



STRATEGIES OF MORE DETERRANCE & BETTER ENFORCEMENT IS NEED OF THE TIME

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Corruption is a social evil and literally a global phenomena. It is an outcome of rapid economic development, different state controls on economy and weakening of societal ethics. If left unchecked it has potential and strength of eating into vital systems and institutions. Unlike developed countries where hardly any corruption exists at cutting-edge level i.e. where a common citizen has interface with the representatives of the State, in developing countries there is no such clear cut and distinct corruption level. Corruption which satiate greed of few coupled with unprofessional attitude of public servants create lot of problems and inconvenience to common citizens and also to those who indulge in corrupt practices in day to day life. Residents and Administrators of Mumbai would not have felt so helpless in severe flooding in the City in 2004 and also in other metropolitan cities if there was lesser corruption and professional ethics followed by all concerned who matters. Anger of the people is generally seen in different forms of agitations. It sends chill in the spine imagining scenario of devastation by the Natures' fury in form of frequent earthquakes & cyclones seen in countries like Japan, US & China which they are able to absorb and take in stride due to enforcement of relatively high professional standards, happening in our country.

In our country, pattern of corruption has changed from petty corruption in 1950s & 60s to that of grand scale corruption of the present day. Now' adays there is big spectrum of corruption where all forms of corruption are co-existing and with very high magnitude. Last few years the countrymen have seen new high in corruption level. Despite making of anti-corruption laws more stringent in the past including creation of Special Courts in few States to try cases of possession of disproportionate assets exclusively against higher class officials and politicians occupying important positions, strengthening Anti-Corruption Agencies etc, so far it seems fight against corruption is a



losing battle. Similar to self-purification mechanism or reasonable level of tolerance of pollutants in a river system for which survival or existence of river is not effected, the Country could absorb & tolerate small magnitude of corruption without effecting or skewing the economic development of the Country in the initial decades after the Independence and the Country could witness vast development both in terms of major industries and infrastructure in Public Sector which help the Country to tide over subsequent economic recessions especially in 1990s. Earlier blame for corruption to Inspector Raj did not change the scenario of corruption in the liberalized economy in last 2 decades except on quantum increase in corruption and vital role of black money in the economy and the Country witnessed 65 Crore Jain Hawala Case, 950 Crore Fodder Scam, 133 Crore Urea Scam, 1336 Crore Indian Bank Scam, JMM Bribery Case, Satyam Fraud, Cash-For-Vote Scam, CWG Scam and the latest mother of all Scams - 2G Spectrum Scam.

In my understanding the magnitude of corruption was less in few decades following Independence due to colonial effect of fear of authority by common men, higher ethical standard due to societal forces and joint family enforcement of ethical behavior as any deviant behavior was frowned upon. With loosening of the societal controls at local level and disintegration of joint family system, influence of materialistic and unethical projection in electronic media, dramatic rise in aspiration level of people with unmatched rise in legitimate income, check on tendency to be corrupt has greatly loosened. In fact mentality & deeds wise now adequate percentage of Indians are more capitalist than good number of Americans.

Last decade has seen few positive developments in form of proactive judiciary, activism of media, some kind of encouragement & protection to Whistle Blowers, simplification of rules & procedures, activism of Institutions like CVC, CAG, introduction of IT in governance and powerful tool in form of RTI Act but it seems these developments have not made major dent in the tendencies and magnitude of corruption as seen from CWG Scam & 2G Spectrum Scam. Implementation & effect of RTI Act for the present can be taken to be in transitory phase but so far experience shows that it has been



commonly used by suspected persons & adversaries for motivated use. However it has certainly brought in more transparency in the Indian System and some fear in mind of corrupt public servants and may finally succeed in achieving the goal for which it was enacted.

Last few months developments in the country is indicative of “Intolerant India” whether in form of agitation of Anna Hazare or Baba Ramdev for which the system has to respond promptly as this dissatisfaction may threaten the Indian Democratic System. Besides fire-fighting and further improving on the measures already initiated like RTI, simplification of rules & procedures, reforming systems including IT enforcement, legislation on protection to whistle blowers, citizen charter especially on corruption prone areas, better corporate accountability, role of media, strengthening & improving credibility of Anti-Corruption Agencies, effective UID System like USA and electoral reforms it is felt that there is need for further stronger measures to make fight against corruption successful. Ethical education is also being advocated as an important strategy for combating corruption seeing the attempts made in this direction by some of the countries like Malaysia. Banking on ethical education in school & colleges as one of the major strategies may not be effective when general ambience and peer pressure is of materialism.

