

Chapter 5

Conclusion

Corruption never has been compulsory.

-Anthony Eden

In his foreword to the UN Convention against Corruption, the then Secretary General of the United Nations, Mr. Kofi Annan wrote, "Corruption is an insidious plague that has a wide range of corrosive effects on society. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and it allows organized crime, terrorism and other threats to human security to flourish...this evil phenomenon is found in all countries, big and small, rich and poor – but it is in the developing world that its effects are more destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining the government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and the major obstacle to poverty alleviation and development".⁸⁹ Thus requirement of an institution which can address complaints of maladministration and enquire/investigate into allegations of corruption, cannot be understated, especially in a country like ours which is world's largest democracy and lays claim to one of the world's largest

⁸⁹ Kofi Annan, *Foreword to UN Convention Against Corruption*, United Nations, New York, 2004

bureaucracies, with the Indian government directly employing as many as 10.5 million people at both the federal and state level⁹⁰.

To ensure that India gets a powerful and an independent Ombudsman it needs to be recapitulated what we had discussed in the third chapter that the term ombudsman refers to an institution which has three main features, namely, it is independent and non partisan officer of the legislature who supervises the administration, he deals with specific complaints from the public against administrative injustice and maladministration and he has the power to investigate and criticize and report back to the legislature. India in fact can learn from some of the best. For example India can see and learn from the experience of Hong Kong where setting up of an ombudsman has been a great success.

The Office of The Ombudsman, Hong Kong (formerly known as The Office of The Commissioner for Administrative Complaints) was established in 1989. The office was formally delinked from the Government after The Ombudsman (Amendment) Ordinance came into operation on December 19, 2001. The Ombudsman is appointed by the Chief Executive of the Hong Kong Special Administrative Region Government. He serves as the community's watchdog to ensure that:

- bureaucratic constraints do not interfere with administrative fairness
- public authorities are readily accessible to the public
- abuse of power is prevented
- wrongs are righted

⁹⁰Praveen Kishor, *Cleaning the Rust: Reforming the Steel Frame of India's Civil Service*, Harvard Kennedy School Review: 2011 Edition

- facts are pointed out when public officers are unjustly accused
- human rights are protected
- the public sector continues to improve quality and efficiency

Keeping in mind the above points it can be easily seen and as was evident from the discussion in the third and fourth chapters, the Lok Pal bills so far formulated in India have lacked coherent direction and concrete agenda except for the first two bills. In fact as has already been seen, the present Lok Pal bill is not only contentious but also confusing. In perhaps wanting to please everyone the bill has landed up pleasing no one.

For drafting a coherent, meaningful and comprehensive Lok Pal bill Huntington's four-fold typology of institutions which includes autonomy, coherence, complexity and adaptability would have been useful.⁹¹ Autonomy according to Huntington points to a structural matrix that is free of administrative oversight and financial pressure. A coherent profile of an institution, such as Ombudsman as an arbiter of conflict and deliverer of social justice is essential for its proper functioning. Complexity is a positive not a negative factor. The more internally differentiated structure it will have, the more efficient its performance will be. Adaptability reflects sensitivity to change in time and space.

Using the above typology for Lok Pal in India especially against the background of previous chapters, it can be said that a good Lok Pal would essentially need to be autonomous and free from government control and interference. Coherence is extremely important as the present bill basically lacked coherence. With the heavy involvement of the civil society and the wide variety of suggestions that were given by the politicians, commentators, analysts etc the present Lok Pal

⁹¹ Dr Mohammad Waseem, *Independence of Ombudsman*, Lahore University of Management Sciences

bill had some overlapping and confusions regarding jurisdictions. As stated above complexity is taken as a positive factor and not negative. However, in the current bill it was seen that the structure of the proposed Lok Pal was so complex that it became a negative and not a positive factor. The Lok Pal would essentially need to be adaptable as India is an ever changing country which requires organisations to be open and amenable to change. Ombudsman, the institution, has demonstrated its ability to thrive in quintessentially different socio political systems in the world and it is felt that the Indian counterpart would also need to be the same.

The setting up of a Lok Pal in India will be a big step forward in creating a grievance redressal system and a system to address the problem of corruption. However, it can be safely stated on the basis of the review of existing anti corruption mechanisms in India done in this study that the usefulness of any institution depends on not only its character, jurisdiction and powers but equally on toning up of the larger environment of which it would become a part.

The Lok Pal cannot be a panacea for all administrative ills or a substitute for good and efficient administration. It would need comprehensive reforms for effective functioning. Reforms by way of improving administrative procedures, strengthening parliamentary procedures, legal aid being made available, simplification of court procedures and reviews and more opportunities and channels being made available for settling disputes.

