

IMPACT OF CORRUPTION ON CORPORATE GOVERNANCE AND ANTI-CORRUPTION MECHANISM
TO COMBAT CORRUPTION IN INDIA

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“Corruption is the enemy of development, and of good governance. It must be got rid of. Both the government and the people at large must come together to achieve this national objective.”

Pratibha Patil

Abstract:

Corruption is a trenchant drain in the context of public trust on corporations. The problem of corruption is persistent in almost all sectors in a developing country like India. Corporate governance is basically concerned with balancing the interests of a company's many stakeholders, such as shareholders, management, customers, suppliers, financiers, government and the community. The four principles of corporate governance i.e. transparency, accountability, fairness and responsibility should be followed to prevent corruption in organizations. The economic development of the country and corporate governance mechanism are interrelated. Corporate governance has been considered as a cornerstone for economic development by ensuring the adequate use of resources. Further, a good corporate governance system of a country can attract both domestic as well as foreign investment. The objective of this paper is to study the corruption level in the Indian corporate sector, its impact on corporate governance and the anti-corruption mechanism to combat with the issue of corruption in India. The study will recommend the anti-corruption policies, laws and strategies to preclude the problem of corruption in India.

Keywords: *Corruption, Corporate Governance, economic development, Indian corporate sector, anti-corruption mechanism*

Introduction

Corruption is a global phenomenon and can be seen almost in every society in one or the other form since time immemorial. Corruption has increased considerably and is now rampant in our society. But it has severe

ramifications and consequences for the building a democratic situation, promotion and protection of fundamental rights. Corruption is an incurable disease that is caused by many social and economic evils in the society. Corruption is a threat to our society. It is also as old as mankind. Corruption can be defined as the misuse of entrusted public power (by elected politician or appointed civil servant) for his/her private gain. It damages the moral and ethical standards of the society. Corruption leads to emergence of many evils in the society. Once the seed of corruption starts growing it will start to grow instantly and flourish with its deep roots. It passes through the whole Nation and becomes a perilous disease that can't be easily cured.

Corruption is a hidden phenomenon in our societies. The parties involved in the transaction keep it as a secret for the privileges of both the parties. Now it is difficult to establish how wide and deep corruption penetrated our economy and social life. For instance, one may consider something as 'a friendly turn' that may be 'misbehaviour' for others. Normal behaviour of a person at a particular time of the day may be unacceptable at another time. Corruption has been considered one of greatest challenges disrupting the growth and development of contemporary India. India's economy has not realized its true potential as corruption has, in the present scenario, inhibits and undermines not only the economic growth, but also the effective functioning of democracy in the nation. No doubt, corruption is prevalent in every field of life. Efforts can be injected to minimize it to a certain extent but its complete elimination is not feasible when it is deeply rooted in our society.

Corruption and economic development

"The more the corruption, the slower the economic growth."

Corruption has made the poverty level in India a worse phenomenon as it impedes the whole country's development down by stealing its scarce resources. When we think about it, if 85% of public money doesn't go to the hands of needy and poor people, this money surely doesn't land in more than a hundred people's hands. Corruption leads to increased inflation and then again more poverty, India's been developing and it's of utmost significance to polish its image especially to reassure investors of the stability of the Indian market. Corruption also have an impact on investment and market stability by increasing uncertainty. But people are also energized to take action against corruption and stepped up in the fight against corruption and citizen websites such as ipaidabribe.com have gained momentum during recent times. However they still confronts other problems because of the nascent stage of the judicial system.

Impact of bribery and corruption on India's economy

According to a recently released biannual country update by the World Bank, the overall outlook for India remains positive with its economic growth expected to accelerate to 6.1% in FY2014.

However, our survey respondents believe that increasing corruption can act as a speed-breaker in the India growth story.

- Around 83% of respondents felt that the recent spate of scams can negatively impact FDI inflows into the country
- Seventy-three percent of investors are expected to bargain hard and factor in the cost of corruption at the time of entering transactions
- Around 77% of the respondents think that it is the responsibility of the Managing Directors to handle the bribery and corruption-related issues in the organizations
- Nearly 50% of the respondents said their companies have lost business to their competitors because of the latter's unethical conduct
- According to 73% of the respondents from PE firms, a company operating in a sector that is perceived as highly corrupt, may lose ground when it comes to a fair valuation of its business.

