



Graduate School of Development Studies

**Corruption: Malfeasance or (dominant)
Modus Operandus**
An Analysis of the factors that abet Corruption and
Restrain Good Governance in India

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List of Acronyms

ACB	Anti Corruption Bureau
ACP	Assistant Commissioner of Police
CBI	Central Bureau of Investigation
CPI	Corruption Perception Index
CSO	Civil Society Organization
CVC	Central Vigilance Commission
INR	Indian Rupee
MLA	Member of Legislative Assembly
MP	Member of Parliament
NHAI	National Highways Authority of India
PDS	Public Distribution System
PI	Police Inspector
RTI	Right to Information
SIT	Special Investigation Team
TI	Transparency International
UNESCAP	United Nations Economic and Social Commission for Asia and Pacific
USD	United States Dollar
WB	World Bank

Chapter 1 - Introduction

1.1 General Overview

Corruption is a multifaceted phenomenon and it is a result of specific socio-economic conditions paired with democratisation. The issue of corruption has major political and economic significance¹. The process of democratisation and economic liberalisation has led to a resurgence of interest in analysing the phenomenon of corruption and the way it assumes various forms especially in developing countries. The media and newspapers frequently come out with corruption scandals illuminating the illicit behaviour of politicians and public officials. Frequently, Non Government Organisations publicise the problem of corruption and mobilise public concern around cases of malfeasance to demand effective action against it. Developing countries have a particular concern for corruption because it may undermine economic growth; discourage foreign investment while simultaneously reducing the resources available for infrastructure, public services and anti-poverty programmes. The misallocation of public resources directly affects poor people and also widens the rich-poor gap. In principle, democratic political institutions allow for the actions of politicians and, government officials to be scrutinized by citizens, media and NGOs etc. However, processes of democratisation and the presence of democratic political systems and politicians may also provide increased incentives and opportunities for corrupt practices. The developing countries which have undergone economic liberalisation do not provide substantial evidence that replacement of discretionary controls within and by Governments with market mechanisms can reduce the incidence of corruption. Rather it appears that such liberalisation re-directs it to other actors and spheres of activity (Harriss-White and White, 1996).

This research paper is an attempt to focus on the contemporary reality of corruption in India. The issue of corruption is routinely sensationalised by the media, while various approaches to devise anti-corruption strategies are in practice, advocated diligently by developed countries and donor agencies. Yet, there appears to very little systematic probing of the underlying structures and patterns of corruption in terms of an holistic analysis of how and why corruption works through in-formalisation of administrative systems within the existing social, political and economic reality in India. This is the main theme of this paper.

It will be argued that informal systems of corruption are under the control of politicians for the benefit of the elite. The problem of corruption is systemic because there are strong indications that the bureaucracy and judiciary are conjoined with and supported by corrupt politicians and business people. The independence of bureaucracy and judiciary seem to be in question as the system gives more importance to the vested interests of the

¹ .What is Corruption?

<http://www.interpol.int/Public/Corruption/about.asp>

few which crumples the impression of ‘effective social justice’² and common public with scepticism and distrust inevitably accepts the same path of informal system (Kumar, 2002:146,147). Few have the courage to speak out against the system³ and if they do, those with vested interests are capable of monitoring and silencing such voices. The media tries to sensationalize this issue of corruption by exposing various cases of malfeasance, but it is not getting success in follow up of the cases, or to establish underlying structures and patterns relating to what may be called ‘the political economy of corruption’. Even in exposing such cases, commitment to protect vested interests plays an important role and as a result most incidents of malfeasance are not administratively or criminally addressed and the system quickly resumes functioning after even the biggest scandal or scam (Kumar, 2002).

This paper intends to explore corruption in all its extensive and structural dimensions, outlining an argument and a framework to be applied. The research does not start with a particular assumption as to the existing system in India. Rather the analytical perspectives outlined attempt to put forth contemporary socio-political and institutional features of corruption which are ingrained and internalized over the years during the process of democratisation. This analysis may be seen to be controversial but if taken in a constructive spirit, it is hoped that this paper may generate further debate around the problem of corruption.

1.2 Statement of Problem

The problem of corruption in developing countries is different as compared to developed nations due to the prevailing and different conditions. In addition to the myriad of administrative problems, like low salaries for civil servants, overall poverty is an important factor which creates strong motivation to earn income. Additionally, the poor management of resources leads to all kinds of economic risks. The lack of risk spreading mechanisms like effective insurance and well-developed labour market is absent. These conditions create numerous opportunities to engage in corruption where public officials have discretionary powers in a context of inadequately defined rules and regulations. As a result, bribery may be extremely difficult to detect (Gray and Kaufmann, 2006). In India, institutions armed with laws, rules and regulations are in place but the functioning of institutions always depends upon public officials and individual people. In short, corruption may still prevail regardless of the existence of institutional regulatory system. The establishment of anti-corruption institutions as per the World Bank (WB) agenda is one of the solutions for combating corruption in India. However, there remains a need to analyse the underlying problems in order to evaluate the different conditions which support corruption while simultaneously assessing the effectiveness of these mechanisms for combating corruption.

² The collective good has a priority over individual good and is the perfect harmonious blending of selfish nature of man and the good of the society. The ideals of socio-political and economic democracy are combined with equality and fraternity which are reflected in the preamble and Part III on Fundamental Rights enshrined in the Constitution of India.

³ As explained in the case study of this paper.

I hypothesize that, anti-corruption institutions cannot necessarily deliver their function effectively, even in the presence of checks and balances, if the root causes of corruption are structural, systemic and deeply embedded. If this is the case, the WB approach of institutional reforms is seen as a superficial and a short term remedy whereas corruption persists in the system and harms the most marginalised sections of the society. This paper focuses on the public sphere of corruption taking into consideration bureaucratic and political actors. It is my attempt to restrict the scope of this paper to administrative corruption and its causes. However, as administrative corruption encompasses political and social spheres, I intend to include additional considerations like the significance of efforts to promote good governance. One of the hypothesis to be highlighted here is that the WB approach, well expressed in terms of ‘neo-institutional tinkering’ by Hadiz (2004) does not consider the tangible implications of corruption. I concentrate on administrative corruption in an effort to investigate deep roots of corruption and the naive institutional mechanisms employed to curb it. Nonetheless, the role of political and business actors remains an important consideration in a democratic polity like India.

1.3 Research Objective and Research Questions

The main objective of this paper is to identify and analyse the way corruption is characterised in the Indian society. With this objective it advances the main research question as

“To what extent are current anti-corruption interventions relevant for combating corruption in India?”

With specific reference to the objective and the main research question, a few sub-questions emerge:

- a) What is the nature and extent of corruption in India?
- b) What are the agencies, policies and interventions as regards efforts to combating corruption in India?
- c) And are these interventions effective at addressing systemic corruption?

These sub-research questions address contemporary issues of corruption in India and the way in which government and Civil Society Organisations play a role in combating corruption. Looking at various definitions and forms of corruption, the systemic conception and socio-cultural logic which paves the way for corruption as a regular activity is taken as one of the premises to explain the embedded-ness of corruption. Additionally, the inherent problems that exist for institutions seeking to address corruption, often due to legal impediments, external pressure, and other problems are explained to illustrate why there is a relatively low success in combating corruption. The research paper will examine various actors and stakeholders involved in corruption. Finally it reflects on how good governance is affected by ingrained corruption and ultimately results in a detriment to productive development.

1.4 Methodology and limitations

The methodology I have adopted is the analysis of secondary literature and materials. The analysis is based on actual documents related to the case studies. The analysis also incorporates the opinions expressed by officials relevant to particular case studies. The paper reviews international journals and books. The research is based on published and

unpublished reports, and articles and books that are easily accessible at the national and international level. I have also used information collected from various Indian newspapers, magazines and the Internet.

In corruption cases, the true relevant information is rarely revealed. Though newspapers and media may attempt to increase awareness of corruption through the publication of investigative articles outlining various cases of malfeasance, it is often impossible to identify the actual realities and extent of informal dynamics. Due to time constraints, it was not possible to personally visit and interview the relevant officials. I have incorporated information from the true sources along with the opinions expressed by officials through online interviews.

1.5 Research Paper set-up

This research paper is divided into five chapters. The following Chapter 2 provides the theoretical framework for this paper. Corruption has many facets and it cannot be discussed in a particular form. I am considering various definitions of corruption including the World Bank's prominent definition. To analyse the situation in the context of India, the forms of corruption explained by Blundo and Sardan (2006) have been used. I link corruption to debates on what is now conceptualised as 'good governance' and argue that the good governance mechanisms for anti-corruption are short term for which the stylized equation by WB and concept relating to good governance are discussed. I will counter the WB approach by arguing that corruption is more systemic and rooted in the public sphere in India and as a result, anti-corruption institutions are not an effective long term and concrete solution. The concept of systemic corruption and socio-cultural logic is examined in this context.

Chapter 3 reviews the current institutional anti-corruption frameworks used in India. Both the State and civil society mechanisms are addressed and the weaknesses ingrained in those mechanisms. Under state mechanisms this paper looks into the functioning of anti-corruption agencies like the Central Bureau of Investigation, Anti-corruption Bureaux, Central Vigilance Commission and Ombudsman, as well as the problems associated with their effective functioning. Subsequently the role of non governmental and civil society organisations which are identified as the fourth pillar of governance in anti-corruption is debated. The recently adopted Right to Information in India has a major role to play in anti-corruption. But whether this fourth pillar provides 'real freedom' in terms of opportunities for accountability or whether, in contrast, it will again function as one of the agents in supporting corruption will be addressed.

Chapter 4 presents three case studies on corruption in India. The first case study is the ill-famous 'stamp paper scam' which was initiated by Mr. AKL Telgi. A further investigation is still going on in this case but as of now the investigation reveals a significant network of actors including known criminals, business people, bureaucrats and politicians. The second case deals with the construction sector and its relation with National Highways Authority of India officials. The corruption exists from the initial stages of awarding contracts up to implementation. This case illustrates how the voice of whistleblower can be repressed. The third case can be categorised as a case of petty corruption where a government servant is

convicted under the Disproportionate assets case under the Prevention of Corruption Act, 1988.

Chapter 5 aims to analyse these three cases by comparing patterns and underlying systems of cooperation and manipulation by various stakeholders, so considering the root causes of corruption. The case studies when analysed through the lens of theoretical framework (incorporated in chapter 2), show that the existing institutional mechanisms employed to address present day corruption are not sufficient to the systemic and deeply embedded nature of corruption in India. Corruption is the rule rather than the exception. To assess how corruption persists in an informal way, with its own rules and regulatory mechanisms, is the main focus of this chapter.

This research paper is completed with Chapter 6 which explains the conclusions and the issues for further research are included.

Chapter 2 - Theoretical explication and interpretation of Corruption

2.1 Definitions and Forms of Corruption

It is not easy to capture scope of corruption in a single definition. It does not always involve monetary malfeasance. Corruption also includes the illicit and improper use of influence or position to get or prevent certain decisions or actions which are otherwise impossible under existing laws, rules and practices and the corruption may also include quid pro quo or the exchange of favours (Brown and Cloke, 2004).

