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Anti - Corruption Mechanism in India

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SYNOPSIS OF THE TALK

As per Transparency International (TI), India ranks 79 in its Corruption Perception Index for the year 2016. According to José Ugaz, the Chair of TI, *“In too many countries, people are deprived of their most basic needs and go to bed hungry every night because of corruption, while the powerful and corrupt enjoy lavish lifestyles with impunity.”*

The interplay of corruption and inequality also feeds populism. When traditional politicians fail to tackle corruption, people grow cynical. Increasingly, people are turning to populist leaders who promise to break the cycle of corruption and privilege. Yet this is likely to exacerbate – rather than resolve – the tensions that fed the populist surge in the first place.

There are three types of corruption that we need to address:

- Collaborative Corruption (between rich & the powerful, both are benefitted and the nation loses)
- Coercive Corruption (between the government and the people, it's unequal power and people loses)
- Corruption between private individuals/ companies (public loses)

Key Questions:

According to Huffington Post Karnataka is considered as one of the most corrupt states in India. Can this perception be changed?

- India has been ranked low for years despite of anti-corruption mechanism in place. Why so? How does it affect governance?
- What needs to be done to make anti-corruption mechanism more robust?
- An honest citizen is most vulnerable. What can be done to empower him?

BIODATA

Shri Rupak Kumar Dutta, an IPS Officer of 1981 Batch (Karnataka Cadre) is currently the Chief Director General and Inspector General of police. Prior to this he was a Special Director in the Central Bureau of Investigation in New Delhi. Earlier he held the post of Additional Director in CBI looking after Anti-Corruption (HQ) Zones in Patna, Hyderabad & Chennai.

Shri Dutta has earlier held several important positions in Anti-Corruption, Training, MDMA & other Divisions in CBI from 1988 to 1996. From 2000 to 2006 he was the Joint Director, DIG and SP. He has been associated with the investigations of several sensitive cases, including those entrusted to CBI by the Supreme Court and High Courts .

Shri Dutta has held various positions in Karnataka, as Superintendent of Police, DIGP, IGP etc. He served as an Additional Director General of Police and as ADGP in Karnataka Lokayukta. Before joining the CBI, he was the Director General of Police, CID, Special Units & Economic Offences in Karnataka. He did his B.Tech from IIT Kanpur and M.B.A from Swinburne University, Australia.

Venue : 34, Vittal Mallya Road, Bangalore

Date: 22 July 2017, Saturday

Time: 6:00 PM



Let me talk on the basis of my experience I have over the years. I have put in about 36-37 years in the Indian Police Service and half my service has been in the anti-corruption and the remaining in the police. My presentation here will be based on my experience.

Looking at where we stand in terms of corruption, the only agency that is doing some kind of study on corruption perception is the Transparency International. Their last report shows that we are in the 79th position in the index.

79th position is not important but among 124 countries we are at a bottom level. The index measures from the least corrupt to the most corrupt with No1 being the least. So this is where we stand and this is where we have been at least for the last 2 decades. The countries which are better placed are Scandinavian countries and New Zealand. The question is why and I have always been wondering so.

When I joined CBI for the first time in 1988, I had asked in a conference, about the figures of anti-corruption cases that have been taken up in the last 1 year. I boldly asked, 'Isn't corruption only on the rise although the figures of anti-corruption cases show that every year these are increasing'. I have always been thinking, is statistics of cases good enough to consider anti-corruption efforts? Why have we been always down below in corruption perception index? What can be done so as to improve our ranking? First of all, as a nation are we serious about anti-corruption measures? Is there a thinking? We do not have a national anti-corruption strategy; draft was there on the CVC website but it has never seen light of the day. Also, I wonder, though anti-corruption agencies are present, are they handling anti-corruption work effectively? Do the anti-corruption agencies possess autonomy required for their role? Is there political interference in their function? Is there lack of professionalism in these agencies? Are these institutions manned by officers with unimpeachable integrity? Now these are the questions that come up when we say why this state of affairs at present.

The UN convention against corruption has emphasized that we need to provide necessary independence to the anti-corruption agencies, free from undue influence. There are countries, Asian countries where independent anti-corruption agencies,



anti-corruption commissions have come up. Though, we are a signatory to the UN Convention against corruption, unfortunately our anti-corruption agencies are part of government machinery. They are not independent.

