governor's approval. The case was finally charge sheeted on 6 January, 2010.

There are many cases which could not be taken to the court of law because sanction for prosecution, which is mandatory in Prevention of Corruption Act cases, was not given by the disciplinary authority. While this provision was included in the statute to protect honest public servants against harassment, this has also been used to protect the corrupt against due legal process as in the case cited above. The CBI and the State Vigilance Organizations have long lists of such cases awaiting sanctions. There are also cases where though the Central Vigilance Commission, after due study of the cases, has recommended issue of sanction for prosecution, the Disciplinary Authority has refused to give such sanctions. The Central Vigilance Commission includes such cases in its annual report which is placed before Parliament. Whether anyone reads these reports in the Parliament is the moot question. As if such constraints are not enough, we now have the directive of the central government not to take up investigations against Joint Secretaries and above without previous permission of their Heads.

The United Nations had found that corruption was the chief reason why the poor nations continued to remain in poverty. World Bank's studies had established that corruption "...was the single greatest obstacle to economic and social development". According to the World Bank study "...countries that tackle corruption and improve their rule of law can increase their national incomes by as much as four times in the long term and child mortality can fall as much as 75%." It was in view of these studies that the United Nations' Convention on Corruption was signed. One of the most important provisions of this Convention is the recovery of stolen assets – i.e., assets stolen through corrupt and illegal practices and parked in tax havens. Nigeria has recovered over 700 million dollars' worth of assets stolen by one of its corrupt leaders. Similarly, the Philippines succeeded in recovering about 600 million dollars' worth of assets stacked in tax havens by a corrupt leader. The United States has,

in the last about over fifteen years, recovered over 6 billion dollars' worth of assets. Unfortunately, India, 40 percent of whose citizens still live in abject poverty, is yet to ratify the UN Convention on Corruption!

Having handled both terrorism and corruption as a law enforcer at the state and national levels, I believe corruption is a bigger menace to the nation than terrorism. While terrorism affects a large number of people, and attracts attention due to the death and destruction that follow its trail, corruption is a silent killer, affects whole populations, and destroys the very character of a nation. It is reported that over half a trillion dollars' worth of illegal assets, earned through corrupt and illegal means, have been stacked by Indians in accounts abroad.

India should, without delay, ratify the UN Convention on Corruption, and work with the countries in whose banks our countrymen have accumulated their ill-gotten wealth so that we get back these funds. Asset recovery is a complicated affair, and a body of experts will be required to study the laws and practices of the countries which are financial centres and have allowed parking of illegal assets. These assets will have to be traced and frozen prior to their transfer back to India. All these actions need assistance and international cooperation, which come within the ambit of the UN's Convention on Corruption. We have passed the National Investigation Agency Act whose objective included implementing the UN resolutions on terrorism.

Though there was opposition to the setting up of such an agency at the centre, after the carnage at Mumbai, the people of India would not have accepted anything less. We have to pass similar laws in regard to corruption in tune with the UN's Convention on Corruption, including asset recovery. This will happen only when the people of India develop zero tolerance to corruption and corrupt people. If indeed we take corruption seriously, there should not be any further delay in this process. But once again the question repeats: do we take corruption seriously?



**INSTITUTE OF PEACE AND
CONFLICT STUDIES**

B-7/3, Safdarjung Enclave, New
Delhi, India, 110029
Tel: 91-11-4100 1900