Corruption, at its core, is a behaviour which deviates from the formal duties and obligations of one's public role (elected or appointed). The impetus for the deviation is personal, familial, or political and the gains could include wealth or status gains (which) violates rules against the exercise of certain types of private-or regarding influence (Nye, 1967).

According to the World Bank's Development Report (1997) corruption is defined as the abuse of public power for private gain. Corruption is distinguished as a grand benefit to a political leader or senior public official by a businessman in return for a decision in his favour (quid pro quo) (Brown and Cloke, 2004). Petty corruption, when a public servant extracts small bribes or illegal fees in exchange for a service or administrative favour is associated with national and local scales of corruption⁴. Robinson (1998:3) describes corruption in three ways. Incidental corruption is related to the individual acts of politicians, public officials and business elites. Institutional corruption denotes the institutions where corruption appears to be the norm. And systemic corruption is malfeasance which is entrenched within a whole society. Shah (2004:235) reflects on two more forms of corruption which are important in the Indian context. First is State (official) influence peddling, which is explained as the collusion of private actors with public officials or politicians for their mutual or private benefit. Second is the patronage or clientelism where public officials use their official position to provide assistance to clients with the same geographic, ethnic, or cultural origin to receive preferential treatment in their dealings with the public sector. The definitions and classifications above infer that the term corruption is used to describe a continuum of multifaceted behaviours with both similarities and distinctions. The most well known definition of corruption (used by both the WB and Transparency International) may suffer with deficiencies in its attempt to homogenize or oversimplify corruption. This definition (as defined by the WB) suggests that corruption involves only the pursuit of private gain. However, the advantage of personal and /or monetary gain is not the case in all circumstances. In this definition a type of incidental corruption where individual politicians use their position to pursue particular ideological

⁴ The definition of Petty corruption is explained by Swedish International Development Cooperation Agency.

http://www.sida.se/sida/jsp/sida.jsp?d=439&a=1443&language=en_US

objectives is not dealt with adequately. Also, it avoids taking into consideration the phenomena of private sector corruption, which is often the result of market led economic reforms rather than a phenomenon of public sector (Brown and Cloke, 2004).

In the case of administrative discretion, an authority has power which can be exercised in favour of or against a person in return for money or other considerations of gain ; also known as a bribe. In this situation, an authority may have the discretion to choose one person, for illegal, unfair or impartial consideration, which is an abuse of power (Sathe, 1997).

The 'real' functioning of the state is different from official or formal functioning, the former may be considered 'generalized informal functioning' of the state or if such functioning becomes dominant it can be called as 'generalised dysfunction'. This does not mean that there is a complete absence of rules and regulations, but rather, everyday corruption is a social activity regulated by complex rules and practical norms and these rules have a potential to alter the course of official functioning. This 'generalized informal functioning' provides the basis for corrupt practices but at the same time maintains official functions. However, here there is an overlap between corrupt practices and 'real' practices (Blundo and Sardan, 2006). In reality, the public services operate in such a manner that people get habituated to the informal mode of operation. Corruption is always regarded as illegal and illegitimate but it is de facto tolerated and widespread. Criminalizing corruption and finding out ways to curb it are hampered due to its embedded-ness in the society. The informal and embedded form of corruption which is legitimized by social practices is tolerated and most of the times 'unofficially' encouraged by the authorities.

Understanding corruption is the first step towards a better understanding of state, administrations, municipalities, development projects and even civil society. To gain a better understanding of the everyday functioning of the state, analysing corruption and the way in which it is embedded in a society is increasingly considered as critical due in part to the 'good governance' agenda. The formal and informal forms of corruption develop into complex strategies by the actors involved, but such corrupt practices are inherently "corrupt". To analyse the social phenomenon of corruption and its embedded-ness, I have utilized the various forms of corruption as explained by Blundo and Sardan (2006:81):

"a) 'Commission' paid for illicit services where users pay money to officials for administrative services and officials provide access to illicit advantages, exemptions or discounts. Behind this payment the idea is to compensate for the risks involved. By this, an unjustified favour is granted to the user at the expense of public office; b) unwarranted fees for public services where the officers in fact 'sells' the service which he is supposed to deliver free. This is a way of internal privatisation where cost of the service is either stated or left to user's discretion; c) gratuity refers to an ex post gesture where user pays to official 'who has done his work well' which is generally viewed as entirely legitimate from the perspective of the actors involved; and d) string-pulling is the perception of administrative system being dominated by favouritism at the expense of competence and efficiency. It may be denounced in impersonal terms as a system but on the other hand it is also pursued as something endowed with profound social legitimacy."

The abovementioned forms of corruption involve transactions of monetary or material nature. They are more or less the impetus of an emotional or identity based gain. They are

interlinked, hybrid and ambiguous forms of corruption frequently encountered in daily realities.

The forms of corruption in developing and developed countries cannot be extrapolated due to differing contexts and hence it is difficult to compare corruption in developing and developed countries. Some forms of corruption are the instances of malfeasance on the part of individual politicians or public officials whereas in other situations, corruption makes particular institutions or sectors of activity ineffective (Brown and Cloke, 2004). Corruption is a routine feature in certain sectors due to the existing weaknesses in the system of controls or regulations that facilitate public officials to extract rents or administrative fees.

Systemic corruption is a situation in which the major institutions and processes of the state are routinely dominated and used by corrupt individuals and groups. It is perhaps seen in the entrenched systems of patrimonialism that still exist in many developed countries (Theobald, 1999). This has a direct effect on the quality and availability of public goods and services. The systemic corruption includes grand corruption where decisions are taken by high level public officials and politicians regarding large public contracts or projects. The element of greed is an essential component of systemic corruption (Omar, 2007). In this system, the actors are not independent but they act in concert with one another. Within public services, jobs are awarded to those who will subsequently be positioned to extract rents and administrative fees as a part of an established bribe-sharing arrangement which ensures that the higher official is able to continue to benefit from the favour in exchange for protection of public servant position from dismissal or punishment (Omar, 2007).

According to Johnston (1997) systemic corruption pervades the entire society and is accepted as a means of conducting everyday transactions. The 'systemic' or 'entrenched' corruption affects institutions and influences individual behaviour at all levels of the political and socio-economic system. It is found in particular socio-cultural environments and characterised as monopolistic and well organised. The societies which are relatively free of corruption, mainly but not exclusively, are characterised by respect for civil liberties, the presence of an accountable and transparent government, and a liberal economic agenda with comprehensive economic opportunities with well structured political competition (Johnston, 1997). Systemic corruption also depends on the interplay between politicians, bureaucrats and key interest groups in civil society which are often related through informal ties of patronage and clientelism (Hutchcroft, 1997).

2.2 Different Perspectives on Corruption

Corruption can be analysed through various perspectives drawing on different disciplines. Public choice theory is grounded in the Rent seeking perspective. According to this theory the self seeking behaviour of politicians and public officials leads to corruption. Corruption thus occurs due to the interaction between clients (i.e. citizens or businessmen) and politicians or public officials (Robinson, 1998). Economic reforms and 'minimal state' is the anti-corruption mechanisms suggested by this theory.

The pluralist perspective argues that corruption is a function of the lack of durable political institutions and political competition in the presence of weak and undeveloped civil society. This approach gives emphasis to the power of democratic politics and institutional

reforms to bring changes in the system which may help in tackling corruption. Thus the political initiatives which increase responsiveness of political elites to the will of the people by creating new democratic institutions such as elected legislatures, parliamentary committees and watchdog bodies can help in controlling corruption (Robinson, 1998).

The political economy perspective which focuses on the dynamics of power and agency, accentuate the differences in the political power of various groups and in the resources allocated by the state. According to this perspective, to understand corruption there is a need to reflect on the historical experience and political realities of the country. The clientelistic relations between emerging capitalist classes, politicians and the state bureaucracy reflect underlying socio-economic factors which determine how corruption will ultimately manifest (Khan, 1998).

Anti-corruption institutional reforms are based on multi-pronged approaches which combine legal strategies, the governance sphere and specific institutional mechanisms. The legal sphere involves enforceable property and contract rights and the enhancement of judicial credibility. Accordingly, the governance sphere can be improved through accountability and transparency mechanisms that limit discretionary powers and improve the terms and conditions of employment for public officials. Incorporation of specific institutional mechanisms like anti-corruption agencies, special courts to review corruption cases, asset declaration of politicians and civil servants helps in monitoring the corrupt practices effectively. But the success of specialized anti-corruption agencies is conditioned by a set of socio-economic factors and the manifestation of various forms of corruption. The agencies can only play a limited role in the societies where corruption is entrenched since the powers of investigation and enforcement are informally placed in the hands of influential politicians and public officials who indulge in corrupt practices (Robinson, 1998). According to Khan (1998), the effectiveness of political and institutional reforms amounts only to short term palliatives in countries where corruption is deeply embedded within socio-economic structures.

2.3 Neoliberalism and Corruption

According to the neoliberal perspective, opportunities to get engaged in corrupt activities primarily arose from market distortions introduced by state intervention. It is explained as 'rent seeking' behaviour (Brown and Cloke, 2004). The state intervenes into markets through exchange rate control, subsidies, quotas, which distorts markets and creates opportunities for state bureaucrats to extract economic rents from their monopoly position (World Bank, 1997). And this analysis led to the conclusion that a greater reduction in state intervention would result in fewer opportunities for corruption. The logical flaw with this assumption that economic liberalisation will deal with the problem of corruption and hence there is no need for anti-corruption measures is wrong because if state intervention is removed, rents would not be allocated as markets are not perfectly competitive. The World Bank's emphasis on the crucial role of state institutions in the successful outcome of the market-led reform agenda resulted in a new emphasis on governance, democratisation and institution building. Thus the argument in favour of economic liberalisation was suggested in order to transform the political systems and state sector reforms (Brown and Cloke, 2004). Corrupt individuals and departments are serious impediments to the reform agenda

and therefore transparency and openness to public scrutiny are identified as crucial aspects of creating efficient state institutions (World Bank, 1997).

Klitgaard (1988 in Shah, 2004) summarizes it in a stylized equation. The scope of corruption, in terms of incentives to engage in corruption, is dealt within economic and institutional environment. Individual officials have a substantial monopoly on and discretionary powers over decision making. They are not accountable for their actions and therefore operate in an environment of low transparency or a total lack of accountability.

$$\text{Corruption} = \text{Monopoly power} + \text{Discretion} - \text{Accountability}$$

In this case, the officials have an ability to engage in corruption along with a very good chance of getting away with it. The chances of getting caught and punished are limited since the control mechanisms are routinely non-existent or weak and if they do exist, sanctions are minimal. Government rules and regulations in the economic sphere create artificial scarcities of goods, services or property rights. This leads to creation of rents for the owners to earn in excess of all relevant costs including 'normal profits'. As the administration of such regulations is concentrated in a very limited number of officials with substantial discretion to interpret and apply, it leads to a high incidence of corruption.