Despite introduction of the Lok Pal bill eight times and attempts made of enacting it through Private Members Bills (In 1967, 1982, 1983, 1984, 1996, 1995) each of the attempts has failed. It seems as if god does not will it. The difference of opinion as seen in the 2011-2012 bills has been seen even earlier. What has to be ensured is that the bill is so designed and the apparatus so structured that it not only removes corruption but also creates a social climate in which

corruption is seen as a social ill and the corrupt are punished. It has to be realized that an institution like Lok Pal should set an example by itself. One cannot by any way assume that the Lok Pal will solve the problem of corruption. It is the policies that create opportunities for corruption that have to be changed.

Creating a Lok Pal with unbridled powers above the government, Parliament and judiciary cannot serve national interest in the 21st century and proper checks and balances should be applicable to the Lok Pal also lest he becomes a law unto himself.⁹² Taking the argument further Dr Bharat Jhunjhunwala writes that the process of appointment of Lok Pal as given in the draft bills ensured that the government would have a say in the appointment.⁹³ Therefore, the independence and the autonomy of the Lok Pal cannot be ensured. Without being independent of the Government, it is feared the Lok Pal would meet the same fate as that of the judiciary, the CBI and the CVC.

The theoretical analysis of corruption as a phenomena and the application of the same in the Indian scenario which have been studied during the course of this work suggests that Lok Pal or JanLok Pal or social activists or the civil society cannot make corruption disappear like a magician. It is too deep rooted and too well entrenched in India to be eradicated completely in a short time.⁹⁴ The draft JanLok Pal bill discussed in the fourth chapter was criticized for reflecting a lack of understanding of the functioning of the government. It was also seen that the draft presented by one section of the civil society was very different from the draft given by the other group. This leads one to question whether involving civil society in legislation is actually practicable. One point of view is that drafting government bills is the governments business and

⁹² Surendra Kumar, *Anna Hazare can't stop Shri 420*, The Tribune, New Delhi, 19 April 2011

⁹³ Dr Bharat Jhunjhunwala, *Have independent power centre*, The Free Press Journal, Mumbai, 11 July 2011

⁹⁴ Surendra Kumar, *Anna Hazare can't stop Shri 420*, The Tribune, 19 April 2011

law making the responsibility of the Parliament. Civil society can work as a watchdog but it cannot assume the role of the law maker as it is not a role that it is ordained to play. Though one can appreciate the entire civil society movement for putting the issue of Lok Pal on the national agenda, one needs to take them with a pinch of salt. Fresh with the success of the RTI campaign the civil society came into the Lok Pal arena. Civil society is an amorphous entity in India still and as was seen in the Lok Pal agitation described in the fourth chapter it did not have a uniform view in the matters concerning the Lok Pal bill.⁹⁵

A look at all the Lok Pal bills presented in the Parliament which have been discussed in the third chapter highlight that each one had some notable features which could have been incorporated in the latest bill. Though a little bit of this was done, it is noticed that the legislation got derailed as points of dispute were more than the points of agreement.

A fear was also expressed that the Lok Pal may land up as a Frank steins monster without accountability and act as an oppressive institution outside the state. Questioning the very structure of the Lok Pal as given in the current bill, Shekhar Gupta, editor of Indian Express asks whether in the fight against corruption, Indians are willing to shuffle the great constitutional arrangement of checks and balances, separation of powers and responsibilities within the existing institutions. He asks whether we should create an institution that is a cop cum prosecutor cum inquisitor cum judge at the same time in a “na appeal, na vakil, na dallil” kind of syndrome. Does India actually need an institution that will override the judiciary and Parliament; will have powers to search and seize and with time will appoint his own successors??⁹⁶

⁹⁵ Kuldip Nayar, *Shifting Stance*, The Statesman, New Delhi, 2 June 2011

⁹⁶ Shekhar Gupta, *We the thieving people*, Indian Express, 23 April 2011

Fighting corruption, therefore, requires a multi pronged approach as there are no quick fix solutions. To tackle corruption one must attack the root cause of the problem and that is a total decline in moral and ethical values in the country. What actually works is a system of checks and balances, a system that encourages affirmation of positive values rather than merely rejecting the negative values. To quote Dr A.P.J.Abdul Kalam, what India needs is "...a grassroots initiative to create a new generation of Indians that learn the virtue of integrity at an early age...we need to ignite and inspire their minds." He advocates building on a Home Pal as that will give the young a new direction and will then steer the country in a new direction. Inculcation of ethical and moral values in children is essential.⁹⁷

David Nussbaum, former Chief Executive of Transparency International argues for a new approach to combat corruption that takes into account the role that personal values play in moral decision making related to corrupt practice. He explains "In the case of value based decisions like whether or not to bribe or accept a bribe, values and ethics can form a sort of threshold, established under what emotional and external circumstances if any, you may say yes. Your social environment, the level of trust you have in those around you, how you see this affecting people you care about, will also come into play; but your values will be a fundamental guide in making these decisions."

