

Corruption in Public & Private Sector in India

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Abstract

There are many different ways that corruption can be defined but arguably the best working definition is an action of a public official for private gain. Corruption can broadly be divided into petty and big-ticket and both of these appear to be endemic in India. A large part of the corruption in India is associated with the delivery of public services and is spread throughout the hierarchy, it has high frequency but each case is characterized by a relatively low amount. Much more apparent and played up by the media is the big-ticket corruption and the recent 2G spectrum example is only one among a long history of such examples that have come up in the public domain. Corruption is not a cultural phenomenon but an administrative one. Improper allocation of discretion, not backed up by adequate monitoring, poor enforcement of laws, and lack of punishments all add up to create an environment where corrupt behavior has become more a norm rather than an exception. Add to that the inadequate use of technology within the government – IT systems, meters, and testing apparatus, etc. But clearly the critical element has to do with a surfeit of laws, rules and regulations that reduce economic freedom on the one hand and create incentives for side payments on the other. Many such laws and rules hail from pre-independence times when discretion was allocated to government functionaries without adequate controls on their functioning. But states within India are reforming, and efforts are on across the country to reduce corruption – these efforts are coming in from the political system as it is now in the self-interest of the political parties to reduce corrupt behavior by public officials.

Key Words: Corruption, Public Sector, Private Sector, Scam

Introduction

Corruption is most often defined as public corruption, corruption committed by public servants, sometimes also referred to as bureaucratic corruption. Most discussions of corruption in the economic literature also define corruption in this sense.¹ Corruption in the private sector is increasingly regarded as an issue and perhaps India's laws will also eventually capture this. But as of today, India's corruption laws are mostly about public corruption.

Within this, there is petty corruption, associated with delivery of public services. This type of corruption is different from the big-ticket corruption, such as the scams reported now and in the past.

We have had several such instances – Haridas Mundhra (1957), Nagarwala (1971), Antulay and cement (1982), Bofors (1989), Harshad Mehta (1992), Palmolein oil imports in Kerala (1992), Telgi (1995), SNC Lavalin in Kerala (1995), Sukhram and telecom (1996), fodder in Bihar (1996), Jain hawala (1997), Ketan Parekh (2001), the Barak missile (2001), Kargil coffins (2002), the Taj corridor (2003), the PDS scam in Arunachal (2004), oil for food (2005), Scorpene submarine deal (2006), stamp papers (2006), cash for votes (2008), Satyam (2008), Madhu Koda and mining (2009), 2-G (2010), Commonwealth Games (2010), Adarsh Housing Society (2010), Housing loans by banking and financial institutions (2010), Belekiri port in Karnataka (2010), food grains in Uttar Pradesh (2010), Bellary mines (2011), VVIP Helicopter deals with Augstawestland (2013), Loan waiver scam (2013) and A Cobrapost pan-India undercover investigation has accused HDFC Bank , ICICI Bank and Axis Bank of running a vast, nation-wide money laundering racket (2013). These are of the big-ticket variety. Although the dividing line between small-ticket and big-ticket corruption is not water-tight, corruption has become an issue in India because the big-ticket corruption has increased. This is more than perception. The monetary values associated with these scams have increased over the years. Not only have they increased in nominal terms, they have increased in real terms too. And since 1991, which is when the present cycle of reforms started, the frequency of scams has also increased. Despite greater external scrutiny by civil society and media, and therefore better reporting, the value and frequency of scams have actually increased. Therefore, this kind of corruption doesn't ease with economic reforms. If anything, the evidence is to the contrary. Reforms seem to throw up opportunities for big-ticket corruption, as this corruption has links with the electoral process and the role of money in elections.

An often used 'formula' on corruption goes something like this: *Corruption = (Monopoly + Discretion) – Accountability*. This has since been expanded into *(Monopoly + Discretion) – (Accountability + Integrity + Transparency)*². Though attractive, there are many nuances that need to be appreciated. Consider discretion, roughly defined as the power to judge what is to receive priority.³ Most research on corruption tends to support the notion that reducing discretion reduces the scope for corruption and thereby reduces corruption itself. Indeed, the largest discretionary abuse now concerns land acquisition, conversion of agricultural land into non-agricultural usage and building regulations, and areas where unrealistic land and building laws, and tenancy laws, have created artificial shortages. Reducing discretion is a simple enough proposition and many examples can be given to underscore the core argument. But in the argument's simplicity also lie the flaws. One, any government requires discretion in order to govern, some discretion will always be required to be assigned – the issue is therefore not so much on reducing discretion, but by how much, and to what extent. Two, who should be assigned discretion – higher orders of the bureaucracy or the lower

ones? And three, what are the forms of discretion? Discretion may simply be over the power to veto or delay, or it may be over the power to approve and sanction, or it may be both. Also consider what is required to ensure that the 'right' decisions are taken. First, decision-making requires information and knowledge of the options and their potential ramifications. Second, it requires the ability to analyze. Third, it needs the right orientation, where the objective of the decision-maker is in line with the objective of the organization (or the government in this case). And lastly, it requires the power to act.