What has been our anti-corruption measure so far? We have been only relying on booking cases under the Prevention of Corruption Act, which is primarily what we have been doing. The agencies which handle anti-corruption work are CBI anti-corruption branches, the State Vigilance Commissions, various anti-corruption bureaus and Lokayuktas in States. Now what do these agencies do? They take up complaints and book cases of corruption under Prevention of Corruption Act but, have these cases been effective in combating corruption? No. Therefore, what should we do?

The Scope of Anti-Corruption Law needs to be widened, there is no doubt on that. There is a draft pending, 2013 amendment which is yet to come up. Then there is something related to the criminal justice system, where protection of whistle-blowers and the witnesses is required. 'Benami' Transactions Prohibition law needs to be imposed. Now recently, rules have been framed. Though Benami Transactions Prohibition Act came way back in 1988, the rules were not framed till recently. So, this law was defunct in that way. So, these are some of the things which in my view need to be done to make the anti-corruption drive more effective.

Then what about Internal Vigilance Mechanism? I have been telling about external agencies, the anti-corruption agencies which have been doing cases from outside but what about preventive aspect? Now this has to be done from within the organisation. Internal vigilance measure is required to



be considered as an anti-corruption strategy; the administrative measure should be predominantly corrective and are our systems adequate to combat corruption?

The UN Convention against corruption has said about it. It is imperative that vigilance mechanism be established in State governments as it will only strengthen government institutions. What could be the measures? Identification of sensitive areas and making effective, preventive and corrective steps, timely rotations and transfer of officials in positions, conducting surprise and regular inspections, monitoring the rules and regulations of the organisations, conducting vigilance awareness programs to educate officers for clean, honest, effective and transparent decision, effective training programs of preventive vigilance, issue of circulars and bulletins and educating officials of importance of preventive vigilance, formulating best practices and manuals for circulation, leveraging and maximum use of technology and having a whistle blower policy, effective could be some. The point which I am emphasizing here is that, we need to take steps to ensure that from within, we do something to combat corruption and these are certain things which can be done. Let us say for example, inspection. Now inspection both regular and irregular, surprise inspections should be done effectively. Otherwise, I don't think we can have a check on what is happening. Similarly finding out sensitive areas. In CBI, we used to have a system of It is imperative that vigilance mechanism be established in State governments as it will only strengthen government institutions. What could be the measures? Identification of sensitive areas and making effective, preventive and corrective steps, timely rotations and transfer of officials in positions, conducting surprise and regular inspections, monitoring the rules and regulations of the organisations, conducting vigilance awareness programs to educate officers for clean, honest, effective and transparent decision, effective training programs of preventive vigilance, issue of circulars and bulletins and educating officials of importance of preventive vigilance, formulating best practices and manuals for circulation, leveraging and maximum use of technology and having a whistle blower policy, effective could be some.

The point which I am emphasizing here is that, we need to take steps to ensure that from within, we do something to combat corruption and these are certain things which can be done. Let us say for example, inspection. Now inspection both regular and irregular, surprise inspections should be done effectively. Otherwise, I don't think we can have a check on what is happening. Similarly finding out sensitive areas. In CBI, we used to have a system of vigilance coordination meeting. These meetings are supposed to be done with the department where you find out what are the sensitive areas, earmark those sensitive areas, then who are the persons to be taken note of, list them and you pursue and follow that. Unfortunately, I am finding that, even there also over the years things are getting diluted; this is supposed to be done quarterly, whereas now it doesn't happen even in a year. Those who are from government of India departments must be aware of these vigilance coordination meetings, so these are the proactive aspects which need to be dealt with.

Now, does corruption impede governance? The vigilance awareness week which was started in 2000, by the then CVC had stated figures mentioning that corruption does impede development and governance. Whether in terms of GDP growth or in terms of justice to poor or in terms of security of the nation. In fact, corruption impacts every aspect of life.

On 2G Spectrum and Coal scams certain estimates of loss were given by the CAG; right or wrong, these are questions to be talked about. But yes we have heard about bank frauds happening where every year we are losing thousands of crores.

When we talk about governance, expectations are on the rise. World is getting more connected and networked. Any matter of relevance is picked up on social sites in no time. People require governance to be responsive, transparent, accountable of rule of law, participatory, consensus, equitable, inclusive and efficient. These are the expectations of the people when it comes to governance. I have told in the beginning that, we are at the bottom of the corruption perception index line.



