



Corruption – a grossly under reported crime

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The scourge of corruption has massively derailed our progress and development ever since the dawn of Independence. In spite of decades of anti corruption efforts, corruption continues to be a bane of public life even today. In the year 1985 the then Prime Minister of India, Late Sri Rajiv Gandhi remarked in frustration,

"Of every rupee the government spends, only 15 paise reaches the poor man in villages."

Though this may have been an off –the-cuff remark not based on any empirical data or survey, the aforesaid assessment is widely believed to reflect the quantum of corruption and leakages in the development funds. It is a matter of deep concern that the extent and the magnitude of corruption seem to be increasing inexorably every year. In the year 2008, Sri Rahul Gandhi, during a public meeting in Jhansi, (UP), referred to his late father's assessment and said

"I remember my father who had once said that only 15 paise out of a rupee reach the people; now the situation is much worse, I have seen that not even five paise out of a rupee reach here,"

Besides the embezzlement of the in development funds and the unbridled corruption in public work and procurement, the other major areas of corruption in India are

- Illegal bribe or gratification by public servants, which ranges from extortion demands to demands of speed money to expedite legitimate work of the public
- Collusive corruption resulting in kickbacks for undue favour in award of mega projects, evasion of tax and other dues of the Government.
- Framing of rules and regulations in favour of a particular company or firm in lieu of illegal bribe or gratification.



Corruption – a low-risk high-profit business activity

Sri N. Vittal, ex Chairman of Central Vigilance Commission(CVC) has called corruption “A *low-risk high-profit business activity*”.

Public servants, from the lowly peon in the remote government office to the mighty Minister at the helm of the Government, are rampantly indulging in corrupt activities without any fear or hesitation whatsoever. The credibility of the public servants as a class is at its nadir. The lax enforcement regime over the years have emboldened the corrupt public servants to make merry in the low-risk high-profit corrupt activities and acquire fortune in disproportionate assets out of their illegal income.

It is very difficult to assess the quantum and extent of corruption. A recent conservative estimate by the US-based group Global Financial Integrity Index, pegs illicit capital flows between 1948, a year after Independence, and 2008, at US \$ 462 billion - an amount that is twice India's external debt. This report further shows that the average amount stashed away from India annually during 2002-06 is \$ 27.3 billion (about Rs.136,466 crore). It means that during 2002-06, the total amount stashed away is $27.3 \times 5 = \$136.5$ billion (about Rs. 692,328 crore). Besides Swiss banks, the money has gone to different tax and secret shelters. The share of Swiss banks in dirty money being a third of the global aggregate, some \$ 45 billion out of the \$ 136.5 billion stashed away from India, would have been hoarded in these years in Swiss banks. Interestingly, as per Economic Times report, WikiLeaks founder Julian Assange, said that there was more Indian money in Swiss banks than of any other nationality. Empirical study has indicated that black money, estimated at about 40 % of Gross Domestic Product, has been the bane of the Indian economy. Black money has severely distorted several sectors of Indian economy, especially the Real Estate Sector.

The Transparency International, a reputed International NGO, regularly estimates the amount and the extent of corruption in different countries and publishes the *Corruption Perception Index(CPI)* based on exhaustive field surveys and other scientific methods. India has throughout



figured in the category of very corrupt countries of the world, scoring only 3.3 out of 10 in the Corruption Perception Index (high score meaning less corruption) in the latest 2010 survey. India has been ranked at a lowly 87th position out of 178 countries where the survey was carried out. It is a matter of deep concern that the CPI score of Indian has suffered a decline from a score of 3.5 out of 10 in the year 2007 to 3.3 in 2010. Most of the Asian countries, including China, Malaysia, and Thailand, have fared better on the CPI.

Thus, while our competitors are improving, we seem to be slipping in our anti corruption efforts. The factors responsible for such a sorry state of affairs are the collusive nature of corrupt transactions; the glaring deficiencies and loopholes in the anti corruptions laws and enforcement strategies; the abnormal delay in trial and a very low rate of conviction; and the virtual absence of internal vigilance and enforcement in the Government Departments.