Review of Literature:

Public organizations serve the public interests through delivering desired services. This certainly makes it imperative to study problems associated with the public sector (Schiele, 2007) to find possible challenges of critical success factors in the delivery of efficient and effective services.⁴

Corruption is such a pervasive and enduring fact in some societies that it has become an important aspect of the cultural norms and practices (Sandholtz, et al, 2000, Guhan, and Paul, 1997).⁵ Corruption comes from a Latin word 'corrumpere' which means to break something and during the action of corruption, the law, legal rule, a moral norm and in worse situations communities and human personalities are broken (Farida & Ahmadi-Esfahani, 2006).⁶

Heidenheimer (1989)⁷ categorized corruption into three forms. Firstly, public-office centered corruption is behaviour that deviates from the formal duties of a public role due to private pecuniary or status gains. The second form is market centered corruption where a corrupt civil servant regards his/her public office as a separate business and seeks to maximize his/her income. Thirdly, is the public-centered corruption where its patterns can be said to exist whenever a power holder who is charged with doing certain things is by monetary or other rewards not legally provided for, induced to take actions, which favour whoever provides the rewards and thereby does damage to the public interests. The literature suggests many variables combining to explain the phenomenon of corruption in general and public procurement in particular. For example; Serra (2004) conducted a sensitivity analysis on the determinants of corruption involving 16 variables. In that study, 4 variables were economic, 5 were social economic, and 7 of the variables were political.⁸

Objective of the Study:

1. To analyse the reason of Corruption in Public & Private Sector in India;
2. To analyse the state wise efforts to combat corruption.

Result of the Study:

A large component of small-ticket corruption is due to shortages that force the assignment of discretion where none would otherwise be required. Licensing created shortages and contrary to what we think, the license raj may have ended for manufacturing, but it is alive and kicking for many

services. This includes health and education and even electricity and water supply. For basic services, we still have problems of access and shortage, particularly among the poor and in disadvantaged regions. However, in urban and metropolitan India, and among the relatively rich, there is no shortage for LPG connections, electricity and water connections and banking. In other words, a shortage means an excess of demand over supply. Left to itself, until the supply-side adjusts, excess demand should result in higher prices. However, if the price rise is suppressed, there has to be rationing. There are sensible ways of rationing. Bribery to allocate the scarce supply is a silly way of rationing and privatizes what should be public revenue. From the point of view of corruption, we need to eliminate the licensing that creates the shortage.

The prevalence of corruption in India, and the public attention that it has been receiving can be gauged from the Centre for Media Services⁹ analysis that during 2005 to 2010, corruption coverage in prime-time bulletins showed almost a four times increase in percentage of time given for news stories on corruption. The Centre for Media Services has carried out surveys under various rounds to study the perception and real experience of people in dealing with government services. The results of these surveys are published under the 'India Corruption Study' umbrella. Many of these public services come under the purview of what is called governance. In 1997, there was a Conference of Chief Ministers on Effective and Responsive Administration. The Action Plan, emerging from the afore-mentioned Chief Minister's Conference, focused on three areas where administrative law reform was important – (a) making administration accountable and citizen friendly; (b) ensuring transparency and right to information; and (c) tackling corruption and motivating the civil services. There is also a Central government identification of departments where there is the most citizen interface. This Central government categorization mentions public grievances (electricity, water, telephone, ration cards, sanitation, public transport, police), rural services (land records, BPL cards), police (FIR registration, lost and found, missing persons), social services (pensions, land acquisition, rehabilitation and compensation, registration of licenses and certificates, ration cards, birth certificates, death certificates, domicile certificates, caste/tribe certificates, arms renewal, registration of documents, motor vehicle registration, driving licenses, school registration, university registration), public information (employment exchanges, examination results, railway, road and airline timetables, government notifications, government forms, government schemes, hospital/bed availability and services), agriculture (information about seeds, pesticides, fertilizers, crop diseases, weather forecasts, market prices), utilities (electricity, water, telephones), commercial (taxation and return filing) and government (electronic procurement). The intention behind this identification was to increasingly resort to e-governance and reduce the human interface and corruption. The India Corruption Study 2008 focused on below poverty line (BPL) households, mostly in rural India. It

covered 22,728 households spread across all over India. The study, a combination of household survey and exit interview, covers eleven public services divided broadly into “basic services” (Public distribution System (PDS), Hospital Service, School Education (up to 12th), Electricity Service and Water Supply Service) and “need based services” (Land Records/Registration, Housing Service, Forest, Mahatma Gandhi *National Rural Employment Guarantee Scheme* (MGNREGS), Banking Service and Police Service (traffic and crime)). According to this study, BPL households paid a total bribe of Rs. 8830 million in availing of the eleven public services covered. Amongst them, people experienced maximum corruption in police, land records & registration and housing. PDS, banking and school education were the least corrupted public services.