Hong Kong which was a principality of British and till early 70s', which was also down the line in the Corruption Perception Index is now high up in index. This is because in 1974 they established what is called ICAC, Independent Commission against Corruption. Now this was an independent body, once it had started, Hong Kong has always been placed high up in the Corruption Perception Index. Not that it happened in one go but in the 90s' & 2000s' and even after that it has been on top. How did this happen?

It went in for good enforcement, it went in for a preventive aspect and it involved the public. All the three things it did, enforcement, preventive aspect as well as taking public along with it. Not that we made no efforts, in fact let me tell you that in the 60s, the Santhanam Committee was set up by the then Prime Minister, Lal Bahadur Shastri. And after that the current Central Vigilance Commission and the Central Bureau of Investigation also came up. CBI was earlier known as Special Police Establishment.



The vigilance mechanisms in ministries and departments have also come up. Circulars were brought out as to what needs to be seen for preventive vigilance aspect, but then what happened? The Santhanam Committee had emphasized that, corruption cannot be eliminated or even significantly reduced, unless preventive measures are planned and implemented in a sustained and effective manner. The committee further said that, the main effort for checking corruption and for creating an environment which sternly discourages to stray away from the path of integrity must come from within the ministry and department. The Santhanam Committee had emphasized that, the liability lies on the head of the department and the head of the organisation.

I am not restricting my talk to any State but I am talking generally about corruption in the country.

When I was in the Lokayukta, a gentleman had told me that one of his friends wanted a electricity meter connection. He went to the Principal Secretary Energy as bribe was demanded. So he was asked to go to the Lokayukta. Now this is a tendency that the departments have. Though there are agencies to look into this matter, but concern must come from within the department. In terms of Police, I cannot say when someone approaches and says corruption is there in the police, go to Lokayukta or the ACB. I must also find out why it is happening and what I can do? This is what was emphasized by the Santhanam Committee - that concern should come from within the ministry or the department.

I had mentioned about all the mechanisms of the Vigilance which have come up. Then there was the 2nd Administrative Reforms under Shri Veerapa Moily. In the 4th report on Ethics and Governance, the definition of corruption and collusive bribery was brought out. We don't have in the Prevention of Corruption Act any definition of Collusive Corruption so far. Unfortunately, the 2013 amendment also does not talk about collusive corruption. Also, making foreign bribery an offence, there is a draft. If suppose, our people have bribed somebody abroad, then action is taken under foreign bribery and information is passed on to India to take action on the people who are involved here. Say for example, in purchase of machinery, if those people have influenced some public sector undertaking or government machinery to purchase a particular equipment of a particular company, they are to be dealt with the foreign bribery offence here and information is to be passed on there. Unfortunately, we still don't have any law in making foreign bribery an offence. When I was the Special Director in CBI, we had a case which the Prime Minister's office was also looking into and it pertained to supply of equipment under line of credit to African countries at nominal rate (interest). It was found that our people who were the suppliers had influenced the officials there and the PM's Special Secretary was asking what action can be taken. I said, we don't have this Act. Draft has been lying there for the past 5 years or more. And so far it has not seen light of the day.



Secondly, administrative reforms commission has also recommended that, prior sanctions are not required in cases of bribery and offences related to disproportionate assets. We know that for cases to be prosecuted under the Prevention of Corruption Act we require sanction for prosecution. This has been often debated that in a criminal case, why should there be a sanction for prosecution. There are cases which require sanction from government under 197 Cr.PC, but act is done while discharging official duty. Corruption, whether it is bribery or it is amassing assets illegally, I don't think these are some things which have the colour of duty. This has often been said and the Administrative Reforms Commission also spoke about it and that sanction must be done away with. But, the 2013 amendment which is coming does not talk about it. Under the Prevention of Corruption Act, 1988, including the 1947 Act, it never talked about requirement for sanction for prosecution after retirement, when a person is no more a public servant. But, the 2013 amendment mentions that there is a need to have sanction for public servants even if they are retired. That is if they have done any act as a public servant whether on duty or off duty you require sanction of prosecution. So if you see that way, 2013 amendment is a retrograde in terms of combating corruption.