However, there is also a stream of thought that sees corruption as a classic collective action problem rather than a problem of personal values and ethics.⁹⁸ This has been discussed in the second chapter as to how corruption has a strong tendency towards collectivization. But it needs

⁹⁷Sudhir Kulkarni, *Lokpal or Homepal*, Indian Express, New Delhi, September 16,2012

⁹⁸ Heather Marquette, finding God or moral disengagement in the fight against corruption in developing countries, 25 January 2012

to be appreciated that collectivization will occur only if individual values are also compromised. In fact, Heather Marquette in her article mentions that no respondents in her study of India expressed toleration of corruption. There was a rather strong condemnation of all forms of corruption which was voiced along secular lines. There was an identification of deeply entrenched systemic corruption in India which said that individual action would be of little help. Keeping these two submissions in mind and the analysis done in the earlier chapters it can be reiterated that though India is suffering from systemic, intrinsic corruption, attempts have been made over the last sixty years to build mechanisms and institutions to fight it out and this will need to continue.

This is exactly the reason why an institution like the Lok Pal becomes important in the Indian context. It can be the institutional answer for fighting corruption in India. The Lok Pal is seen as an instrument that can check corruption, induce transparency in the system and make the administrative machinery more citizens friendly. But if this is what is popularly perceived to be the role and mission of the Lok Pal then what has happened now? No debates are being heard regarding the Lok Pal and it seems to have been put on a back burner for the time being. Is it really the lack of political will which is contributing to the institution not being established for so many years? The answer to that is apparently a yes as it is widely believed that the political class is not really keen to have the bill implemented as is evident from the innumerable failed attempts to see the bill through despite public opinion being in its favor.

To sum up briefly, nearly all the theoretical perspectives and understandings available on the subject of corruption discussed in the first chapter can be well applied to India. The black money problem specifically highlighted in the second chapter while analyzing the historical background

of corruption in India, emphasized the need for an effective anti corruption mechanism to tackle it as it is running a parallel economy in India. It was seen that India continues to lie low in the corruption perception indexes as there are a few fundamental flaws in the system. While analyzing the flaws it was noticed that despite availability of laws and agencies, India's performance in tackling corruption has not shown much improvement. Since the Lok Pal or the Ombudsman is one institutional mechanism that has eluded India so far, it was also seen through various Lok Pal bills discussed in the third chapter that even though the intentions were correct, they failed to succeed. The present Lok Pal bill seems to have been lost in the quagmire of politicking and fault finding.

Before concluding it would be in fitness of things to share some of the limitations of this work. Since a Lok Pal has still not got established any discussion of it gets into the sphere of prophesying. It has also been seen during the study that corruption has been a subject prone to large amount of research and theoretical insights. However, there is not any one theory or model that can apply to all countries. Even the reports of Transparency International are based on perceptions and are criticized for not representing the larger concerns. While using the reports it was however felt that whatever be the limitations, the reports are important initiatives as they provide a global view of the subject and country ratings are indicative of what is wrong with the existing system in the concerned country.

To conclude, purpose of this exercise is to present the widely discussed and thought provoking stream of ideas already available and which could be simultaneously and collectively adopted to prevent corruption or at least control it and to effectively redress grievances in India. Such measures could include the enactment of one or more laws in order to create the required

institutions and authorities, the amendment of existing laws and practices, and the strengthening of existing institutions and above all of creating an ethos and culture oriented towards development of ethics in each individual and society. Development of ethics and morality in Indian society is perhaps needed most, more than any institutional mechanism and definitely needed for ensuring greater performance, accountability and effectiveness of the existing anti corruption mechanisms and any other new initiatives that may be taken. Thus, what needs to be ensured in India is that clean public life and standards have to be built on grounds of moral conscience and public opinion.⁹⁹

Lines from Robert Frost's poem "Stopping by woods on a snowy evening" best embody India's predicament and attempts in combating corruption and bringing in a Lok Pal and show that there is hope yet as all is not lost and a lot needs to be done.

"...The woods are (lovely), dark and deep,

But I have promises to keep,

And miles to go before I sleep,

And miles to go before I sleep."

⁹⁹Rajindra Sachar, *Lok Pal Bill 2010-A farce on public*, South Asia Politics, February 2011