Indian laws on corruption have evolved over time. In the beginning, there was nothing but the Indian Penal Code (IPC) of 1860 and Sections 161 to 165 dealt with offences by public servants. Sections 169 and 409 of the IPC also deal with other offences by public servants. We next had the Prevention of Corruption Act (PCA) of 1947. Other than offences already included under the IPC, the 1947 PCA introduced a new kind of offence – criminal misconduct in the discharge of official duty. The Criminal Law Amendment Acts of 1952 and 1964 brought more refinements, as did additional amendments to the IPC in 1964. The 1947 PCA, the Criminal Law Amendment Acts and the IPC provisions were consolidated into the PCA of 1988, post-Bofors. Lest we forget, the Benami Transactions Prevention Act (1988) and the Prevention of Money Laundering Act (2002) also apply in a tangential kind of way.

The National Crime Records Bureau has brought out a “Crime in India” database.¹⁰ Chapter 9 of this document is on economic offences and has sections on cognizable crimes registered and disposed under the PCA and relevant sections of the IPC. Corruption-related crimes are handled through various means. Not all are cognizable. Some are handled through departmental investigations. In 2009, 3,683 such cognizable crimes were registered. There was a backlog of 5,899 cases from earlier years, so that there were 9,580 cases for investigation. Of these, charge-sheets were filed in 2,648 cases. There is a time-lag issue, in the sense that charge-sheets may be filed at some future date. Nevertheless, for illustrative purposes, the probability of a charge-sheet being filed is 0.276. There were 746 convictions. Glossing over the time-lag issue again, the probability of conviction once a charge-sheet has been filed is 0.282. We have no information on the kind of punishment that was imposed and how long the trial took. As there are no firm figures, some playing around with numbers is required. If one includes quasi-government also, there are around 45 million government employees who come under the ambit of PCA and related IPC clauses. Even if 10% of them are corrupt, there are 4.5 million government employees who ought to be prosecuted. However, the probability of a cognizable crime being registered is 0.082. The probability of a charge-sheet being

filed if a crime is registered is 0.276. The probability of conviction if a charge-sheet is filed is 0.282. Forget the quantum of punishment and the number of years the investigation and trial process takes. It is through the nature of probabilities that they are multiplied. Thus, the probability of conviction if I am corrupt is 0.082 multiplied by 0.276 multiplied by 0.282, that is, 0.006. By any definition, this is extremely low, which is why corruption is a low-risk and high-gain activity. Even if one were to take the probability of those investigated (charge sheet being filed) being brought to book, the ratio is about 0.778 (0.276 multiplied by 0.282) or 7.78 percent. In an economist's language, optimal economic deterrence must be such that the expected gain from being corrupt is equal to the expected cost from being corrupt. In today's India, the expected gain is extremely high. The expected cost is extremely low. The system encourages corruption. The problems that plague corruption-related cases flow from general problems with the criminal justice system, as well as lack of political inclination.

The State-level variations are brought out with the help of an index constructed using data from 4 five year periods – 1990-95, 1996-00, 2001-05, and 2006-10.¹¹ In the last few years, Bihar and Gujarat score much above the other States.(Table 1)

Table 1: Rating Major States on Anti-Corruption Efforts

States	1990-95	1996-2000	2001-2005	2006-2010
Bihar	0.41	0.30	0.43	0.88
Gujarat	0.48	0.57	0.64	0.69
Andhra Pradesh	0.53	0.73	0.55	0.61
Punjab	0.32	0.46	0.46	0.60
Jammu & Kashmir	0.13	0.32	0.17	0.40
Haryana	0.33	0.60	0.31	0.37
Himachal Pradesh	0.26	0.14	0.23	0.35
Uttaranchal	.	.	0.32	0.33
Tamil Nadu	0.19	0.20	0.24	0.29
Madhya Pradesh	0.23	0.22	0.31	0.29
Karnataka	0.24	0.19	0.20	0.29
Rajasthan	0.27	0.23	0.26	0.27
Kerala	0.16	0.20	0.22	0.27
Maharashtra	0.45	0.29	0.27	0.26
Chhattisgarh	.	.	0.34	0.24
Uttar Pradesh	0.11	0.11	0.16	0.21
Orissa	0.22	0.16	0.15	0.19
Assam	0.21	0.02	0.14	0.17
Jharkhand			0.25	0.17
West Bengal	0.11	0.08	0.03	0.01