2.4 Criteria for assessment

Within the context of Rational Choice Institutionalism, I would like to emphasize on the Principal-agent model. In this model, the government is assumed to be the Principal which is the dominant entity. The Public officials are agents who perform their role in the bureaucratic structure. The task of principal is to motivate agents to act with integrity in the use of public resources. But bureaucrats find themselves with discretionary powers to engage in corrupt transactions, particularly as the potential gains are far greater than the expected costs. This provides officials an impetus to commit corruption. Thus the monopoly powers of discretionary authority given to public officials drive them for corruption. The model is restated by Klitgaard.⁵ According to this framework, corruption is reduced by establishing rules driven government with strong internal controls. Strong rules and regulations theoretically leave little room for discretion by public officials (Shah, 2004: 236,237). Whether this institutional reform is effective in India remains a question however.

Another perspective is from a neo institutional economic framework which emphasizes the importance of transaction costs and information asymmetries in explaining the causes of

⁵ Ibid

corruption. This framework purports that corruption persists as a result of the high transaction costs that prevent citizens from holding their public officials accountable. Under this model, the citizens are seen as principals operating with imperfect or incomplete information. On the other hand, public officials, or agents, possess the necessary information and are better informed when compared to the citizens. This informational asymmetry provides public officials an opportunity to engage in corrupt behaviour. And moreover, the corrupt actions of the public officials are likely to go unchecked, also, as a result of the informational asymmetry. According to this perspective, anti corruption strategies are fundamentally a function of citizen empowerment through mechanisms like devolution, decentralisation, bills of rights, citizen's charter, Right to Information Legislation and so on. But there still remains the problem of path dependency⁶, cultural and historical factors, attitudes⁷ and environment that can limit hope of justice and accountability (Bhargava and Bolongaita, 2004).

Thus the analysis of this paper involves the evaluation of the abovementioned perspectives within the context of India. The paper will additionally reflect on the Indian specific case studies (chapter 4) and from there consider corruption from the perspective of various relevant factors, including 'traditional' practices of reciprocity, colonialism and greed.

2.5 Corruption and Good governance

The definition of Governance with special relevance to the developing world; provided by the WB in Governance: The WBs experience states that:

“Good Governance is epitomized by predictable, open and enlightened policy making, a bureaucracy imbued with professional ethos acting in furtherance of the public good, the veil of law, transparent processes and a strong civil society participating in public affairs. Poor governance (on the other hand) is characterised by arbitrary policy making, unaccountable bureaucracies, uninformed or unjust legal systems, the abuse of executive power, a civil society unengaged in public life, and widespread corruption.”⁸

Thus WB's approach to the governance encompasses issues of increased state responsiveness and accountability. In fact UNESCAP (United Nations Economic and Social Commission for Asia and Pacific) explains the term good governance with eight broad characteristics; good governance is participatory, consensus oriented, accountable,

⁶ The reform process struggles with the system established over the years. In this process, the influential interest groups tend to dominate and block reform process (Bhargava and Bolongaita, 2004).

⁷ The attitudinal change develops when there is a little possibility of corrupt actors being brought to justice. People victimised by corruption have a fear that their attempts to combat corruption may lead to further victimization and hence they tend support corrupt activities (Bhargava and Bolongaita, 2004).

⁸ <http://www.gdrc.org/u-gov/governance-understand.html>

transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law.⁹

Good governance is a value laden concept. It connotes just or moral judgements made in the public interest by those exercising authority. The public interest is an aggregation of the interest of the many but certainly not all of which depicts western thinking of Bentham's Utility principle (the greatest good of the greatest number). From an Indian perspective it is 'universal welfare and happiness of all and every one, that is 'Public service as an ideal' in the classical view of good governance (Arora in Barathwal, 2003). Ontological good is the condition of knowledge, criterion of value and immutable substance behind ebb and flow of existence. Good is the final resting place with all actions meaningful and noble to the extent they incorporate 'goodness'. This ontological 'good' is expected in the good governance (Gupta, 2003). The World Bank's conceptualisation of good governance deal with bureaucratic accountability ensuring a system to monitor and control the performance of government offices and officials in relation to quality of service, inefficiency and abuse of discretionary powers. To incorporate openness and transparency in the course of administration are also related determinants (Srivastava, 2003).

The anti-corruption programmes within the 'Good Governance' agenda are sharply contradicted by the wider economic restructuring policies prescribed by the WB. Anti-corruption initiatives provide finite resources to the relevant authorities with limited time spans. The anti-corruption institutions, suffer from cutbacks in state expenditure central to the demands of economic reform programmes while additionally needing to meet renewed demands of public scrutiny with limited or no resources. Also, institutions are frequently under attack from anti-democratic elements from local elites upon whom structural adjustment depends for their implementation. This results in a very limited conceptual understanding of the state, its institution and its relation to civil society assumed by the International institutions. The social costs of economic reforms have actually heightened the distance between the increasingly technified business of government and the task of meeting the basic necessities of the poor. State bureaucracy has been severely entrenched, poorly paid and treated as an 'enemy' by the modernising forces of neoliberalism. This opinion of the society hinders the creation of public institution as a major tool in the fight against corruption (Brown and Cloke, 2004).

2.6 Analysing corruption from historical perspective

Corrupt practices involve secret and clandestine behaviour on the part of the actors as a result of the illicit nature of corruption as much as the risk of disclosure of sensitive information.

9

<http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>

Radcliff Brown's analysis of functionalism evaluates institutional norms, which may contribute to the stability (and reproduction) of social systems that create an environment in which the socially deviant phenomena of corruption cannot thrive. Mertonian functionalism attempts to demonstrate integration of corruption into social functions. This trend can be tested in developing countries (Blundo, 2006).

The expression 'culture of corruption' or 'culture of embezzlement' or 'culture of bribes' (Blundo, 2006)¹⁰ describes situations in which corruption is systematic and generalised and therefore becomes an accepted way of life for the population. The culturalist argument can be used to explain the rampant corruption in India. Blundo and Sardan (2006) discuss two approaches: the Continuist approach and rupturist approach. The continuist approach states that corruption is endogenous in nature whereas the rupturist approach emphasises the role of change in governance and hence the adaptation of new practices suitable to it. Corruption can also be identified as the manifestation of traditional social practices and logics in modern political context. The traditional values like social appreciation of generosity, a system of gift exchange, the preference of personal contacts in the administration, and respect for elderly colludes with a modern way of life. Social norms which legitimize personalism and favouritism within an administration can lead to the development of a corrupt culture (Blundo, 2006). Osborne (1997), on the other hand suggests that there are different views with respect to bribes and gifts that are not necessarily cultural. According to Osborne, low salaries of civil servants and future uncertainties in the competitive environment also contribute toward tolerance of bribes (Osborne, 1997).

2.7 'Emic' conceptions of corruption (Blundo, 2006)

An examination of the socio-cultural constructs that inform everyday practices illustrate how ambiguous the phenomenon of corruption is due to the variations in social experience and cultural values. A gift is considered preliminary to every transaction as prescribed by the colonial system. In case of Dash system in Ghana, transfer of a material gratuity between client and civil servant helps to seal agreements and mark relationships and social events. In the case of bureaucracy, the transfer of material objects may help to establish a personal link between the client and the bureaucrat in an institutionalized system (Blundo, 2006)

A cultural explanation does not address the embeddedness of corruption as development machinery itself creates a number of rent systems that support corruption. The traditional or informal networks play an important role in determining how corrupt practices are motivated by the desire for solidarity within a kinship network. This network creates an environment of expectations and feelings of obligation arising from multiple social relationships (Blundo, 2006).

¹⁰ . Culture of Corruption,

Culture of Embezzlement, Culture of bribes are the various expressions used by various writers and incorporated by Blundo and Sardan, 2006 to describe systemic corruption.

Chapter 3 - Corruption and fighting corruption in India

This chapter describes existing anti-corruption institutional and legal frameworks and investigates the underlying lacunae which hinder the ability to curb corruption.

India is one of the oldest civilisations in the world with a veritable kaleidoscopic variety of socio-cultural and religious influences. During the last 59 years of its independence, India has achieved multifaceted socio-economic progress (Land and the people, India 2007: 1). India is both a Union of States, and a Sovereign Socialist Secular Democratic Republic that uses a parliamentary system of government. The Republic is governed based on the terms of the Constitution which was adopted by the Constituent Assembly on November 26th, 1949 and became effective on January 26th, 1950. The Constitution which envisages a parliamentary form of government is federal in structure with unitary features. The President of India is the constitutional head of the executive of the Union. Executive power of the Union is vested in the President and is exercised by the president either directly or through officers subordinate to him/her in accordance with the Constitution. The Vice-President is ex-officio Chairman of the Rajya Sabha and acts as President when the latter is unable to discharge their functions. The Union executive consists of the President, the Vice-President and the Council of Ministers with Prime Minister as the head to aid and advice the President¹¹. Real executive power thus vests in Council of Ministers with Prime Minister as its head. The Legislative assembly of the Union, which is called Parliament, consists of the President and two Houses, known as Council of States and House of the people (Lok Sabha). The Council of Ministers is collectively responsible to the House of the People. Similarly in the states (or regions) of India, the Governor is the head of the executive, but it is the council of Ministers of the state which are collectively responsible to the Legislative Assembly of the state. The Constitution distributes legislative power between Parliament and state legislatures and provides for vesting of residual powers in Parliament. The power to amend the Constitution also exists in the Parliament¹². The Constitution provides for an independent judiciary and the existence of a Comptroller and Auditor-General, Public Service Commissions and Chief Election Commissioner. The system of government in States closely resembles that of the Union. The local government consists of Municipalities and Panchayats.

3.1 Corruption: The Current Praxis

Corruption in Indian public life and services is a marker of the dominant performing style of politicians in power and is actively abetted by unscrupulous business people and acquiescent bureaucrats. India inherited a power-oriented administrative system from the British in which people were accustomed to relying on the government for their existence

¹¹ Article 74(1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as head to aid and advice President who shall in exercise of his functions, act in accordance with such advice.

¹² Article 368 of the Constitution of India states that Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of the constitution.

and progress in every sphere of activity. While concern with corruption in India is not new corruption today is a crisis that threatens to endanger India's society, polity and economy (Narsimhan, 1997:251). The Transparency International's annual Corruption Perception Index (CPI) reveals a marginal improvement in perceived levels of corruption in India. India has registered an integrity score of 3.5 and ranks 72 among 180 countries. Compared to other South Asian countries though the CPI of India is the highest; considering the economic development India is too far from developed countries¹³.

A number of ministers and governors have had to resign as a result of corruption charges (14 ministers and 3 governors had to resign during P.V. Narasimha Rao Govt. at the centre during 1991-96). Leading politicians charged in various proceedings and the involvement of the Head of the government at the centre (with reference to the *Hawala* proceedings) shows massive spread of corruption at the highest levels¹⁴. Corruption among ministers in the states is also widespread and often overlooked or even supported by the heads of government in their respective states. There are three important reasons behind formulating anti-corruption machinery in India (Vittal, 2006)¹⁵. Corruption is anti-economic development since it has an anti-consumer bias. The cost coverage in various projects and services can be traced to corruption and also leads to poor quality of services. Moreover, corruption is anti-poor and anti-national. Resources meant for the poor disappear in the black market as a result of corruption. A study on the Public Distribution System study showed that 36% of food grains and 36% of the sugar meant for PDS disappear in the black market¹⁶. Corruption is anti-national, for instance the aforementioned *Hawala* scam case

¹³ <http://www.tiindia.in/content.asp?ta=Press%20Release%20-%20CPI%202007&ma=CPI>.