Corruption and Indian corporate sector

"Corruption colours the Indian corporate sector."

According to a new survey of large local and multinational companies across industries worldwide, India has been found to have highest percentage of companies where fraud specifically corruption and bribery has been detected to a large extent. The problem is severe in emerging countries like India, where 80 per cent of the people came across some sort of fraud in their firm. India is more prone to fraud cases than any other country. For instance, the survey revealed that Indian respondents were most likely to come across corruption and bribery cases, money laundering, regulatory breaches and theft of intellectual property. The corporate scandal at Satyam is a leading example where the chairman of the company himself confessed that he had manipulated company's accounts.

Statistics revealed that globally, 11 per cent of executives surveyed reported that they have discovered cases of in-house corruption and bribery, whilst in India, 25 per cent of respondents reported that they came across such types of fraud in the past year. In comparison, this percentage is just 18 percent in China and 20 percent in Russia. According to Wall Street Journal, one reason accounting for India's higher rank than some of its emerging market peers might be because in recent years more and more Indian companies have started reporting and confronting corrupt practices.

Fraud cases and corrupt practices has been a growing problem, both for Indian companies and investors, but the part of the problem is non-compliance with the accounting standards and financial regulations. For instance, auditing of company's balance sheets is supposed to be voluntary but sometimes it is carried out by auditors who are too close to the company's management. In addition, the standards for corporate governance within Indian companies are comparatively low. Bribery to government officials is a common issue but one another key issue for Indian companies is executives taking bribes to give a big order to a vendor, or to hire someone. One-fifth of the Indian respondents had found instances of regulatory or compliance breach, compared to a global average of 12 per cent. India appears to be in a slightly better position compared to the global average on a handful of matrices, including the theft of physical assets. Globally, 22 per cent of respondents reported that they came across theft cases, but only 17.5 per cent of respondents from India said they had come across such cases.

Indian corporate sector has reported maximum cases of corruption and bribery practices. Traditionally, only public sector has reported maximum cases of fraudulent and corrupt practices. But, as corruption can be seen anywhere and everywhere, the private sector organizations are also indulged in corrupt practices. The employees working in these corporations belong to a particular society. So, the norms, value system of that particular society and the family factors along with individualistic factors result in corrupt practices on the part of executives working in these corporations. The performance of the corporation along with its human capital helps in building an image in the minds of society, stakeholders, customers, suppliers and government as well. The corrupt practices opted by the executives of the corporation will devastate the goodwill of the organization in the market. A corrupt practice by one executive in the organization will further induce other employees to indulge in such practices. Such a tendency on the part of employees will affect the company's performance in a critical way.

Notable scandals in Indian corporate sector

Scam	Year	Amount (in crores)	Place	Scammers	Notes
Saradha Group financial scandal	2013	40,000	West Bengal	Kunal Ghosh, Sudipto Sen, Madan Mitra and many more ^{[1][2][3]}	Financial scam caused by the collapse of a Ponzi scheme run by Saradha Group, a consortium of over 200 private companies that was believed to be running collective investment schemes popularly but incorrectly referred to as chit funds . As a result of this scam (Odisha and W.B), Rajya Sabha MP Kunal Ghosh (All India Trinamool Congress) is in jail since Nov, 2013 for interrogations. Odisha MP Ramchandra Hansda (Biju Janata Dal) MLA Pravat Tripathy (Biju Janata Dal) and former Odisha MLAs Subarna Naik (Biju Janata Dal)and Hitesh Kumar Bagarti (Bharatiya Janata Party) have also been arrested for ponzi scam. Rajya Sabha MP from West Bengal Srinjay Bose (All India Trinamool Congress) has also been arrested. West Bengal transport minister and All India Trinamool Congress MLA Madan Mitra was also arrested. ^[11]
Abhishek Verma arms deals	2012	80,000	Defense sector	Abhishek Verma , Anca Verma	Defense scandal caused by an American attorney who turned whistleblower after hacking into emails and documents