One should acknowledge the importance of countervailing pressure by civil society. First, there is the central Right to Information (RTI) Act, enacted in 2005.¹² Second, there have been citizens' charters, an initiative launched in 1997. They resulted from a Chief Ministers' Conference in May 1997, where an "Action Plan for Effective and Responsive Government at the Centre and the State Levels" was adopted. Citizen charters aren't only about the Central government and its ministries and departments. They also extend to State governments. Third, some States have a Lokayukta. The first Administrative Reforms Commission, which submitted a report in 1966, had recommended that anti-corruption Ombudsmen should be set up at the Centre and in the States. This would be called the Lokpal at the Centre and Lokayuktas in States. Fourth, there might be a law for protecting whistleblowers soon. Fifth, there have been initiatives like the zero rupee note, created by a NGO named 5th Pillar. These are meant for public servants who demand bribes for public services. In similar vein, there has been the "Jaago Re" campaign of Tata Tea and Janaagraha and the Ipaidabrike campaign.¹³ Sixth, there have been initiatives like the Citizen Report Cards of Public Affairs Centre, Bangalore. The use of citizen report cards has led to improvements in the quality of service delivery and reduction in corruption. The Centre for Innovations in Public Systems (CIPS) at ASCI (Administrative Staff College of India, Hyderabad) has also experimented with such ratings. Seventh, Madhya Pradesh was a pioneer in enacting a Public Service Guarantee Act in 2010. For some public services, this piece of legislation has time-lines for delivery. If there is a delay in delivering the service, a fine is imposed on the relevant officer. Jammu and Kashmir, Rajasthan, Chhattisgarh, Himachal Pradesh, Delhi, Uttar Pradesh and Punjab have followed suit and there may also be a Central law along similar lines.

Because of these reasons, especially when monopolies have ended and there is competition, small-ticket corruption has declined, except in instances where additional public expenditure (MGNREGS is an instance) has offered new avenues for corruption. The countervailing pressure by civil society changes the demand, triggering pressure for better quality of public goods and services. However, supply-side changes require civil service reform. Despite several recommendations about what should be done, nothing has significantly changed on this. Nor have there been any improvements on the anti-corruption legal machinery. More importantly, the interface between the citizen and the government, for petty kinds of corruption, is at the level of the local body, not at the level of the Centre or the States. Supply-side changes require improvements in the channel of supply. Who determines what these public goods and services are? Who determines how resources are devoted to these? With proper decentralized planning and devolution of powers to local bodies, such questions should be answered by local bodies. However, they continue to be determined centrally and

countervailing pressure has succeeded in demanding more (and better) from local body officials, who are often inadequately placed to cater to these needs.

In addition, the big-ticket corruption is a reason for worry, though the dividing line between petty and large-ticket corruption is thin. While shortages in getting telephone connections may have disappeared, discretion in granting telecom licences hasn't come down. While transparency in government decision-making can certainly be improved, it is difficult to figure out how discretion and its abuse can be completely eliminated. Large-ticket corruption is also associated with electoral expenditure and electoral reform. These have been considered by several committees. The Dinesh Goswami Committee on Electoral Reforms (1990), the Vohra Committee Report (1993), the Indrajit Gupta Committee on State Funding of Elections (1998), the Law Commission Report on Reform of the Electoral Laws (1999), the National Commission to Review the Working of the Constitution (2001), the Election Commission of India – Proposed Electoral Reforms (2004) and the Second Administrative Reforms Commission (2008) are examples.

The 5th Report of the Administrative Reforms Commission quotes from the Vohra Committee Report and we end on that sobering and unsatisfactory note. “An organized crime Syndicate/Mafia generally commences its activities by indulging in petty crime at the local level, mostly relating to illicit distillation/gambling/prostitution in the larger towns. In port towns, their activities involve smuggling and sale of imported goods and progressively graduate to narcotics and drug trafficking. In the bigger cities, the main source of income relates to real estate – forcibly occupying lands/buildings, procuring such properties at cheap rates by forcing out the existing occupants/tenants etc. Over time, the money power thus acquired is used for building up contacts with bureaucrats and politicians and expansion of activities with impunity. The money power is used to develop a network of muscle-power which is also used by the politicians during elections.”¹⁴ There are no easy answers to this problem.

Conclusion

This paper has examined the corruption in Public and Private Sector in India but there is need to explore much more in this regard as corruption is coming with new ways also and stringent law are needed to check on corruption.

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