Besides fine tuning and improvements upon the measures already initiated as mentioned above, there is need for effective governance and not more legislation and anti-corruption laws with deterrent punishment. The country has responded to different malaise or adverse development with some form of legislation but enforcement could not be up to level of intentions of the law-makers. Now our country rank highest in the world as far as number of laws enacted is concerned. Even good number of persons in legal profession may not be aware of existence of many Acts, leave aside ordinary citizens of the country. On this I would like to quote **Nobel Laureate Albert Einstein**.

“Nothing is more destructive of respect for the government and the law of the land than passing laws which cannot be enforced”



Legislation, though made with best of intention, will be ineffective and a failure unless enforced effectively and implemented in the spirit & intention of legislation and not end in domain of litigation for years and decades.

One of major strategies for combating corruption in future should be to have provisions for higher punishment in Anti-Corruption Laws which could prove deterrent for the corrupt. Though there was improvement in this aspect over previous legislation in enactment of "Prevention Of Corruption Act,1988" but with the visible failure in combating corruption, realization is coming that the provision of punishment is not enough to cause deterrence. In present Indian context "Pleasure & Pain Theory" of crime and punishment holds good. If corruption is to be controlled than corrupt public servants have to be exposed and to be punished severely so that they perceive that there is substantial risk & likely more pain than the likely pleasures to be derived in indulging in corrupt acts in form of loss of office, longer sentences and confiscation & forfeiture of illegally acquired wealth.

Recently two former senior officials in the Chinese government were executed following convictions on corruption charges, marking the highest punishment meted out to corrupt officials in recent years as the ruling Communist Party moves to tackle a rampant graft problem. There is no need to follow China model in a democratic country like ours but time has come to suitably amend the existing anti-corruption laws of India so as to prescribe stringent punishment for corruption. This would act as a deterrent on the corrupt public servants as well as fence-sitters and it is felt that this will help bring down the magnitude of corruption in coming days.

In our country very few accused persons facing trial on corruption charges go to jail even after conviction. This is primarily due to prolonged trial and delayed hearing of appeals by Appellate Courts due to inadequacy of number of Courts. When corrupt public servants are booked they try to take advantage of our legal system by keeping the penal consequences at bay for a considerable time. Moreover, in a good number of



cases the accused persons do not survive to see the logical end of their case and such a situation helps their kith and kin to enjoy the ill-gotten wealth. In trials for offences relating to corruption the pace must be accelerated with establishment of more Courts of Special Judge (Vigilance) and speedier trials in spirit of legal provision.

Existing penal provision under the Prevention of Corruption Act needs to be amended for enhanced punishments. For the offence of Criminal misconduct punishable U/s. 13 (2) of the Prevention Corruption Act,1988 the minimum punishment prescribed is one year which may extend to seven years with fine. The minimum punishment of one year needs to be enhanced to make the penalty more stringent. Moreover, in disproportionate assets cases ending in conviction, the fine amount equivalent to disproportionate assets should be imposed on the accused by the trial Courts and specific orders needs to be passed for realization of the fine amount from the movable/immovable properties of the accused which are seized/ freed during investigation or attached by the competent Court under the Criminal Law Amendment Ordinance,1944.That apart there should be provision for enhanced punishment for commission of second and subsequent offences by the same person.

The Law Commission of India in its 166th Report recommended for enactment of a **separate law providing for forfeiture of property** acquired by the holders of public office through corrupt means. The said recommendations were examined and it was considered that the objective of confiscations of illegally acquired property could be achieved by incorporating the Provision of the Criminal Law (Amendment) Ordinance,1944 in the Prevention of Corruption Act, 1988 itself with suitable modifications. Therefore, proposed insertion of a new Chapter IVA in the Prevention of Corruption Act to empower the Special Judge to exercise the powers of attachment before judgement. The procedure will be more effective and speedy.



Besides there is need of law/legal provision in existing laws to discourage acquisition of many house properties with progressive taxation policy, revision of bench mark of valuation of properties for purpose of transfer through out country annually to discourage undervaluation, effective ceiling on land holding and ownership of agricultural land to bonafide farmers and tax benefit to them only, more restrictions & scanning of acquisition of immovable properties in the name of TRUSTS and DEITIES by the Registering Authorities concerned, more restriction on acquisition of properties in name of family members under The Benami Transactions (Prohibition) Act, 1988, immediate dismissal in all instances of conviction of serving public servants by trial Courts under Article 311 of the Constitution of India unless any order contrary to such action is passed by the appropriate Court, effective & deterrent measures to spend and stash away black money.

With these measures and better enforcement, it is hoped that we will succeed in our fight against corruption and able to provide sustainable happiness & prosperity to all the citizens and uphold their faith in institutions of our democratic system.