The civil society is up in arms having found the most unlikely crusader in a retired Army Havildar, Anna Hazare, - a man of Spartan frugality, boundless energy and relentless tenacity in taking cudgels against the rich and powerful for public cause. Yet, effective results may not accrue by emotional crusade targeting only the rich and the powerful amongst the corrupt. Ordinary people are crying for relief from corruption at all levels, including petty corruption from a large number of public servants in the entire nook and corner of the country. Systemic institutional changes and capacity building at an enormous scale to target all pervasive corruption at all levels is the mantra to create a lasting impact and bring relief to the people long oppressed from the scourge of corruption.

Corruption - the most under reported crime

Corruption can be said to be the most under reported crime in the country. The figures from National Crime Record Bureau (NCRB) show that in the year 2009, 3683 criminal cases were registered by all the anti corruption agencies of the states.



Details of cases registered and persons arrested under Prevention of Corruption Act (Source NCRB)

Sl.	Year	No of Vigilance cases registered by		Persons Arrested by	
		CBI	State/UTs	CBI	State/UTs
1	2005	827	3,008	NA	3,510
2	2006	719	3,285	NA	3,425
3	2007	610	3,178	NA	4,531
4	2008	NA	3,371	NA	4,295
5	2009	NA	3,683	NA	4,218

NA means data not available

Registration of only about 4000 odd criminal cases per year against corruption in the entire country means that an overwhelming number of acts of corruption are going unreported.

In this context, the performance achieved by Orissa Vigilance during the past 10 years is given in the following table.

Year	Case Registered	Charge Sheeted	Final Reported	Convicted	Acquitted	Abated
2001	316	187	155	10	37	0
2002	290	183	122	7	71	0
2003	305	285	63	14	50	0
2004	285	194	49	12	52	0
2005	291	183	52	19	48	0
2006	288	183	49	40	64	0
2007	286	253	28	37	58	17
2008	320	224	28	56	80	17
2009	383	241	29	69	67	18
2010	437	324	14	77	127	18
Total	3201	2257	589	341	654	70

Thus, the performance of Orissa Vigilance in registering 383 criminal cases in 2009 and 437 criminal cases in the year 2010 is indeed remarkable and laud worthy if we take into account the capacity constraint and the total incidents of corrupt activities in the state as compared to the rest of the country. In fact, the total registration has increased every year from 286 in the year 2007, 320 in the year 2008, 383 in the year 2009, to 437 in the



year 2010 showing an increase of 53% over the past four years. Such registration have been achieved in spite of large number of vacancies in the ranks of Investigating Officers and without corresponding increase in the availability of man power over the past five years.

Thus, it appears that the criminal cases against corruption, which are finally registered, may not form even 5% of the criminal acts of corruption, that take place every day in the country.

Reasons for gross under reporting of corruption cases

1) The reluctance of the victims of corruption to come forward and report against the corrupt public servants is due to their cynical disbelief that the guilty will ever be punished for the crime. Besides, the victims sometimes suffer from deep anxiety whether their genuine work /grievance will be attended to without any harassment from the officers of the same department against whom they have lodged the complaints. Our convoluted legal system is frightening enough to deter all but the bravest or the most harassed victims. The main reason is the enormous delay in the disposal of cases from trial in the Court. In fact, as on 30.6.2011 as many as 2539 criminal cases of corruption were pending trial in different courts of Orissa. Out of the 2539 pending trial cases, as many as 871 cases are pending trial for more than 10 years. Some cases which have been sent up for trial during the 1980s could not be disposed of even after more than 20 years of trial. The impact of such delay of gargantuan proportion on the psyche of the victim can well be imagined. How can we expect a victim to trust a system that takes more than 20 years to decide upon his complaint?

2) The low percentage of conviction is another major deterrent. During the year 2001- 2010, 341 cases of Orissa Vigilance resulted in conviction as compared to 654 cases of acquittal and 70 cases of abatement of trial due to death of accused, implying a decadal conviction rate of 32 % . Thus, the percentage of conviction at 32 %, though very good in comparison to the corresponding figure in other criminal cases, may not be good enough



to inspire the necessary confidence amongst many victims to motivate them to come forward and report against such crimes. The cynicism on the part of the victim is understandable when he finds accused public servant getting scot free by exploiting the loopholes in the convoluted legal system.