The renewed interest in monitoring corruption also sparked the debate on its measurement. Corruption usually leaves no paper trail hence responses based on actual experiences are sometimes the best available and the only information. Social norms might affect peoples opinion as to corruption but still such cultural bias does not seem to be that important. Also, Government's anti-corruption strategy is one of the ways to monitor its success. Thus according to Kaufmann, Kraay and Mastruzzi (World Bank, 2006), various ways for anti-corruption policy measurements are a) by gathering the informed views of relevant stakeholders) by tracking countries' institutional features and c) by careful audits of specific projects.

¹⁴ *Hawala* scam is the case of one racketeer and his associates who influenced the country's top politicians and bureaucrats. Leaders of political parties were accused of receiving money from 'Jain and his associates'. According to CBI investigations, various bureaucrats and politicians (around 115) were paid millions of rupees as bribes. Money was paid to receive government contracts mainly in the fields of power, steel and coal.
http://vineetnarain.net/html/the_hawala.htm.

¹⁵ Speech delivered by N. Vittal (Ex. Central Vigilance Commissioner) in the April, 2002.

¹⁶ The Black Market plays an important role in the Indian economy. It refers to illicit and illegal transactions that violate price controls, rationing and other restrictions (Ray,1981).According to Govt. of Canada webpage Black Market is the place where Goods and services that are controlled or forbidden by governments continue to be bought and sold privately .Ref .on
http://www.canadianeconomy.gc.ca/English/economy/black_market.html

investigation showed a nexus between the source of funds for Kashmir militants and bureaucrats. Also, an act of bribery which allowed smuggling of RDX resulted in the killing of precious lives in the 1993 Mumbai Blasts. This shows an illustration of how corruption is anti-national. The WB decided to hold back over \$1 billion dollars meant for health programs in India due to allegations of fraud and corruption (Srivastava, 2006)¹⁷.

“The existing situation in India is perhaps most eloquently described by Wrath and Simpkins as the “scarlet thread of bribery and corruption” which “flourishes as luxuriantly as the bush and weeds which it so much resembles, taking the goodness from the soil and suffocating the growth of plants which have been carefully, and expensively, bred and tended.” (Theobald, 1999:491).

Public service organisations are headed by public servants who are expected to behave in accordance with the professed objectives of their departments. Unfortunately the system of personnel transfers which nurtures corrupt behaviour has a negative impact on their practical ability to perform at a high ethical level (Wade, 1985:467). Third parties always try to influence public officials by the payment of monopoly price. Due to the competitive preference of getting a ‘desirable post’ with good facilities, huge amounts of money is paid for the very best positions. The presence of internalized norms of corruption and carelessness in acting tough when it comes to disciplinary action, deviates from the organisational behaviour expected from the modern bureaucracy. Elections are also managed in more or less same way. The electoral votes are mainly based on the competition to offer short term material interests. The policy- oriented appeals or personal charisma of the candidate is not the basis to demand votes as most powerful figures have a personal clientele following. The demand for legislative office is high since it is a source of power and prestige. As a result, every stage of the electoral process, from obtaining the ticket of a strong party, to competition in the election or nursing the electorate between elections to retain the party ticket and seat results in enormous costs. State and national politicians have a different formula to influence which depends on ability and willingness to raise revenue. The important positions in the ministry and top secretariat positions also depend on this system of high stakes bribery, quid pro quo and financial exchanges (Wade, 1985). Democracy such as this can be described as ‘patronage democracy’ in which the state has a relative monopoly on jobs and services. In practice this means that elected officials have significant discretion in the implementation of laws allocating jobs and services at the disposal of the state (Chandra 2007:86 in Wit J. de and Berner,2008). Whereas in the government departments sometimes the internalized norms are violated resulting in conflicts between officers over transfers thus in a culture of corruption there are conflicts and disagreements even during the course of corruption.

In the government departments certain sections are more important in terms of location and ability to raise money. The conflicts over transfers can arise due to the competition to get specific desirable posts. The corruption in the offices is more influenced through politicians. For example, the Public Works Department deals with the economic

¹⁷ <http://www.asiamedia.ucla.edu/article.asp?parentid=52046>

well being of the local communities as well as large amounts of money. In case of police departments, there is always competition to get posted at certain police stations. The police stations which are strict, law abiding, placed in drought prone and rural areas are not generally preferred by the officers. As a result, the desirable police stations (where again informal norms operate and opportunities for corrupt behaviour are plenty) demand a high price for each post. The tendency to get posted and work at the places where corruption is freely nurtured is seen in almost all the departments like Labour Welfare, Transport, Excise, Civil Supplies, Electricity Board and even the Agriculture Department (Wade, 1985).

A CBI inquiry was demanded in a case of corruption involving rehabilitation work¹⁸. A large lobby of officials, employees of the state government, local advocates and other intermediaries were allegedly involved in looting the state exchequer as well as cheating the affected persons while simultaneously misappropriating a large chunk of money earmarked for rehabilitation. Fake land registries, manipulated records, and fund mismanagement in construction work were the avenues of corruption which made a mockery of even the Rehabilitation and resettlement policies directed towards project affected people.¹⁹

The rural employment guarantee scheme is another example of departmental corruption²⁰. In this case, only 25% of the jobs were actual and the remaining 75% job figures were fake job entries in job cards and muster rolls of the state. The illegal distribution of funds was done in a participatory manner among sanctioning level and executive authorities starting from district to block to Grampanchayat levels which was well organised and institutionalised. The release of funds by top authorities started only after they receive a certain percentage of money from project fund (CEFS, 2007).

3.2 Anti-corruption machinery

Anti-corruption measures may be broadly classified as preventive, punitive and promotional. Attempts to render the transaction of all government business more transparent and accountable to the people are preventive measures. Punitive measures are the laws, rules and the formalized mechanisms necessary for effective investigation, court trials, and administrative and criminal disciplinary action. Encouragement of value based politics and inculcation of moral and ethical principles among the younger generations intended to build up a kind of social ostracisation of corrupt people by the society is a promotional measure (Narsimhan, 1997:251,252).

¹⁸ The State of Madhya Pradesh Sardar Sarovar Project funded by World Bank.

¹⁹ Demand for full compliance with resettlement and rehabilitation policy and Supreme Court Order by Narmada Water Disputes Tribunal Award, made by an Organisation Narmada Bachao Aandolan. Details retrieved from <http://www.narmada.org/>

²⁰The scheme is started by Government of India aiming to involve rural people in jobs where the project implementing agency has to mandatorily show 60% of the project expenditure on account of wage employment to labourers. Centre for Environment and Food Security has uncovered a Rs 2100 crore scam in this scheme during its implementation in Madhya Pradesh.

The Prevention of Corruption Act, 1947 mentioned certain categories of public functionaries as “Public Servants” and spelled out the punishment for different acts of bribery and corruption by such public servants. The Act was comprehensively amended to include more public functionaries under the definition of “Public Servant”²¹. Several administrative measures were taken to discipline the conduct of public servants and to monitor their performance by the hierarchical command structure in government departments. Santhanam Committee, 1962²² recommendations suggested strengthening of vigilance and anti-corruption machinery in the Government.

An Anti-defection law (which received presidential assent in January 2004) aimed to curb corruption in the electoral process by limiting the number of ministers in the central and state government. Members of parliaments with offers of cabinet position are prone to change parties and destabilise government. Indeed, the law reduced incentives for corruption, but with the final authority given to the parliamentary speaker to determine disqualification for defection, political manipulation is readily available.

The Resolution on Whistleblowers (issued in 2004) assigns the Central Vigilance Commission as the agency to receive complaints by whistleblowers of allegations of corruption or misuse of office by public servants. But the legislation on the same is still pending (Transparency International, 2004:157).

3.2.1 Central Bureau of Investigation

The Central Bureau of Investigation (CBI) of India is a pre-eminent federal investigating agency that deals with anti-corruption matters as well as conventional and economic crimes²³. A major problem with CBI investigations, however, is the withdrawal of consent by political parties to carry on the investigations started by the earlier government in power. If the new party in power feels the investigation is politically embarrassing or uncomfortable, support is withdrawn. Clearly this is a serious handicap in planning anti-

²¹ “Public servants” include all personnel in service under the Central government and the state governments, all employees of public sector undertakings under these governments, all ministers in the Government at the centre and in the States, all judges and magistrates and other judicial officers and all employees of municipalities and corporations and other statutory civic bodies. The Prevention Of Corruption Act, 1988 (Amendment) Act brought all employees of universities under the definition of “Public Servant”.

²² A committee on Prevention of Corruption headed by K. Santhanam was appointed by Government of India in 1962 to examine various issues related to corruption along with the organisation, set up, functions and responsibilities of vigilance units and to suggest measures to make them more effective(Narsimhan,1997).

²³ During the period of Second World War, when large military and naval contracts were awarded, there was a need to keep a vigilant eye on public expenditure. The genesis of CBI can be traced back during the same period. It derives statutory back up from The Delhi Special Police Establishment Act of 1946(Narsimhan,1997).

corruption inquiries²⁴. A new dispensation allows CBI to register regular cases, even against top civil servants. However, there is a valid criticism that CBI usually only goes after the 'small fish'. Though the process of investigations and filing charge sheets is completed within a year or two, most of the cases registered remain pending trial in the courts for several years which is strongly suggestive of the concurrent need for the speedy delivery of justice and an increase in the number of Special courts trying Prevention of Corruption Act cases (CBI Biennial conference, 2004). Indeed, there is a need for a new law to enable CBI to make inquiries without securing the state governments consent while continuing to ensure customary discretion for top politicians as to which cases are investigated (Narsimhan, 1997:257-258).

3.2.2 Anti Corruption Bureaux

The State level corruption investigations are handled by Anti Corruption Bureaux(ACB). The powers endowed upon ACB are derived from the Police Act .The investigations carried out by the ACB are done so under the superintendence of State government. To address instances of public pressure for an enquiry into misconduct of a minister the Commission of Inquiry Act allows inquiries into specific allegations made against ministers. An inquiry commission is generally headed by serving or retired Supreme Court or High Court judge and does not have the authority to administer disciplinary action. The reports submitted by the inquiry commission are assessed by the relevant government. The process of examining witnesses both by investigating agency and the court takes a very long time and may result in an overlong and diluted process. Witnesses who are pressurised and prevaricated are a regular feature of investigation which thwarts the course of law and justice (Narsimhan in Guhan and Paul, 1997:257/258). Commissioners appointed by concerned government departments ultimately return to their parent agencies after their work is complete, begging the question as to whether they are truly independent and objective during their tenure as a commissioner. Since Commission inquiry can result in the exposure of malfeasance by high level politicians, bureaucrats or business people involved in the political establishment they are prone to pressure and even subsequent retaliation. This detracts from the objective and efficacy of the Commission of Inquiry.

