



COMBATING BRIBERY & CORRUPTION

A

Presentation on Anti-Corruption Mechanism in India

by

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Corruption – Definition and Cause

- World Bank definition – Use of public office for private gains.
- UNDP definition- Misuse of entrusted power for private gain.
- Mathematical Construct : $\text{Corruption} = \text{Discretion} + \text{Mystification} - \text{Accountability}$.
- Corruption rises with increase in discretion / mystification or decrease in accountability and vice a versa.

(discretion means power to take decisions, which may differ under the same circumstances by different interpretations and mystification connotes, lack of transparency)

- Corrupt actions differ across societies- considered corrupt in one – taken as right in another- socio-cultural factors.

- Gerald E. Caiden (2001) in his book, “Where Corruption Leaves” states that as long as underlying causes, like human greed persist, corruption is unlikely to be eliminated altogether.
- Corruption existed from times immemorial– in various forms and types.
- Kautilya in his treatise – “Arthashastra” described over 40 types of Corruption and Bribery and ways to address the same.
- Bribery – the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or breach of trust. Inducement can take the form of gifts, loans, fees, rewards or other advantages or any gratification other than legal remuneration.

- India ranked 76 out of 168 countries in Transparency International's Corruption Perception Index, 2015 (CPI), score of 38/100. Most clean country Denmark – rank No.1, with score of 91, 2 - Finland (90), 3 - Sweden (89) and 83rd - China (37).
- As per World Bank Ease of Doing Business rankings– 2016, India at 130 out of 189 countries evaluated. In 2015 at 142, down 12 levels. Criteria / Methodology include – Starting a business, Dealing with construction permits, Getting electricity, Registering property, Getting credit, Protecting minority investors, Paying taxes, Trading across borders, Enforcing contracts and Resolving insolvency.

- Corruption can be collusive or coercive.
- Corruption can be classified as grand, petty and political, depending on the amount of money lost and the sector where it occurs.
- Grand corruption consists of acts committed at high level of government that distort policies or the functions of the State enabling leaders to benefit at the expense of public good.
- Petty corruption is everyday abuse of entrusted powers by low /middle level public servants in their interaction with ordinary citizens who often are trying to access basic services in places like hospitals, schools, driving licence, passport issue, police, local bodies and other such agencies.
- Political corruption- manipulations of policies, institutions and rules of procedures in allocation of resources and financing by political decision makers - abuse of position powers, status etc.

Corruption and concerns

- Has become a part of public debate within countries and in international discourse.
- Moral and economic dimensions
- Context of humans- dishonest or fraudulent conduct.
- Context of public officials- misuse of office
- Corruption involves acts of omission and commission

- Official actions of all public servants covered
- Crucial factor – personal gain
- Distinction – bona fide mistake/ negligence –
- Malfeasance or bad intention - to be established – to term as corrupt action.
- Personal gain – in many forms- common economic gain like money, property etc – could also be career advancement or some other gain.

Corruption strategy

- Global experience- prevention of corruption, creation of awareness in citizens, developing community relations and effective and quick implementation of laws on bribery.
- Strategy – around economic growth – comprehensive approach including systemic and institutional reforms, simplification of procedures, laws and regulations, use of technology, greater transparency, participation of citizens etc.
- Anti- Corruption Machinery – Should be independent and autonomous - also fair and quick in its functions.

INSTITUTIONAL MACHINERY

- Central Vigilance Commission – Apex anti-corruption statutory body
- Central Bureau of Investigation – Premier investigating agency of GoI
- Department of Personnel and Training – Nodal department for anti-corruption policies
- Lokayuktas / Vigilance Commission in States
(22 States and 1 UT –Delhi have Lokayuktas)
- Anti-Corruption Bureaus in States – Investigating agencies
- Chief Vigilance Officers – Extended arm of CVC in Ministries/Departments/CPSUs/Public Sector Banks/Other organisations of GoI

STATUTES / LAWS

- Prevention of Corruption Act, 1988 – Comprehensive special law relating to prevention of corruption and connected matters.
- Delhi Special Police Establishment Act, 1946 –constitution of Special Police Force i.e., CBI
- Central Vigilance Commission Act, 2003
- The Whistle Blowers Protection Act, 2011
- The Lokpal and Lokayuktas Act, 2013
- The Right to Information Act, 2005

UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

- India signed UNCAC in December, 2005 and ratified in May, 2011
- An universal legal instrument to deal with corruption globally - 71 Articles
- UNCAC calls on signatories to criminalise various offences including bribery of foreign government officials
- India is broadly compliant with the various provisions of UNCAC except Articles 12 & 16
- Article-12 – Bribery in Private Sector
- Article 16 – to penalise offer and acceptance of an undue advantage by Foreign Public Officials (FPOs) and officials of Public International Organisations (PIOs)
- In pursuance, India has introduced legislations for compliance to these mandatory articles.