3) Even for those cases, where there is successful conviction in spite of all odds, the absence of stringent penalty takes away the sheen from the conviction order. In 37 corruption cases which has ended in conviction this year in Orissa, the sentences range for imprisonment of 1 year to 3 years and fines from Rs.4000 to Rs.1 lakh. As per the provisions of Cr.P.C., if the imprisonment is not more than 3 years, the convict is entitled to automatic bail if he has filed appeal in the Appellate Court. This implies that in none of the 37 convicts have spent even a single day in jail in spite of conviction order. Moreover, the convicts also invariably manage to obtain a stay on the payment of fines. Thus, the convictions, often coming after the retirement of the corrupt public servants, tend to have more academic value than deterrent impact against corruption.

4) The other major drawback is the deficiency in the penal law due to absence of adequate provisions for confiscation of the proceeds of the crime of corruption. Since corruption is an economic offence, the penal laws should ipso facto contain stringent provisions for confiscation of proceeds of crime with convenient procedures for creating satisfactory impact as deterrence. But, the Prevention of Corruption Act does not contain specific provisions for attachment. Instead, it depends upon an outdated enactment, Criminal Law Amendment Ordinance for attachment proceedings against corrupt public servants.

5) The public servants indulging in collusive corruption are further emboldened by absence of potent laws and effective anti-corruption strategy against collusive corruption, where both the bribe giver and bribe collector are gainer often at the cost of the Government. There are no complainants to set the laws of anti corruption in motion. Moreover, such corrupt acts are shrouded in secrecy and it is very difficult to obtain credible evidence to frame



charges against the accused persons and convict them in the Court. In fact, most of the corruption at high places belong to this category and the inability of the Government to enact potent laws to tackle collusive corruption is one of the main failure of its anti- corruption strategy.

Way forward

Due to its steadfast commitment in anti corruption efforts, Orissa Vigilance has gained credibility and earned the trust and faith of the people. This is reflected in registration of a very high number of trap cases. In the year 2010, as many as 185 trap cases have been registered constituting 42.3% of total cases as against 123 trap cases registered in the year 2009. This shows that if the anti corruption agency of the State/country performed creditably, more and more people will come forward and report against the public servants indulging in corrupt activities.

Therefore, in order to make a serious impact against corruption, we have to ensure quick investigation and quick trial of criminal cases relating to corruption. This can be only done by

- Significantly increasing the investigative capacity of anti-corruption agencies by effecting a quantum jump in the number of investigating officers
- A strict mandate may be fixed for the investigating officers to complete investigation in specified amount of time depending upon the complexity of the cases. There should be a maximum time limit for investigation which can not be exceeded and therefore, provisions should be there to form a team of IOs for investigation of mega scams.
- Quick trial necessitates opening of a large number of Vigilance Courts with a mandate to complete trial of corruption cases within a specified period of time. The number of Courts should be linked to the trial of fresh charge sheets filed by Vigilance Department



- Special Vigilance Courts be opened to take up the trial of old cases pending trial for more than 5 years. This will ensure that trial of fresh cases in normal Vigilance Courts, which have the potential of creating maximum impact, do not get adversely affected by the trial of old cases - which tend to be long and drawn out.

Besides, immediate steps need to be taken to make the Penal Law more stringent, with prescription of minimum penalty with respect to imprisonment and fine. The confiscation provisions should be an integral part of the revamped anti- corruption laws based more on the attachment and confiscation proceedings in the Money Laundering Act rather than the outdated attachment proceedings under Criminal Law Amendment Ordinance.

Departmental proceedings may be simultaneously undertaken, which should be swift and exemplary ordinarily resulting in quick dismissal of the corrupt public servant. Speedy investigation of cases will be a great help to the Department to finalise the disciplinary proceedings quickly.

Zero tolerance against corruption should not be an empty slogan. Cases of petty corruption should not be ignored because this vitiates the atmosphere of probity and integrity in public life. Many petty corruption issues can be quickly and effectively dealt by the administrative departments.

Effective implementation of these steps will transform corruption from low-risk high-gain activity to a high-risk low-gain activity. As a result, the fruits of a corruption-less society reaped by people will be perhaps as sweet as the fruits of Independence.