The Investigating agencies formally function under government control which provides the government with ample opportunity to interfere in or influence an investigation, especially in cases where top leaders or political parties are involved. The CBI and ACBs have more recently been assisted by technical assistance and specialised staff to provide support and serve in an advisory capacity on issues of taxation, excise and other related matters.²⁵ And while computerisation has contributed to less scriptory work and easier

²⁴ In order to confer greater autonomy on CBI, the Supreme Court of India in the famous Vineet Narain Case struck down the directive issued by the Federal Government, which required the CBI to secure the clearance of the Government before launching the investigations against senior bureaucrats. For excerpts of the judgement refer <http://cbi.nic.in/judgements/excrpts.pdf>

²⁵ A Banking Advisory Board to assist CBI is set up by Reserve Bank of India in 2002 which examines apparent irregularities committed by bank officials and to identify instances of

review of cases, the enormous time required for each investigation may make the final action ineffectual (Narsimhan, 1997).

3.2.3 Central Vigilance Commission

The Central Vigilance Commission is a multi-member body and a forum for the common person to bring their complaints of corruption. The CVC complaint process is intended to ensure that the complaint comes to the attention of the appropriate department of the Government or by the CBI itself. In a way CVC enlarges the network of information for CBI. The Santhanam Committee's recommendation²⁶ to take up primary responsibility by government departments themselves for maintaining integrity and rectitude led to the introduction of a scheme of having a Central Vigilance Officer in each Government ministry, as well as government owned Public Sector Undertakings assisted by Vigilance officers for the effective handling of corruption complaints and monitoring actual functioning of the department to eliminate the scope for practice of corruption and to facilitate people in their transactions with the department which contributes to preventive vigilance. CVC will undertake an inquiry into any transaction in which a public servant is alleged to have acted for an improper purpose. One of the long awaited initiatives started by CVC is to publish the names of senior officers who were charged with violating conduct rules. The disclosure of sensitive information helps to raise awareness as well as serving as a deterrent message in the society through media²⁷. The commissioner of the CVC communicates directly with the public through messages and speeches in order to bolster confidence in the institution. Citizens can lodge complaints with confidence of anonymity or fear of reprisal (Narsimhan, 1997).

3.2.4 Ombudsman

An autonomous, independent and inquisitorial body to inquire into complaints of transgression of law by an administrative authority was first started in Sweden in 1809 and were established in various other countries with modifications regarding powers and responsibilities²⁸. In India, *Lokpal and Lokayukta* (Official names for Ombudsman in India at

criminal misconduct for further consideration of CBI. For further details refer <http://www.cvc.nic.in/ins28.pdf>

²⁶ According to the Committee Report, two main tasks of the CVC were 1) Prevention of corruption and maintenance of integrity; and 2) Ensuring just and fair exercise of administrative powers vested in various authorities by statutory rules or by non-statutory executive orders.

²⁷ Subhash Bhatnagar, 2001 World Bank, CVC Website-a bold anticorruption experiment <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTINFORMATIONANDCOMMUNICATIONANDTECHNOLOGIES/EXTGOVERNMENT/0,,contentMDK:20485999~menuPK:1767268~pagePK:210058~piPK:210062~theSitePK:702586,00.html>

²⁸ Ombudsman is a Swedish word that stands for "an officer appointed by the legislature to handle complaints against administrative and judicial actions. The Ombudsman was started

the Central and State level respectively) undertake responsibilities to make inquiries into complaints of corruption and misconduct against all central ministers, Members of Parliament and top level bureaucrats in the Government. These Ombudsmen deal with various complaints across all government areas, sending a message to public servants that their work is monitored and can be investigated by an anti-corruption agency. The political fraternity oppose Lokpal as politicians themselves are often the targets of Lokpal scrutiny. There is a need to set-up this position as a statutory body with multi members whose appointments may be made by the President so that the leaders of the opposition might have an effective role to play. A separate investigating and prosecuting wing could arguably be set up for all inquiries and prosecutions launched by the Lok Pal. In case of Lokayukats at the state level, their powers, function and jurisdiction are not uniform throughout the country. Its applicability towards the Chief ministers and elected representatives is different in various states where they are kept outside the meaningful jurisdiction of Lokayukta (Baisakh, 2005).²⁹

3.3 Non-Government and Civil Society Organisations (CSOs)

The bottom-up approach of the fourth pillar of the society constituted by CSOs and NGOs potentially plays an important role in the fight against corruption because public awareness is a crucial precondition for curbing corruption. Their interactions with government organisations help improve governance and administrative accountability. Right to information helps to fight corruption by opening governance to public participation and scrutiny. The Indian journey towards operationalising the RTI has been a grass roots struggle for transparency. The emergence of a grassroots movements such as the by Mazdoor Kisan Shakti Sangathan³⁰ in the state of Rajasthan and the organisation by Anna Hazare (Social activist) in the State of Maharashtra, have helped to pave the way for the RTI Act. The Indian Government enacted the RTI Act in 2005 and it has since become a legal weapon in the hands of common citizens to address malfeasance and abuse of power in the government.

in various countries as Finland in 1819, Denmark in 1953, United Kingdom in 1966, and Australia in 1976.

The Lokpal Bill was presented before Parliament of India in 2001. As of now, the Government could not take final stand on this bill.

²⁹ <http://www.indiatogether.org/2005/jan/law-lokpal.htm>

³⁰ <http://www.mkssindia.org/node/1>

Chapter Four - Case Studies

“Police Corruption is as old as the hills. Twenty to thirty years ago, corruption was confined to the junior levels. The supervisory level, drawn mainly from the Indian Police Service (IPS), was almost overwhelmingly free of this malaise....However, by the last decade of the century the number of those in the supervisory levels who have fallen by the wayside increased considerably.”

(Juilo Ribeiro, Former Commissioner of Police, Mumbai quoted in the Frontline Magazine, 2003, 20(24).

In this chapter, I will discuss three different cases of corruption. The cases will help to illustrate the extent to which corruption is embedded in India comprising government departments and private sector. For the purpose of case study material I have relied on specific sources listed in the references and footnotes. The events in the case studies are intertwined hence I have tried to incorporate the most relevant information in the research paper and have tried my best to avoid minor details not necessary for explanation of the cases.

4.1 Telgi Stamp Paper Case³¹

In India, stamp paper and special stamps are used for all legal transactions. It is a form of revenue for the government and a way of legitimizing government activities. A certain percentage of the revenue from stamp paper and stamps is given to the exchequer as a sort of fee. Anyone can apply for a stamp vendor permit and be given a license. In the case I outline, the main accused (Abdul Karim Ladsaab Telgi) is also known as the kingpin and central to the Organized Crime Syndicate. Mr. Telgi indulged in the printing, sale and circulation of counterfeit Government Stamps and Stamp Papers throughout India, including the cities of Hyderabad, Chennai, Bangalore, Delhi, and Indore. The investigation has still not revealed the total amount of money involved in the Stamp Paper scam but estimates vary between INR 3000 crores and INR 30, 000 crores³². The scam involved the printing and selling of thousands of crores worth of counterfeit stamps and stamp paper. During the course of investigation and on the basis of disclosures made by the accused persons, various places were searched and fake stamp papers, printing machinery, perforating machines and other raw materials used for counterfeiting were seized.

The investigations were triggered of by the complaint made by PI Ramakant Kale of Bund Garden Police Station, at Pune on 07-06-2002 following the interception of a car. Search of the car led to the recovery of fake stamps worth INR 298, 694/- (6,532.44 USD). The investigations revealed the existence of an Organized Crime Syndicate headed by Telgi

³¹ This case study is based on and compiled by the author from the True Copy of the charge from CBI.

S. K. Peshin, Additional Supreintendant of Police, CBI is the investigating Officer.

³² The value is 656,100, 012.30 USD to 6,561,000,087.83 USD Approximately.

who was responsible for the counterfeit effort. Allegations of police officer involvement were raised and it was further revealed that the officers were attempting to subvert the investigation.

As a result of these allegations, the Special Investigation Team (SIT) was appointed by the Government of Maharashtra which was entrusted with two important tasks (a) to carry out an in depth investigation into the fake stamp case and (b) carry out an enquiry of all the allegations levelled against police officers.

Prior to the formation of a Special Investigation Team (SIT), a special task force, headed by R.S. Sharma (the then Commissioner of Police, Pune), looked into all the fake stamps cases registered in the whole of Maharashtra. Ironically not a single report was submitted to the Government. It was mentioned in the charge sheet that Mr. Sharma's response to indications of corruption and subversion by the crime syndicate were not professional or thorough. As a result, Mr. Sharma was held for dereliction of duty, poor professional response, and failure to personally intervene and take immediate corrective action related to several situations. AKL Telgi obtained a Government Stamp Vending License by utilizing the services of Anil Gote in the year 1994.³³ Following the registration of a complaint of malpractices against AKL Telgi his stamp Vending License was cancelled. Despite cancellation of his license, however AKL Telgi continued to deal in counterfeit Government Stamps and Stamp paper³⁴. AKL Telgi was running an Organised Crime Syndicate by having opened up a chain of offices at various places in Maharashtra for the purpose of selling the counterfeit Government Stamps and Stamp Paper to various government department companies, banks, insurance offices and real estate dealers. Emboldened by his success, AKL Telgi began exploring the avenues for expanding his counterfeiting project and with this end in mind established contacts with individuals important to expansion efforts. During the course of the investigation by SIT several Public Interest Litigations (PIL) filed anti corruption complaints in the Honourable Bombay High Court.³⁵

³³ Former minister and Legislator C. Krishna Yadav also helped Telgi in the conspiracy and he was arrested by the Maharashtra State Police Department.

³⁴ Deputy Commissioner of Police, Pradeep Sawant was alleged of going soft when Telgi was in the Police custody. The two policemen were arrested who allegedly took Telgi to Goa and Hyderabad on pleasure trips and in connection with his business, using funds of the Police department which can be used only with the sanction of the officer of the rank of Deputy Commissioner of Police.

³⁵ Social Activist and anti-corruption crusader Anna Hazare filed a Public Interest Litigation in Bombay High Court. At the same time several offences of an identical nature involving Kingpin AKL Telgi and his gang members were registered under investigation in different States across the country. As a result the investigations of such cases pending were assigned to CBI. Cases and arrests were made at various places. In Delhi, PI Puran Singh helped Telgi's associates while investigating two related cases and his complicity with the accused was clearly shown.

The CBI investigation states that, the existing organised crime syndicate grew significantly in size and activity and was in fact carrying out illegal and unlawful activities through the use of coercion, threat, intimidation and violence. Corruption spread to the higher echelons of the police force as well as the higher levels of political power. AKL Telgi, along with the members of his Organised Crime Syndicate, used violence, threat of violence, intimidation or coercion and other unlawful means to gain pecuniary benefits and indulge in activities of organised crime.

Telgi first began developing a plan to counterfeit stamps and stamp paper during his earlier occupation in the travel business. When he landed him in police lockup for an infraction related to his work at the visa section in a travel agency he first came up with the idea to apply for a Stamp Vending License using his acquaintance with a minister. On the account of the active connivance of the police personnel, Telgi continued to indulge in unlawful activities of the sale of stamp papers and remained at large even though his anticipatory Bail was rejected by Bombay High Court Order. Telgi operated full-fledged printing press and in order to deceive the public, as well as institutions, he issued forged bills through fake accounts. One of his licenses was issued on the basis of a recommendatory letter issued by the then Vice President, Maharashtra Congress Committee addressed to the then Revenue Minister, who endorsed it as 'Please Consider'. Telgi ensured that accounts were opened in numerous banks in the names of his fictitious firms by the members of his syndicate. Telgi was convinced that using political clout for obtaining official Government Stamp vendor licenses for the purpose of camouflaging his illegal business activity was effective. Telgi developed contacts with officials in the India Security Press at Nasik, and used their technical capacities for counterfeiting activities.