STATUTES ON THE ANVIL

- Prevention of Corruption Act (Amendment) Bill, 2013 – comprehensive amendments to cover supply side of corruption- Private Sector. Also re-defining offences of corruption with stiffer penalties
- Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations, 2015 - criminalising bribery of foreign officials (presently not covered)
- Public Procurement Bill, 2012 (lapsed, being revived presently) - to regulate and ensure transparency & accountability in procurement by the GoI and its entities

CVC - GENESIS

- June 1962 – debate in Parliament on issue of corruption – first major corruption scandal after independence – Mundhra Case.
- LIC invested in shares of several firms amounting to Rs. 1.26 crores in June, 1957 on direction of Government.
- Justice M C Chagla–Commission of Enquiry–public enquiry-Jan.1958
- Justice Vivian Bose–presided Board of Enquiry - May, 1958
- Committee under Shri K. Santhanam, MP constituted – popularly known as Santhanam Committee.

- Recommendations made in 1963 – major causes of corruption identified as –
 - (i) Administrative delays;
 - (ii) Governments taking upon themselves more than what they could manage by way of regulatory functions (license, quota, permit raj);
 - (iii) Scope for personal discretions in the exercise of powers vested in different categories of Government servants; and
 - (iv) Cumbersome procedures in dealing with various matters which were of importance to citizens in their day-to-day affairs.

- CBI established on 1st April, 1963 – Delhi Special Police Establishment (DSPE), agency for investigation of corruption in War and Supply Department of GoI and Railways – merged with CBI.
- Santhanam Committee observed – lack of a dynamic integration between the vigilance units in the various Ministries and conceptualized an apex body for exercising superintendence and control over the vigilance administration.
- Shri Lal Bahadur Shastri, the then Home Minister, while laying the scheme of the Central Vigilance Commission on the table of Parliament observed that the Commission was to be a fearless champion to the man of integrity and source of terror to the corrupt officers. In order to achieve **this target, punitive, detective as well as preventive measures will have to be adopted.**

- The Central Vigilance Commission (CVC) was accordingly set up by the Government of India in pursuance of the recommendations of the Committee through a Government Resolution on 11.02.1964, **as an apex independent body for prevention of corruption which would not be subordinate to any Ministry/Department with the same measure of independence and autonomy as the Union Public Service Commission (UPSC).**

- **One man Commission – Central Vigilance Commissioner**

- The Hon'ble Supreme Court of India in **Vineet Narain and others Vs Union of India and others** (popularly known as Jain Hawala Case) - gave the following directions on 18.12.1997 :-
 - The Central Vigilance Commission shall be given statutory status.
 - The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for over viewing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning.

- The CBI shall report to the CVC about cases taken up by it for investigation; progress of the investigation; cases in which charge sheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities especially those in which sanction has been delayed or refused.
- These directions were implemented through the enactment of the Central Vigilance Commission Act, 2003.
- Supreme Court, in April, 2011 in case of Centre for PIL Vs. Union of India, observed : “...the Central Vigilance Commission has since its inception been considered as an **integrity institution** and conferred with due autonomy and insulation from external influences.”

STRUCTURE OF CVC

- At present under the CVC Act, 2003, the Central Vigilance Commission is a three member body consisting of the Central Vigilance Commissioner (Chairperson) and two Vigilance Commissioners as its Members – a multi-member body.
- **Appointment:** The appointments of the Central Vigilance Commissioner and the Vigilance Commissioners are made by the President of India by warrant under her/his hand and seal on the recommendations of a Committee consisting of:-
 - (i) the Prime Minister - Chairperson
 - (ii) the Minister of Home Affairs - Member
 - (iii) the Leader of the Opposition in the House of the People - Member

JURISDICTION OF CVC - Inquiries

- To inquire or cause inquiries to be conducted into offences alleged to have been committed under PC Act, 1988 by certain categories of public servants of the Central Govt., Corporations, established or under any Central Act, Govt. Companies, Societies and local authorities owned or controlled by the Central Govt.
- **Categories under Section 8(2) of CVC Act, 2003**
- Members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of Central Govt.
- CPSUs – Schedule 'A' and 'B' – Chief Executive and Executives on the Board and other officers of E-8 and above.
- CPSUs – Schedule 'C' and 'D' - Chief Executive and Executives on the Board and other officers of E-7 and above

- Public Sector Banks - Scale V and above
- Reserve Bank of India – NABARD and SIDBI – officers in grade ‘D’ and above
- General Insurance Companies - Managers and above
- Life Insurance Corporation – Senior Divisional Manager and above
- Societies and other local authorities - officers drawing salary of Rs.8700/- per month and above on Central DA pattern and as may be revised for time to time.
(approx. around 1.75 lakhs public servants of Gol)

Directorate of Inquiry – Lokpal references

- shall also include members of Group ‘B’, ‘C’ & ‘D’ –public servants of Central Government.