Scam	Year	Amount (in crores)	Place	Scammers	Notes
scandal					retained on the US based servers of arms dealer Abhishek Verma who is globally known as 'Lord of War' and his wife former Miss Universe Romania Anca Verma 's global weapons companies SIG SAUER and GANTON. Leaked documents were sent to Indian politicians Arvind Kejriwal & Prashant Bhushan who released these to the press as a result CBI and Enforcement Directorate arrested Abhishek and his wife Anca in multiple cases of defense sector purchases related corruption & money laundering ^[17] aggregating to US\$12 billion (₹80,000 crores). Presently, Abhishek and his wife Anca are incarcerated in Tihar Jail Delhi awaiting trial.
Common Wealth Games Scam	2010	70,000	New Delhi	Suresh Kalamadi, Sheila Dikshit - the then Chief Minister of the State.	It is estimated that out of ₹70000 crores spent on the Games, only half of the said amount was spent on Indian sportspersons. The Central Vigilance Commission, involved in probing the alleged corruption in various Commonwealth Games-related projects, has found discrepancies in tenders – like

Scam	Year	Amount (in crores)	Place	Scammers	Notes
					payment to non-existent parties, will-ful delays in execution of contracts, over-inflated price and bungling in purchase of equipment through tendering – and misappropriation of funds.
Indian coal allocation scam^[21]	2012	185,591	National	Comptroller and Auditor General of India , the coal ministry, many electricity boards and private companies	coal blocks allotted, not auctioned, leading to estimated losses as per the Comptroller and Auditor General of India Supreme Court cancels all 214 coal blocks allocations since 1993. Government to e-auction the coal blocks now.
Uttar Pradesh NRHM scam	2012	10,000	Uttar Pradesh	Mayawati , Babu Singh Kushwaha	Babu Singh Kushwaha and IAS Pradeep Shukla behind bars for their involvement in NHRM scam.
2G scam	2008	176,000	National	Nira Radia , A. Raja , M. K. Kanimozhi , many telecommunications companies	communication bandwidth auctioned for lower than market value. A. Raja and M. K. Kanimozhi have been in Tihar Jail for 15 months and 5 months respectively. They have been charge framed.
Navy War	2006	18,000	Defense	Abhishek Verma , Ravi	Arms Dealers Abhishek

Scam	Year	Amount (in crores)	Place	Scammers	Notes
Room Leak scandal			sector	Shankaran assisted by other defence personnel	Verma and Ravi Shankaran compromised senior defense officials working in the Navy War Room located inside Prime Minister's Secretariat in India & obtained sensitive data pertaining to military purchases & ongoing defence acquisitions for securing lucrative multibillion-dollar contracts relating to Scorpene Submarines deal of the Indian Navy worth US\$6 billion. Ravi Shankaran fled to United Kingdom in 2006. Red corner Interpol notice was issued for him. Even after 8 years of arduous legal battle in UK Courts, Indian Govt failed in his extradition. Abhishek Verma was granted bail in this case in 2008 by Delhi High Court.
Uttar Pradesh food grain scam	2003	30 ^[39]	Uttar Pradesh	Mulayam Singh Yadav , Mayawati	Food which the government purchased to give to the poor was instead sold on the open market

Corruption and Corporate Governance

Corporate governance is the set of rules, regulations, processes and practices that direct and control the affairs of a company. Corporate governance involves balancing the interests of shareholders, management, customers, suppliers, financiers, government and the community. Corporate governance provides a framework for achievement of organizational goals.

“Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals...the aim is to align as nearly as possible the interests of individuals, corporations and society.” - Sir Adrian Cadbury

Corruption is the outcome of poor governance. Corporate governance introduces such control systems that leads to foster accountability and disclosure practices in the organizations. Good governance can become a tool for risk mitigation. Companies with good governance presents less agency risk to its shareholders that will result in lower cost of equity capital for the Company. Exercise of good governance in a company is dependent upon the moral characters of the executives of an organization. Corruption can't be eliminated at all but its further growth can be restricted by initiating efforts on individual level. If every person in the society assumes their moral values and responsibilities on personal basis, the problem of corruption can be cured to a certain extent.

Impact of Corruption on Corporate Governance

Recent studies in the field of corporate governance revealed that the operating performance of the company is associated with standards of corporate governance. A company's low corporate governance standards increase the cost of its capital, impede the flow of investment and lower the operating performance of the industry. But the good governance standards of a company can help to prevent corruption or at least can limit its negative consequences. Good governance is based on socially acceptable principles, promotes honest and responsible behavior. Similar like business transactions, corruption has two sides i.e. demand side and supply side. Government sector lies on the demand side that can provide undue advantage in exchange of certain payments. The private sector stands on the supply side that refers to those who are seeking and willing to pay to avail undue advantage from the government.