To ensure the necessary protection and immunity from legal punishment, Telgi developed contacts with politicians and public servants. He then corrupted them by sharing a portion of the proceeds of the illegal activities. Telgi attempted to sabotage the investigation by paying an officer closely associated with the investigation (ACP Mulani). Mulani received a sum of INR 15 *Lacs* from a lawyer who represented the arrested members of the Syndicate as an Advocate. Unfortunately, the so called Advocate was acting more as an active member of the Syndicate in an effort to destroy to the Client-Advocate relationship, which is necessary in the administration of the Criminal Justice System. Additionally, participation of S.S.Wagal (the then Joint Commissioner of Police, Mumbai) in rendering help and support to the Syndicate through the active abetment of other officers has surfaced during the course of investigation. In as many as seven related cases Wagal was booked under MCOCA (Maharashtra Control of Organised Crime Act, 1999) for his alleged role in 'shielding' Telgi and granting him special favours. The officers were also parties to the criminal conspiracy by protecting Telgi from legal punishment through the falsification of official records. During the period of his custody at Dharavi jail, Telgi had access to all the facilities including the use of mobile phones. He was able to communicate freely and thereby continue unlawful activities even during the time that he was in police custody. Various people working in government units provided him specialised services in carrying out the unlawful activities, for example, one of the ACPs of ACB was also arrested during the investigations. In the Central Prison (in Bangalore) Telgi continued to carry out illegal activities without any hindrance and was able to continue directing organized crime operations with the aid of public servants within prison.

One police officer, who was tried to identify properties owned by Telgi, met with an all out effort by Telgi to discredit him by making a false complaint against this officer resulting in his transfer to another station. Constant pressure was maintained on PSI not to seal or seize printing machines. One of the members (Christopher) of his gang was done to death over the issue of financial dispute. It was also revealed during investigations that Telgi had influenced senior police and government officials to get other 'unwanted' police officers transferred. Seizures of counterfeit stamps and stamp papers at different places other than Maharashtra proved beyond doubt that illegal and unlawful activities of the Syndicate were flourishing in different states. The investigations also disclosed the nexus between Telgi and politicians of the day. Anil Gote approached the then Revenue Minister and helped Telgi to obtain a stamp-vending license. MLA (Anil Gote) gave his own address to ensure Telgi as a trustee of the Kisan Trust. The records of the Trust were manipulated to conceal the Telgi, MLA association. Funds moved freely as a result of deliberate camouflage by showing false and forged receipts in the name of the MPs. The tentacles of this Organised Crime Syndicate have spread throughout the country and 48 cases were registered by CBI.

4.2 The Sad Fate of a Whistle-blower in the National Highway Scam³⁶

National Highways Authority of India: Improper utilization of funds, sub-standard quality of work and domination of a whistle Blower.

The National Highways Development Project (NHAI)³⁷ is a dream project of unparalleled importance to the nation of India. Unfortunately this project turned into another opportunity for public money to be siphoned by personal gain through poor implementation at every stage. In this case, however, an employee of one of the NHAI projects sent a letter detailing discrepancies in the implementation of the project. This whistleblower was associated with the WB funded National Highway (phase -2) project, but according to him, the same issues of malfeasance exist with all the highway projects.

Preparation of Detail Project Reports by the design consultants:

The DPR, prepared by the design consultants, were in poor shape and could not be implemented without major modifications. Project design consultants made the designs and drawings with little consideration for actual ground conditions. The NHAI accepted the submitted designs with little or no scrutiny. The proof consultants used for checking DPRs submitted by the design Consultants, did only cosmetic work to the final design plans and apparently did not even open the Final DPRs submitted by the consultants before paying for the works.

³⁶ This case study is based on, and compiled from the True copy of the letter sent by Mr. Dubey to Prime Minister of India.

³⁷ Golden Quadrilateral and North-South, East-West Corridors is the largest national highway project which consists of building 5,846 Kilometres of express highways connecting Delhi, Mumbai, Kolkata, and Chennai forming a quadrilateral of sorts.

Procurement of Civil Contractors:

Additionally, the process of procurement for the highway project was manipulated and hijacked by big contractors. Contractors had submitted forged documents to justify their technical and financial capabilities. Several large contractors were able to get help, including even the most secret information and documents from the public officials in NHAI. The contractors were not screened or audited in advance of accepting their quote for various components of the highway project. While the need to make the process of selection of contractors more transparent was expressed, it was not done.

The commission to officials is linked to the contractors getting their first mobilization advance. The entire mobilization advance of 10% of contract value³⁸ was paid to the contractor within a few weeks of the award of the work contract. Unfortunately there was little follow up to ensure that the contractors were actually mobilized at the site ready to begin work. The result was that the entire mobilization advance remained with the contractors (may be diverted in other activities) for months without the commencement of work. This diversion or idling of funds also took place in the case of equipment advances to the contractors. Equipments were not purchased and even in the cases when it was purchased, were used elsewhere. Additionally, contractors were given customs and excise duty exemptions on most of the road construction equipment purchased for the project. However, because of laxity on the part of NHAI, the contractors bought equipment on behalf of or for other parties and later appropriated a portion of the excise/custom duty exemptions for themselves.

Selection of supervision consultants and design consultants:

Significant fraud took place in the selection of supervision and design consultants, which are necessary for technical expertise. In order to acquire consultant work, consultants propose to deploy well qualified and senior professionals to provide project supervision and technical expertise. The same professional figure may simultaneously be recommended in technical proposals forwarded by multiple consultants. Once the work contract is awarded, the request for replacement of proposed personnel with professionals of less qualification and experience are filed. The NHAI officials do not ask for any documentation to support the qualifications and expertise claimed by the consultations.

Subcontracting and subletting to individual project supervisors and technical experts is a problem. The NHAI conducts International Competitive Bidding to procure the most competent civil contractor for execution of its projects. The work contracts are usually awarded at a high cost in exchange for contractors' assurance of the best possible quality of work. Unfortunately, most work contracts are subcontracted to small contractors who are not capable to execute projects of this magnitude or to ensure the quality of work necessary. Thus the entire process of short listing and pre-qualification of contractors and International competitive Bidding is nullified by the process of subcontracting to the numerous petty contractors. While the phenomenon of subletting and subcontracting is well known, these manipulations are supported by public officials at NHAI.

³⁸ This value goes unto INR 4000 *crores* i.e. 874,399,989.85 US\$ approximately.

S. K. Dubey brought these concerns to the notice of the highest office of the country for kind intervention and necessary action. But Dubey who acted as a whistle blower in this case, was subsequently murdered. His request for confidentiality was apparently not honoured, making him vulnerable to pressure and threats. He requested his name to be kept anonymous³⁹. The Dubey case was entrusted to the CBI. Two suspects were found dead shortly after they had been questioned and CBI also expressed the possibility of a mafia conspiracy behind the murder.

The corruption in construction or the public works sector is higher as compared to other sectors⁴⁰. The size and scope of the construction sector ranges from the transportation infrastructure at the larger end, to domestic housing at the smaller end. The majority of contractors who do engage in corrupt practices tend to do so not because they want to but because of how the industry and the political environment operate (Transparency International, 2005). Construction projects involve a large number of participants in a complex contractual structure. The sizes of infrastructure projects are often huge and as a result, it is easier to hide large bribes and inflated claims and invoices. Most of the projects are owned by the government or require government approval. When there are not sufficient controls on the behaviour of officials and the structural and financial complexity of the projects is significant, acts of malfeasance may be relatively easy. The existence of number of contractual links can provide an opportunity for someone to pay a bribe in exchange for the award of a contract. Because there is an uncertainty in the relationship between contractors, bribes and inflated claims can easily be hidden or even blamed on poor project design or mismanagement. The construction industry places enormous dependence on the individuals who certify the correctness of the work done before it is concealed. It is therefore very difficult to check the required standards once the work has been completed. This difficulty in checking the quality and standard of the work may create an incentive for contractors to do defective work or use inferior materials in exchange for payment of bribes to relevant officials. The costs are kept secret and thus commercial confidentiality takes precedence over public interest which depicts a culture of secrecy instead of transparency in the construction industry. Bribery and deception are so ingrained that they are accepted as a norm. Bribery perhaps, is viewed as a routine business cost which many companies expect to include in the contract bid price. A company cannot act with integrity while businesses in construction are routinely engaged in deception and bribery for fear of losing out on contract awards. Thus a vicious cycle of malfeasance is created with construction contractors being obligated to engage in corruption in order to survive (Transparency International, 2005).

³⁹ Excerpts from his letter quote that-'since such letters from a common man are not treated with due seriousness, I wish to clarify that this letter is being written after careful thought by a very concerned citizen who is also very closely linked with the project... (K)indly go through my brief particulars attached on the separate sheet to ensure secrecy before proceeding further'.

Mr. Dubey mentioned his name, address, occupation details assuming it will be kept as a secret.

⁴⁰ Arms industry and the oil and gas sector also comes under the sectors with high corruption as mentioned in Transparency Internationals Global Corruption Report, 2003.

4.3 Disproportionate Assets Case: Exemplifying an expeditious Anti-Corruption institution⁴¹

This is a Disproportionate Assets case of petty corruption considering the amount of money involved as compared to the earlier two cases.

In this case, the accused, Shaikh Abdul Bari joined the service as a Junior Clerk in the office of the Superintendent of Police in November 1984. He was transferred to various stations during his tenure. He worked at the Office of the Superintendent of Police at Aurangabad (Maharashtra) from May 1987 to November 1991, the Office of the Commissioner of Police, Aurangabad and the Office of Superintendent of Police, Osmanabad. Mr. Bari is charged with possession of pecuniary resources or property disproportionate to his known sources of income. Section 13(1) (e) of The Prevention of Corruption Act, says that a public servant is said to commit the offence of criminal misconduct, if he or any person on his behalf is in possession or has at any time during the period of his office, has been in possession for which the public servant cannot satisfactorily account of pecuniary resources or property disproportionate to his known source of income. The Act goes on to describe known sources of income as those received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. Neither can a public servant avoid Section 13(1) (e) of the Act by showing other legally forbidden sources of income.

During the course of his tenure, Mr. Bari was in charge of issuing licences for running hotels, cinemas and other places of entertainment. According to the evidence on record, Bari acquired property in his name and in the name of his wife and sons (the wife and sons of accused had no source of income of their own). Thus the accused misused his position as a public servant and amassed the property by unlawful means. Additionally, Bari failed to satisfactorily account for possession of the said property and pecuniary resources. Moreover, Bari never disclosed to his appointing authority his acquisition of said property and pecuniary resources as required by the Maharashtra Civil Services (Conduct) Rules⁴². The accused was unable to prove 'Known sources of income'. When Bari was charged with disproportionate assets to income by the prosecutor, he became responsible for proving 'known sources of income' and was unable to do so. It was additionally identified that the accused received gifts without any reason. According to Bari, he was gifted with an expensive audio system. However, there was no reason provided by the accused to show

⁴¹ For this case study, True copy of the Judgement delivered is referred.