FUNCTIONS & POWERS OF CVC-

Section 8 of CVC Act,2003

- Superintendence over functions of DSPE(CBI) in so far as it relates to investigation of offences under PC Act.
- Directions to the DSPE (CBI) for the purpose of discharging responsibility entrusted under sub-section (1) of Section (4) of DSPE Act.
- To inquire or cause an inquiry or investigation into complaints of corruption in respect of officials belonging to categories specified in sub-section (2) of Section (8) of CVC Act.
- Review the progress of investigations conducted by DSPE under PC Act.

- Review progress of applications pending for sanction for prosecution with Competent Authorities under PC Act.
- Tender advice to the Central Govt., corporations, companies, societies and local authorities on such matters as may be referred to the Commission.
- Exercise superintendence over Vigilance Administration of the Ministries/Departments/PSUs/ PSBs/Autonomous bodies and local authorities owned or controlled by Central Govt.

OTHER FUNCTIONS AND POWERS

- All powers of a Civil Court trying a suit under C.P.C while conducting any inquiry **under Section 8(1) (c) & (d).**

(i.e. summoning and enforcing attendance of any person and examination on oath, requiring the discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any court or office, issuing commissions for examination of witnesses or other documents and any other matter which may be prescribed [**Section 11 of CVC Act, 2003**])

- Conducts such inquiry directly into select matters.

OTHER FUNCTIONS AND POWERS Contd....

- Report of any inquiry undertaken by any agency on a reference made by the Commission shall be forwarded. **(Section 17 of CVC Act, 2003)**
- Commission shall on receipt of such report and after taking into consideration any other factors relevant, advise the Central Govt./Organizations as to the further course of action.
- Power to call for reports, returns and statements - to exercise general supervision over vigilance and anti-corruption work in the Govt. and its organizations **(Section 18 of the CVC Act, 2003)**

OTHER FUNCTIONS AND POWERS Contd....

- Central Govt. shall, in making any rules or regulations governing the vigilance or disciplinary matters relating to persons appointed to public services and posts in connection with the affairs of the Union or to members of the All India Services, consult the Commission. **(Section 19 of the CVC Act, 2003)**
- CVC – Chairperson and VC’s – Members of the Committees for making recommendation of appointment of Director of Enforcement Directorate.
- Committee also recommends officers for appointment to the post of SP and above (in CBI), Dy. Director and above (in ED) and extension or curtailment of tenure of such officers in CBI and Directorate of Enforcement. **(Section 25 & 26 of CVC Act, 2003)**

COMPLAINTS HANDLING

- Stated Complaint handling policy laid down – anonymous / pseudonymous complaints filed. Only specific complaints involving corruption matters taken cognizance.
- Receives complaints - more than 29,838 in 2015 – through post, e-mail, website and on toll free telephone.
- Complaints of vigilance nature/allegations of corruption sent for investigation and report to the CVO/CBI after verification/confirmation from complainant. Only 5 % sent for Inquiry / Investigation & Report to CVO / CBI annually – adopts a selective approach.
- Complaints involving administrative & general matters – sent to CVOs for necessary action at their end. Sent through CVC portal to CVOs of Ministries / Departments / Organizations electronically since Jan, 2012.

ADVISORY FUNCTIONS

Advises the administrative /disciplinary authorities in Vigilance / Corruption cases / matters involving the specified categories of public servants.

Consultation process:

- Advises in two stages -
 - Initiation of disciplinary proceedings or otherwise -- 1st stage advice
 - On Report of Inquiry Officer -- 2nd Stage advice.