Setting up a time limit on various stages of trial under PC Act to ensure day-to-day procedures as given under section 19 of the Act has never been ensured. Of course, protection of whistle-blowers is very much required. This is about the 2nd Administrative Reforms as the commission talked about strengthening the Lokayukta mechanism because the institution of Lokayukata was talked about in the 1st Administrative Reforms Commission under Shri Morarji Desai. Barring few States, in most of the places it had not come up. Even in the places it had come up; it didn't have much of power or role to play. Karnataka if you see, Lokayukta made lot of news in 2008 to 2011 or even before that for about say 5 years. It was in the news for doing ACB (Anti Corruption Branch) work. Also one of the Lokayuktas, used to move around and go to the departments and do surprise checks. This was a unique system in the country and how it came up is also

surprising. Because before the 1984 Act came into being there was the Vigilance Commission under which the ACB functioned and the Vigilance Commission was replaced by the Lokayukta under Lokayukta Act, 1984. The ACB which was part of Vigilance Commission came with the Lokayukta. Actually the ACB cases were supervised by the Lokayukta and the Uplokayukta before the Rangaswamaiah case happened.

In the Rangaswamaiah case, High Court and the Supreme Court said that under the Lokayukta Act, 1984, the Lokayukta or the Uplokayukta as an institution have no role in the work of anti-corruption under the Prevention of Corruption Act.



That is done by the police, which was declared as the Police Station under section 2(S) of the Cr.P.C. Since then the Chief of the ACB has been the all-in-all of the anti-corruption cases under the Prevention of Corruption Act. It was one thing that these staff in the ACB were part of the Lokayukta institution under section 15 of the Lokayukta Act. The protection that the staff thus got was that nobody could be inducted or nobody could be removed without consent of Lokayukta. This was something unique so far as the institution in Karnataka was concerned. I don't think anywhere in the country it was so except in Madhya Pradesh. In Madhya Pradesh, there was the special police establishment under the Special Police Establishment Act similar to which the CBI functions.

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The Lokayukta institutions do not have much teeth in looking into corruption other than conduct civil inquiries or other inquiries. We need to strengthen the Lokayukta institution. The Lokpal Act has been passed and it has come into being. It is also necessary as stated by the 2nd Administrative Reforms Commission that the Anti-Corruption Bureau should be under the Lokayukta institution.

ACB could be brought under the control of the State Vigilance Commission and this commission should have 3 members and function similar to that of the Central Vigilance Commission and each state should constitute a State Vigilance Commission. Apart from strengthening the Lokayukta institutions, on CVC pattern the State Vigilance Commission should be a multi-membered body. It is necessary for the Anti-Corruption Bureau to be brought under the State Vigilance Commission.

There have been a lot of positive outcomes of course in the recent past, we have the RTI, the Public Service Delivery Act which guarantees delivery of service, Digital India is coming up in a big way because it is the digital world which can make change, there is the direct cash transfer which is happening through the Jan Dhan Yojana, the SIT on black money, Demonetization and related restriction on cash transactions, GST is going to come up in a big way in deflating the corruption. We have been signatories of UNCTAD and we need to work a lot on this in

terms of bringing our law at par with the United Nations Conventions. The new laws in the offing should come into effect. The Lokpal Act which has come into being must be put in place.

Some reform has happened to the electoral reforms, but it is essential that much happens on this front as it is here onwards that things start. Now, let us know why corruption happens. Corruption happens because of monopoly, discretion and no or less accountability. There is a beautiful equation which has been framed and that is, corruption is equal to monopoly + discretion – accountability. Now, monopoly is going as competition gets in many actors. Say for example, tele-communication, earlier it was only BSNL or the government machinery which was providing the tele-communication. It had monopoly. For steel, it was the Steel Authority which had the monopoly but now because of others getting in, their sole roles are getting reduced. Discretion is something which needs to be again talked about. Certain amount of discretion is required but it should be contained within certain bandwidth has to be put. However, accountability is something which has been a bane for this country because it has been missing.

I sometimes wonder when you go around anywhere, you have got unauthorised constructions, and government lands have been occupied. All things have happened and who has faced the wrath of the law? Who has fought for this? It's not that he or she has to be in service but there may be difficulty when it comes to booking of cases for possession of disproportion of assets, but when it comes to action of 131 (D) of criminal misconduct, even if the person has retired, you can take up cases. But never anything happens when it comes to fixing of accountability. This is something which is lacking in our country. This was emphasized in our National Anti-corruption Draft which I had mentioned about earlier. Further, apart from the enforcement and the preventive aspect, involving people is important so it has to be participatory. We need to involve people, we need to take them along with the drive against corruption and it has to be holistic. It must be all encompassing, we need to have preventive aspect, and we need to make it participatory. But very important is the political will. As it should come, it must also be followed by administrative action.



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