Special case No. 14/2000, The State Of Maharashtra through Jinsi Police Station (City), Aurangabad (Prosecution) vs.1. Shaikh Abdul Bari w/o Abdul Rahim 2. Saw. Najma Khatun w/o Abdul Bari (Accused).

⁴² According to the rule 19(1) of the Maharashtra Civil Services (Conduct) Rules, 1997, it is obligatory for a Government Servant to submit a return of his assets and liabilities in the form as may be prescribed by the Government.

what prompted a gift of such valuable⁴³. In this case, the wife of the accused was involved in the criminal misconduct⁴⁴. It was alleged that greed for money and property deviated the accused from the right path of discharging his duty as a public servant. Bari was convicted for the offence for having disproportionate assets (according to the judgement delivered on Aug.1st, 2005). The judgement stated that the property which was acquired by the accused through unlawful means should be confiscated. This would ensure a check of sorts on tendency public servants considering amassing property in an illegal manner⁴⁵.

⁴³ The prosecution proved that, the accused was in possession of INR 2, 85,257/- (6,240.58 USD) i.e. about 37% in excess of his income from the known sources .During the investigation; it was found that the accused had the amount of INR 2, 79, 229/- (6,108.71 USD) at his disposal by way of savings from his income. However he was found to be in possession of the property worth INR 5, 64, 486/- (12,349.29 USD), (1 INR is equal to 45 USD approx. <http://www.xe.com/ucc/>)

⁴⁴ Section 109 of the Indian Penal Code states that an act or offence is said to be committed in consequence of abetment ,when it is committed in consequence of instigation or in pursuance of the conspiracy ,or with the aid ,which constitutes the abetment and whoever abets any offence shall be punished with the punishment provided for the offence.

⁴⁵ The judgement was delivered in the court of Special Judge, Prevention of Corruption Act, Aurangabad (Maharashtra).

Chapter 5- Analyzing Corruption in the Indian context

This chapter analyses the case studies presented with the help of the theoretical framework previously outlined. For the purpose of analysis I would like to highlight certain characteristics in order to illustrate how cases can be analysed.

5.1 The Role of Police and politicians

The Telgi case illustrates the involvement of police officials and top politicians in their efforts to shield the accused. Police officials at all hierarchical levels; have supported the accused both in terms of his organised crime efforts as well as protection from criminal justice intervention. The amount of money involved in the Stamp Paper scam goes upto 766 million US\$. During the preliminary investigation and before the case was handed over to SIT and CBI, the investigation committee did not even submit the report as is mentioned in the charge sheet. This lack of due diligence is later seen in the conviction of various police officers and proves the nexus between Telgi and the police in this scam. In the same way, involvement by and support of politicians is seen from the very first step of issuing licences for Telgi's business.

In case of the preventive approach, one of the solutions reflects on increasing incentives to bureaucrats, but bureaucratic departments and political initiatives cannot be transformed into profit careers. Incentives per se can hardly outbid the briber because public servants' intrinsic motivation, cultivation of professional ethics and anti-corruption norms in the society are additional contributing factors in the prevention of corruption (Lambsdorff and Nell, 2006). To set up a corrupt deal is a challenging task. The negotiation of agreements and ensuring that each side adheres to its promises are both important and delicate aspects. The parties may be tempted to betray each other, which supports the notion that corruption is a troublesome business. Corruption is illegal and hidden from the public. These characteristics make corruption insecure as well as lucrative. The informal or parallel system is not an abstract entity but its understanding can be obtained by observing the key activities both in the institutions, various departments and society as a whole. The involvement of bureaucrats and politicians suggests a nexus between corrupt politicians and criminals where it is difficult to reveal the names. The 'conspiracy of silence' where everyone knows about each other's wrongdoings but have to keep quiet because of their own activities is the prominent feature of this model. As Shah (2004) observes, when police themselves act as law breakers it indicates the breakdown of the rule of law. In the case studies (4.1 and 4.2), the support and the involvement of top police officials for bribery and corruption suggests that the rule of law may be weakly embedded in the Indian system. While the conviction of a person in a petty corruption case (4.3) shows that law and judiciary can work, comparing this case with earlier cases (4.1 and 4.2) where police officials and politicians are involved, it is my observation that laws are applicable to some but not others, serving individual private interests over those of the public. Bribe money is shared among the officials from lower to higher ranks. Thereby protecting officials at all levels; higher officials can help other officials by conducting a formal investigation and proving them not guilty through investigative reports. The conviction of an accused in the third case also reflects that usually only the 'small fish' is convicted on corruption charges as compared

to the 'big fish'⁴⁶. It is hard to convict the 'Big Fish' because his network is capable of supporting and protecting him when difficulties are encountered as illustrated in the Telgi (4.1) case.

5.2 The Role of a Whistleblower

In the first case (The Telgi Case) outlined, a complaint was made based on suspicions. The investigation later revealed multiple level of malfeasance taking place. In the NHAI case, however, a whistle blower, an individual from within the system, filed a complaint based on actual knowledge of malfeasance with the highway construction project.

Corrupt government officials have a tendency to prioritize intensive infrastructure projects with significant capital associated due to tremendous opportunity for significant personal financial benefit (Transparency International, 2005:02). In his letter Mr. Dubey, who himself was a government employee aware of the malpractice occurring in construction projects explained the way in which secret contracts are decided, how there are always discrepancies in the documentary record, and the way implementation of construction work is carried out. One view of steering of socio-economic development towards such large projects may also result in neglecting much needed health and educational programmes. The opportunity to reap significant financial benefit in construction projects creates fertile ground for corruption. The siphoning of government monies from needed project infrastructure and services affects ordinary people in terms of essential services, life-saving medicines, and access to sanitation. According to the suggestions made by TI in its Public Procurement policy, there must be a commitment to a strict anti-corruption policy by contracting the authority and its employees (Transparency International, 2005). Taking into account the possibility for conflict of interest, there is a need to establish a mechanism for reporting corruption and protecting whistleblowers. Despite requesting that his name and identity remain anonymous the whistleblower, Mr. Dubey, was murdered subsequent to his report of malfeasance and request for an intervention. This example suggests the ingrained nature of corruption in India, an ingrained system of corruption that can and actually will suppress the voices raised against corruption. In the broader sense, this example can be applied to illustrate how and why individuals and the broader society in India are likely to follow the informal rules and regulations of the corrupt system. The mechanisms that unable the bureaucratic functions to continue advancing haven't been rooted out. The voice of a whistleblower, like Mr. Dubey is suppressed and therefore accountability mechanisms, though in place, are abused by the discretionary power of the public officials. The state induced mechanisms for accountability are not effective. For example in the newly created mechanisms of the RTI Act, the fear of information being used as evidence in a court of law by ordinary people against public officials has lead public officials to either deny access to information or provide incomplete or false information (Nagraj, 2008). Thus according to Shah (2004), the performance of watchdog agencies depends upon the governance-corruption nexus because these agencies are prone to extract rents in the countries with weak governance mechanisms.

⁴⁶ .The terms, 'Big Fish' and 'Small Fish' are used by Scott d. Taylor while explaining the corruption in Africa.

5.3 The role of Judiciary

None of the case studies discussed in chapter 4 exclusively dealt with the judicial corruption. However, in the third case we can see that the judiciary played an important and effective role. Conversely, in the Stamp paper case it was alleged that the four accused (Anil Gote, Dilip Kamath, Rashid Kulkarni, AKL Telgi-MLA and 3 police officers) were given special treatment during the course proceedings at trial.

The notion of corruption in the context of the judiciary relates to the acts or omissions by the judiciary that constitute the use of public authority for a private benefit of court personnel that result in the improper and unfair delivery of judicial decisions. Judicial corruption may also include abuse of court procedures for personal gain (Transparency International, 2007). The Constitution of India guarantees the separation of powers within the three tiers of government branches⁴⁷. As a result, a politically motivated individual within a judiciary has the power to influence judicial functioning. The fear of retribution by political leaders or powerful individuals, more often than not, wins over the risk of administrative disciplinary actions. In India, corruption is systemic within the broader justice institutions. The court clerks, prosecutors and police investigators can misuse their power without discovery as much discretion is granted in the processing of paperwork and the slow bureaucratic processes. Bribes are often solicited in an effort to get things done (Transparency International, 2006)⁴⁸. The relationship between officials wages and corruption is non-trivial because when there is no risk of punishment and it is a daily affair then additional increase in the payments does not significantly reduce the corruption (Dusek et al., 2004).

The first two case studies illustrate how money is demanded directly by the corrupt, a clear indication that corrupt individuals are confident that no worthwhile action will or can be taken against them. Thus the existing anti-corruption system for identifying and punishing the corrupt appears ineffective due to its inability to provide deterrence to people indulging in corrupt practices⁴⁹. An Independent judiciary is an essential requirement for anti-corruption efforts. However, an independent and functional judiciary alone is not sufficient to curb corruption since without outside checks a judiciary may tend to act in an arbitrary manner. In the Stamp Paper case, a lawyer offers a bribe to the top police official, which in and of itself shows disrespect for the law enforcement profession. In this context it is important to analyse how the rules governing relations between judges, lawyers and

⁴⁷ In the case of Indira Gandhi Nehru V. Raj Narain, a strict adherence to the doctrine of the separation of the powers was restated. This notion is not rigid, however, in practice it is more a question of separation of functions than power.

<http://www.legalserviceindia.com/article/l16-Separation-Of-Powers.html>

⁴⁸ The survey commissioned by TI, India and conducted by the Centre for Media Studies in the year 2005 concludes that the estimated amount paid in bribes in a 12 month period is around USD 580 million in the proportions of 61% to lawyers, 29% to court officials, 5% to judges and 5% to middlemen)

⁴⁹ Corruption in India: An empirical study.

litigants can ease or facilitate corruption. For example, the practice of judges meeting with lawyers for the defense without the presence of the prosecutor is a clear lack of impartiality and may ultimately result in case management. Moreover it is difficult to distinguish between the corruption of judges and that of court staff. Judges and their staff create delays (the delays in judicial system are apparent from the number of cases pending in the courts) in order to generate payoffs. Lower level judicial proceedings are important which decide the fate of litigation in the higher courts. Thus the initial trial proceedings give litigants incentives to corrupt lower level trial judges and court staff who can manipulate procedures (Susan Rose-Ackerman, 2004 in Transparency International, 2004). Though citizens are resentful of the existence of corruption this resentment is not properly canalised and thus CSOs and NGOs are not necessarily effective in combating corruption. The lack of administrative control, in fact, supports the corruption (as discussed in the case of an NGO from South India). The police officials and politicians have a mutual understanding which allows them to extract rents.