- Disciplinary Matters: Advice of the Commission is sought on the nature of penal/disciplinary proceedings (first stage advice).
- In case of major penalty proceedings advised at first stage, after completion of inquiry, advice is obtained on the nature of penalty to be imposed/ dropping of charges (second stage advice).
- Sanction for Prosecution Matters: Tenders advice in cases of prosecution for Presidential appointees (matters in which sanction is to be accorded in the name of the President).
- Resolves cases of difference of opinion between CBI and Departments in sanction for prosecution requests / cases in respect of non-Presidential appointees (matters in which an authority other than the President is to accord sanction)

OTHER FUNCTIONS

- Appointment of CVOs - Scrutinizes panel/names of officials suitable for appointment.
- Vigilance clearance - Provides vigilance clearance inputs for Board level appointees in CPSUs/Banks etc. and Senior level appointments/ empanelments to AIS/other Central Services.
- Advises Govt. on matters of policy and procedures/ vigilance administration, anti-corruption and such other related matters suo motu or referred to it.

CHIEF TECHNICAL EXAMINERS UNIT – CVC

- Technical wing of CVC.
- Carries out inspection of civil, electrical, stores, IT purchases and horticulture works/contracts/procurements
- Helps in detecting deficiencies and malpractices in execution of works/ contracts
- Around 100 such examination/inspection of works conducted every year
- Recoveries to the tune of Rs.99.01 crores effected as a result of intensive examination of works/contracts in 2015.

Commissioners for Departmental Inquiries (CDIs)

- CDI Unit of CVC.
- Commission nominates its Commissioners for Departmental Inquiries as IO to conduct inquiry proceedings in limited cases of senior officers.
- CDIs are appointed by the Disciplinary Authorities (DA) of the organizations to conduct inquiry on behalf of DA.
- CDIs submits inquiry reports to the Disciplinary Authorities concerned after conducting oral inquiry.

APPROACH TO TACKLE CORRUPTION

➤ **Punitive Action**

Process- Criminal and Regular Disciplinary action. Stronger laws and their implementation. Making corruption a high risk and low reward activity by punishing the guilty swiftly.

➤ **Preventive Action**

Identifying vulnerabilities and effecting changes in procedures/systems/processes to reduce opportunity for corruption in organizations. Creation of awareness and bridging knowledge gaps of personnel.

INITIATIVES – Preventive Vigilance

- Focus on preventive vigilance – system and procedural improvements.
- Concept of Integrity Pact (IP) in major purchase/procurement. IP to be signed by the prospective bidder and organization inviting tender. Involves appointments of Independent External Monitors of proven integrity in consultation with the Commission
- Over 125 Departments/PSUs like SAIL, ONGC, GAIL, Coal India Ltd., M/o Defence have implemented Integrity Pact.
- Organizations advised to leverage technology for transparency and checking corruption.

INITIATIVES CONTD....

- Emphasis on computerization of all activities and transactions involving risk of corruption in organizations.
- Organizations advised to adopt e-tendering, e-procurement, e-payments and bill watch system for vendors / contractors, etc.
- Disseminating information to the public through website.
- Information Sharing and Analysis Against Corruption (ISAAC) – Knowledge Sharing Portal on Anti-Corruption measures
- Vigeye Vani – Quarterly newsletter – dissemination of awareness and best practices
- Observance of Vigilance Awareness Week every year – theme based outreach activities
- Conducts vigilance audits of major government departments, PSUs and Banks.

RECENT INITIATIVES

- CVC specified authority under PMLA to receive information of suspicious transactions of public servants.
- Institute of Chartered Accountants of India (ICAI) requested to place details of CAs on website and share with Banks – Preventive measure for fraudulent certificates / documents submitted by loan seekers.
- System and procedures for processing vigilance clearance for senior appointments in Government/Financial Institutions/CPSUs streamlined and digital signatures introduced for expeditious processing.
- Social media – CVC on ‘Twitter’.

Whistle Blower Mechanism

- SC judgment in Satyendra Dubey's case.
- Public Interest Disclosure and Protection of Informers Resolution (PIDPIR), 2004 –
- CVC Designated Agency – to receive and act on whistle blowers' disclosures.
- CVOs of Ministries/Departments also made Designated Authorities in August, 2013.
- Whistle Blowers Protection Act, 2011 enacted in May, 2014 - not yet come into force.
- Bribery is usually conducted in secrecy - Whistle Blowers can play a central role in uncovering corruption. However, must be protected from retaliation for matters reported in good faith on incident of bribery.

Corruption Cases

- CBI registered 717 cases under PC Act in 2015.
- CBI completed investigations in 768 cases in 2015.
- Bank fraud cases in 2015 – 171 cases involving Rs.20,646 crores.
- As on 31.12.2015, 599 cases were under investigation.
- Special Courts disposed of from trial 739 cases in 2015.
- Conviction rate of CBI – 65.1%.