Good corporate governance can act as an anti-corruption tool. Corporate governance injects transparency and accountability in the system to prevent corruption. Corporate governance practices can't exist in vacuum, companies also find it difficult to follow the corporate governance regulations. Ethical and moral values on

personal level and legal framework on government's initiative can help to prevent corruption. The process of fighting with corruption should start at individual level. Corporate governance standards on its own level can't act as a panacea for all corporate evils.

Corporate raiding not only gains a portion of company's profits but rather these are to take over the whole business through schemes such as litigation, land or asset allocation, corruption-tainted bankruptcy in the companies. Such schemes are often intended to prove that a company's corporate documents depict false results. Preventive as well as punitive measures are popular all over the world as a solution to the problem of corruption. Preventive measures work through the legal framework of the country and further society's moral norms are used to eliminate corruption practices. Examples include the quality of procurement laws, business regulations, codes of conduct, freedom of information legislation, and independent oversight mechanisms. Punitive measures, on the other hand, are the post facto prosecution and application of specific sanctions to acts of corruption, with the intention to generate untenable costs that deter future corrupt behavior.

Corporate governance principles tend to eliminate corruption in the country but the problem of corruption is grassly rooted in India. So it is not easy to cure this disease from India due to the insufficiency of government efforts and poor legal framework. The requirement is of a transparent legal system to combat corruption from its roots. Though legal framework is there to prevent this problem but further amendments in the laws can increase the chances of curing the disease in a proper way. But the ultimate elimination will be possible only when each citizen of the nation will assume their personal responsibility for non-engagement in corrupt and fraudulent practices.

Anti-Corruption Mechanism to Combat Corruption in India

Indian policy on prevention of Corruption

During reign of British, when Lord McCauley drafted the Indian Penal Code, he enumerated in the Sections from 161 to 165-A of Chapter IX which specifically relates to the offences by or relating to public servant. Section 171-B to 17-E of Chapter IX-A of Indian Penal Code, 1860 deals with political corruption in particular. Even though these provisions confined to the election matters, while defining and considering particular act as a corrupt or not a corrupt these provisions play vital role.

Delhi Special Police Establishment Act, 1946

Corruption assumed very vast proportion and become a very big administrative problem during Second World War. The longer period of scarcity during this period spread this virus of bribe and corruption among all the rank of civil servants. To tide over this situation in 1941 the Special Police Establishment was designed to investigate problem of bribe and corruption. Initially its responsibility was to investigate cases of bribe and corruption in the transaction of war and supply department of India. At the end of 1942 its activities were extended to cases of corruption in the Railway department because Railway department was strategically concerned with the movement with and supply of war materials. In 1946, by enacting Delhi Special Police Establishment Act, 1946 statutory status was given to DSPC and the Act authorizes the Special Police Establishment to investigate all departments of corruption in India.

Prevention of Corruption Act, 1947

In 1947 Prevention of Corruption Act was brought on the Statute book to make more effective provisions on the corruption and bribery. The Prevention of Corruption Act ("PCA"), originally enacted in 1947, was the first major law enacted to combat corrupt governance. At the time, World War II was ending and the Indian government found itself in possession of large amounts of government surplus. The original purpose of the PCA was to deter officials in charge of post-war reconstruction and disbursement of government money from cashing in on the opportunity to squander the surplus.

Central Vigilance Commission Act, 2003

Even though the Santhanam Committee recommendations accepted by Government half heartedly some extent certain positive and welcoming steps were taken by Indian Government against corruption. Constitution of Central Vigilance Commission was one among such potential and fruitful measure. Contrary to committee recommendation, instead of setting up of Statutory Commission of high officials, the Government set up a Commission of nonofficial body. Till 1998 the Commission existed as a body authorized by an administrative order and didn't have any statutory backing. The Supreme Court in Vineeth Narayan Case²⁵ directed to the Central Government that the CVC should be made into a statutory body to strength its teeth against corruption. Accordingly the CVC Ordinance 1998 was passed on 25 August 1998.