5.4 Culture and reciprocity ⁵⁰

There are many views on the distinction between bribes versus gifts, though the differences are not inherently cultural (Osborne, 1997:22). Corruption can exist if there is someone willing to engage in corrupt practices, someone who is corruptible. As illustrated in the case studies, it would have been impossible for a person who starts their career as a fruit vendor to end up running a multibillion dollar business unless they had the illicit support of politicians and bureaucrats (ref. to Telgi case). However, elements of tradition or culture may also play an important role. The culture to contact a chief, leader, trusted person or an authority to get work done is a regular feature in public departments in India. The system of favouritism is thus culturally rooted and mutually agreed among the social actors. Gift giving is also considered an acceptable social practice in India. As a result it may be hard to distinguish between a bribe and a gift. Gift giving often depends on the social relationship between the parties. In case 4.3 the accused received gifts from jewellery businessman. It was not easy to trace the reason behind such gifts. In the case of politicians, gift giving before elections is a regular custom. Once the election is over, giftors are likely to engage in rent seeking behaviour as a sort of quid pro quo. Indian institutions were developed under the British regime and are still influenced with the universal law codes whereas the informal institutions (include family, kinship structures, traditions, and social norms) are influenced by legal pluralism. “The pluralistic codes of clans, sub-caste, sects and different religious groups compete in various ways with the universalistic claims of rules of modern governance” (Price, 1999: 318). A public servant has to deal with various demands which are not prescribed in official rules and regulations. These demands by social and ethnic groups work on the basis of unwritten socio-cultural codes and contradict the demands of impartial and fair treatment in the public services. Politicians have to perform two-fold functions by fulfilling the demands of their constituency in terms of public services (like roads, irrigation, hospitals), and balancing the interests of socio-religious groups. Thus outwardly, citizens raise their voices against corruption on the one hand and approach politicians for favourable treatment within the public services sector on the other but the

⁵⁰ Used by Blundo and Sardan, 2006.

general population does not see how one is related to other and thus corrupt and non-corrupt activities are not easily traceable (Price, 1999).

Taking into consideration the notion of 'honour' (Price, 1999), interpersonal relations can be analysed within political and bureaucratic administrations. The position of the leader is always supported by certain ideologies of honour and responsibility. The Gods are offered with food and adorned with the gifts according to rituals. The **head of the family** is also thought in terms of family deity who is always respected and honoured. I would like to extend this logic to the 'social segmentation' whereby the political and bureaucratic leaders can be conceived as persons (morally) eligible to receive gifts and respect. This gives rise to an idea of automatically granted authority to public officials. Politicians in India are accorded this authority with an expectation that they should in turn protect the people against certain evils. This idea paved the way for gift giving in all the levels of society⁵¹. This argument can be extended to explain the way criminals are sheltered by the bureaucratic officials and later by the politicians. This gives rise to solidarity among these different groups with highly volatile and unstable relations as the notion of 'honour' loses its moral essence. The logic of a solidarity network (Sissener, 2001) where personal ties of friendships are used to gain information can be explained in the context of the Telgi case. Telgi first conceived the idea of starting a 'fake stamp' business in the prison and later, with the help of a large network of personal ties, is able to successfully manoeuvre in and around the criminal justice and government systems.

5.5 Progressive patronage?

Control of corruption is one of the six dimensions of the Worldwide Governance Indicators developed by the World Bank⁵². As discussed earlier the political, bureaucratic and public sector departments in India are prone to corruption. The grassroots led approaches are also under scrutiny due to the 'partnership mechanism' between municipal agencies, NGOs and slum organisations. The poor have to face the harsh realities of corruption (as in the case of Rural Employment Guarantee Scheme in MP). In case of the urban poor, the reliance on patronage for example, in which they prefer to rely on vertical patronage like relations or intermediaries to safeguard their livelihoods, is commonplace. The need to maintain such relations is an important strategy to be successful in the competitive environment. The brokers and patrons have links with politicians and local councillors. The informal relationships represent a patronage system that adversely affects industrialisation and democracy. Considering the huge population of India there is always more demand for services, resources and benefits than supply. Thus the direct access to various public services is very difficult or rather impossible. In such a scenario access through intermediaries, brokers and leaders is the best option which eventually leads to the 'army of

⁵¹ Pamela Price explains 'social segmentation' as the constitution of social relations in micro-units of kin-linked people and 'political segmentation' is the constitution of political relations in factions and other types of informal domains of power, influence and authority .

⁵² World Bank states voice and accountability, Political stability and absence of violence and terrorism, Government effectiveness, Regulatory quality, Rule of Law, Control of corruption as six dimensions of the Worldwide Governance Indicators. (World Bank Institute, 2008).

brokers and intermediaries' (Wit J. de and Berner, 2008). The middle classes are not an exception to the use of vertical relations of patronage and brokerage.

5.6 “Good” Governance or Neo-institutional Tinkering

The governance quality Index developed by Huther and Shah placed India in the 'fair governance' category (in Bhargava and Bolongaita, 2004). This categorisation is fair as the corrupt practices and agents of corruption are well known. Public officials are aware of corruption but they have to follow the informal rules of the system and are often unwilling to take action against corruption as the incentives for corruption are always better. The conviction of a corrupt government servant (in 4.3) shows that while anti-corruption machineries are in place, corruption is so systemic nature as observed in 4.1 and 4.2 that even the agencies charged with combating corruption may also extort rents. This shows that even the attempts to increase the wages of civil servants may have little positive impact on petty corruption and certainly not in the case of grand corruption. Another consideration is the dichotomy between dealing with petty and grand cases of corruption. In case of petty corruption the mechanisms are efficient (as in 4.3). In the case of a grand corruption, the problem is with the investigative avoidance and fear of catching a 'Big fish'. Officials are likely to overlook corruption; otherwise they cannot perform well due to 'political pressure'.

The socio-political and economic sphere operates in an ambience of nepotism. Because it is so difficult to resist the ever present temptations and rewards of getting involved in this cycle of corruption, the cycle continues. The developing economy of India remains in the hands of self seeking elites and politicians in the presence of professional and middle classes who are not "independent" in a true sense thus contribute to the widening of rich poor gap due to uneven distribution of resources. Even in this stage of state modernization, the existence of pre-modern social behaviour explains the inner continuance of informal networks in a state that externally appears as a modern and rational-legal state. As found in the case studies (4.3.1 and 4.3.2), the public officeholders focus on serving particular client groups through informal networks that support corruption. It then becomes hard to imagine the difference between public and private. Favourable conditions of corruption then become an accepted norm. Within the context of rational choice institutionalism, the abuse of public office for private gain becomes a routine occurrence in India through informal networks.

Unfortunately, institutional reforms are not the solution where corruption is embedded in political and economic systems. In India, institutional forms and procedures are deprived of administrative and political support. Moreover, there is a lack of consensus which is required for anti-corruption effort success (Johnston, 1998). Corruption in India does not explain all that is wrong but it is a symptom of deeper difficulties. It is a social process that functions as an opportunity or alternative for many people. The opportunities and alternatives available to citizens affect their vulnerability to corruption. The lack of broad based legitimacy and support of the state institutions and the economy negates the proposed solution of democracy and market economics for anti-corruption (Johnston, 1998).

The monopolisation by a few actors leads to the scarcity of alternatives which again reinforces dependency upon the corrupt system. As V. P. Singh (in Kumar,2002) explains that the nation has ample resources but appears to lack them. Citizens are compelled to

accept that the nation is poor; which is not at all the reality. In addition, the internal informal agreement between police, government officials and politicians' leads to the enforcement of informal corruption codes which as a result become institutionalized in the formal system.

Chapter 6 – Conclusion

The hypothesis of the research paper states that the corruption in India is not incidental but it is deeply embedded in the structural system. Structural causes of corruption make it systemic. The case studies discussed in the research paper reflect on the fact that emphasis of pluralist perspective on the watchdog bodies and empowerment of civil society is not the absolute remedy for combating corruption in India because social activities are regulated with various components of culture and tradition having internal rules and informal norms. The informal norms and rules can obviate official functioning and make the official system conducive for corruption. The social aspect of 'gift giving' which is not regarded as wrong, besides considered as a tradition, makes corruption hard to detect. In the context of Principal-agent model, restated by Klitgaard, the emphasis is given on strong internal controls by establishing rules and regulatory framework. Achieving the aim of reduction in the monopoly and discretionary power of public officials by strengthening institutions and empowering civil society is not applicable at present, as the 'vested interests' of few elites, politicians and public officials possess strength to subvert rules and dominate the voices raised against corruption. An innovation like Right to information Act in reducing informational asymmetries is highly commendable but citizen empowerment through this innovation is not a panacea for combating corruption. Considering the developing economy of India, in the presence of contrast situations of absolute poverty on one hand and concentration of resources by a few on the other, an attempt to promote good governance agenda through institutional reforms is not a sustainable remedy for combating corruption .

According to Robert Wade (1985:488/89), there is a need to reinforce and strengthen social sanctions without which legal sanctions are weak and can easily be circumvented. Governance involves official actions and individual decisions. Institutional reforms will only be effective when the task to ensure purity at the individual level is taken up as a challenge. Unfortunately patronage and patrimonial networks strongly supported by society dilute these efforts and makes corruption more systemic. The interaction of various forms of corruption makes it a habitual part of everyday life infused in all levels of the society with prominent systemic characteristics. The World Bank's emphasis on the good governance agenda envisages an idea establishing new institutions. The donor agencies thus support in establishment of new institutions. This approach of reforms through institutions is not relevant in India as the corruption is an accepted norm. The politicians and public officials are not willing to support the institutional reforms. The case studies reflect on the fact that institutional mechanism is operational and effective to combat petty corruption whereas in the cases of Grand corruption, vested interests play an important role to mould the government system and make it supportive for corruption. Thus the neo-institutional tinkering is a naïve and short term remedy for combating corruption in India.

The government system itself allows corruption to flourish. Policies are decided by anticipating corrupt deals between informal actors and the government, leads to benefit of a few rather than society at large. This paper has brought out that the problem is not a hierarchical system in the bureaucracy but the politicians veto over bureaucratic decisions and mutual conspiracy between both administrative and political actors to allow corrupt elements in the government functioning.

Individual ethics and set of values guide the conduct and individual behaviour. Public organisational ethics at the institutional level suggest that the public interest should override personal interests'. The implementation of code of ethics is the most important requirement in various government departments of India. But implementation of code of ethics is not realistic and is hardly of any use until and unless tendency to disregard the legal rules continue. The enactment of the Whistleblowers Act is an important step. But passing the Whistleblowers Act will be useful only if government functioning is administered in an impartial way.

Corruption is widespread in India because conditions are supportive for it. A strong motivation to earn income exacerbated by poverty and lack of risk spreading mechanisms creates opportunities to engage in corruption. In case of corruption both the parties benefit. When the enforcement officials themselves are corrupt, it is hard to blame common people. The internal network of conspiracy limits the deterrent effect of institutional mechanism. The anti-corruption organisations perform effectively to curb petty corruption but it hardly benefits in combating corruption at higher levels. The government's inability to punish those who are found indulging in corrupt practices is one of the major reasons behind people's engagement in corruption.

To increase official transparency, the excluded people from all sections of the society should be encouraged to use the range of political and economic options available to them so that they can participate and raise their concerns. However, in India various constraints for example illiteracy and poverty do not allow for equal participation of all people and thus the tendency to follow informal networks is more which allows and transpires corruption. Hence a pure reform at the institutional level as suggested by WB is not a sufficient remedy. The need is to look at systemic and deep rooted problems including the social practices and informal norms established in India over the years.

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