PC Act Cases (pending under trial)

Length of Pendency	As on 30.06.2016
Less than and upto 3 years	1888
More than 3 years and upto 5 years	1012
More than 5 years and upto 10 years	2048
More than 10 years and upto 20 years	1335
More than 20 years	0239
Total	6522

Emerging Challenges

- Investigation of corruption cases and frauds becoming increasingly complex and technology driven – financial crimes / frauds, cyber crimes and tracing laundering of proceeds of crime.
- Requires high degree of skill set and expertise of investigators. Combating such financial and transnational crimes requires domain expertise, knowledge of advanced financial instruments, investigation / asset recovery procedures in multiple jurisdictions, competence in digital forensics, forensic accounting and data analytics, etc.
- Investigating agencies, like CBI have inadequate manpower – alarming number of vacant posts – executive ranks – 1149 posts, Law Officers – 173 posts and Technical Officers – 94 posts remained vacant as on 31.12.2015.

Emerging Challenges - Contd.

- PC Act, 1988 provides for day to day trial.
- Pendency of PC Act cases in 132 Courts across the country is high, over 6,500 cases.
- Situation improved since 2009 when on orders of Hon'ble Supreme Court, 92 additional Special Courts were created.
- Quick and timely trial would have high deterrence to anti-corruption efforts.

India has never been in stronger position: Parekh

PRESS TRUST OF INDIA

Mumbai, August 29

HDFC Chairman Deepak Parekh today said the country's economy is in a "stronger position" and demonstrating an immense growth potential with a strong leadership at the helm bringing in key reforms.

"India has never been in a stronger position than today from a macro-economic perspective. The country is demonstrating an immense growth potential helped by a strong leadership at the helm, driving key policy changes," Parekh said at a risk summit organised by CII.

He noted that with the present government, large scale corruption has been weeded out.

He said India, with an expect-



Deepak Parekh

ed GDP of above 7.5 per cent, stands out well in comparison to its global peers.

"We in India hold a key advantage by being a major economy with tremendous growth potential," he said.

The veteran banker said the country has benefited tremendously from lower crude oil prices.

He said the private sector capex has continued to be slow, so support has been

boosted from public sector spending on infrastructure.

"Often when infrastructure projects are a work-in-progress, there tends to be a feeling that nothing is happening on the ground. But this is certainly not the case in India," he said.

Parekh said there is a flurry of activities taking place in the areas of ports and water ways, airports and smart cities.

Increased installed capacities in renewable energy have been put in place and a number of initiatives in the railways to improve service are underway.

He said the e-auctions of government tenders and bidding process are the biggest mark of credibility which the country has today.

Modi has weeded out large-scale graft: Parekh

TIMES NEWS NETWORK

Mumbai: HDFC chairman Deepak Parekh has praised the Narendra Modi government for weeding out "large-scale corruption" at the Centre and providing strong leadership for driving key policy changes. Parekh's comments on the government were made in a speech delivered at a CII



event on Monday. He raised the issue of India's strong position in the context of what he described as "political leadership deficit" in many advanced economies and mature democracies.

He said that India has never been in a stronger position than today from a macroeconomic perspective. He said that the country was demonstrating immense growth potential supported by the fall in prices of international commodities.

On the government's measures to stamp out corruption, Parekh said that the biggest mark of credibility that India has today is that all government tenders and bidding are being done transparently through e-auctions. "India is a very compelling story for long-term investors looking for higher yields on their investments. India has never seen better days than the present. So I am confident that businesses across the board will see an upswing," said Parekh.

He said that while India did not have any problems on the political front, this year has seen the rise of many more political personalities across the world that could spell trouble and have serious implications. "Markets will be increasingly volatile to events like the future of the EU and the run-up to the US elections," said Parekh.

Black money: 300% rise in raids, seizures

New Delhi, Aug 30: The income tax department has seized an all-time high value of cash and jewellery, while ₹3,360 crore unpaid taxes have been surrendered this year as part of its enhanced crackdown against black money holders in the country.

In a mammoth jump of

over three times in the searches, raids and seizure action in the first seven months of this year as compared to the corresponding period of 2015, the department seized over ₹330 crore of alleged tainted cash, jewellery and other movable and immovable assets.

An official report states

that I-T raids and searches this year have beaten all records of the last about five years in terms of number of such actions conducted, seizures made and subsequently the untaxed income brought to the government coffers.

The figures compiled in the report state that the I-T de-

partment carried out only 55 searches between January-July 2015, while these numbers rose to 148 in the corresponding period this year, cash seized jumped thrice to over ₹254 crore, and the value of jewellery and precious metals seized this year stands at ₹94.59 crore.

PTI

THANK YOU