Central Bureau of Investigation

In 1963 Central Bureau of Investigation was created and incorporates DSPE as its investigative and anticorruption division. However the time the anticorruption cases of CBI were weakened as the agency was

increasingly asked to investigate conventional and economic related crimes. As the result in 1987 the Bureau was divided in to two divisions i.e. Anti-corruption Division and Special Crime Division. Presently CBI is one of the effective anticorruption institutions in the country encountering corruption cases through its Ant-corruption Division.

Prevention of Corruption (Amendment) Act, 1988

In ordered to curb and combat with corruption which is growing very fast in all spheres, the Parliament enacted one more Act called “The Prevention of Corruption (amendment) Act 1988”. This act gave wider definition to the “public servant” compared to the earlier Act 2 of 1947. Some of the major changes brought into the Prevention of Corruption Act, 1988, are as under:-

- a) The definition of .public servant. has been enlarged;
- b) A new concept of public duty has been introduced for the first time [Section 2(c)(viii);
- c) Minimum sentence of six months has been prescribed for the offences committed under the Act. The Courts have been denied any discretion, either for special or adequate reasons, to reduce the sentence from six months;
- d) The State Government or as the case may be, the Central Government has now the power to make an application to the District Judge for the attachment of the money or property which is believed to have been acquired by the public servant by corrupt means;
- e) The concept of .known sources of income. has undergone a radical change. This now means not only the income received from any lawful sources but also that such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to the public servant.

Lok Pal and Lokayukta Bill

Addition to the above stated steps, further tasteful and remarkable step taken by Indian Government against corruption was attempts towards constitution of Lokpal and Lokayukta institutions. The Administrative Reform Commission in its interim report on “Problem of Redressal of Grievances” submitted in 1966, recommended for the constitution of two tier machinery of Lokpal at Centre and Lokayukta at States. To give effect to this recommendation, a Bill called Lokpal and Lokayukta Bill has been introduced 8 times in as many as Lok Shabha and has been put to an unnatural death thereafter.

Right to Information Act, 2005

The RTI is a major legislative step in the Indian anti-corruption movement. This law, enacted in October of 2005, effectively reverses the Official Secrets Act by forcing public authorities to regularly self-report information about their dealings and also to provide specific information in a timely manner as requested by citizens. In addition to facilitating transparency in the duties of all public workers, the RTI can reach private bodies to a limited degree.

The Public Interest Disclosures and Protection to Persons Making the Disclosure Bill, 2010

Whistleblowers play a crucial role in providing information about corruption. Public servants who work in a department/agency know the antecedents and activities of others in their organization. They are, however, often unwilling to share the information for fear of reprisal. There is a very close connection between the public servant's willingness to disclose corruption in his organization and the protection given to him and his/her identity. If adequate statutory protection is granted, there is every likelihood that the government would be able to get substantial information about corruption. Realising the need of hour the Indian parliament has decided to come out with specific legislation on whistle blowing and introduced the Bill in the Parliament.

2011 Indian anti-corruption movement

The 2011 Indian anti-corruption movement constitutes of a series of protests for the Jan Lokpal Bill that sprang up across India especially after April 5, 2011. The protesters want the Government of India to draft a strong anti-graft Lokpal Bill which follows the originally drafted Bill and not the changes the Government plans to bring in, which will make the Lokayukta just another advisory body with no actual power in the vast Indian bureaucracy. Following continuous calls in vain to the Government to work effectively towards passing the Bill, a renowned civil society activist and Gandhian Anna Hazare, went on an indefinite hunger strike unto death until his demands in support of the Bill were met. Anna demanded for a joint committee of civil society members and government representatives to draft a strong anti-graft Bill.

Conclusion

Corruption is a widespread phenomenon on global level. It is prevalent in both public and private sectors. The corrosive power of corruption is affecting business competitiveness of the country. No doubt, there are several

legal and policy framework and also the National level strategies that are involved in the process of combating corruption but still success in this direction seems to be long way into the future. India requires an unambiguous road map for building commitment on personal as well as government level to cure with the panic disease of corruption. The success of prevention of corruption is depending on the integrity and efficiency of the investigating agencies, the State police or the Central Bureau of Investigation (CBI), and the independence and competence of the prosecutor. If the investigating and prosecuting authorities fail to meet this quality, the achievement of the motto of anticorruption laws definitely will be the distant dream.

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