

Corruption in Nepal: Curse or Crime?

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“Ghus linya ra dinya dubai deshka thula satruhun”

“Both bribe takers and givers are the worst enemies of the nation”.

--King Prithivi Narayan Shah

This stringent attitude towards corruption was expressed by late King Prithivi Narayan Shah, founder of new Nepal 250 years ago. Unfortunately, the following generations did not learn from him. Although Nepal modernized and became a Republic in 2008, corruption is a widespread phenomenon. Government promises to establish good governance, rule of law, development, peace and prosperity have gone unfulfilled. The ‘zero tolerance’ policy on corruption has brought no substantial changes.

The annual report of Transparency International (TI) on the perception of corruption index has listed Nepal 154th¹ out of the 183 countries around the world it assessed. Nepal was ranked 121st in 2008, and is the lowest placed South Asian country after Afghanistan. Earlier this month, the Prime Minister shamelessly admitted that corruption is rampant in Nepal.² The Auditor General’s Annual Report for 2011 brought to light the extent to which money laundering takes place in the government sector; from the total Rs 29,91,4,000,000 of tax collected, some Rs 1,26,95,00,000 (approximately USD 15, 868,750) was not deposited in the state coffer during the last fiscal year 2010/11.³

People are deeply frustrated with the failure of the state and legal mechanisms in place to curb corruption. On many occasions, I have heard people express their frustrations by saying that, *“this land is cursed by a chaste widow, so nothing good can happen here”*. This is in reference to the belief that the widow of famous Nepalese reformer Bimsen Thapa, cursed Nepal. Bhimsen Thapa committed suicide after falling prey to a political conspiracy. He cut his throat with a piece of glass in jail when he heard that his wife was being paraded naked around Kathmandu city.

Historical events lend support to this superstition, because Thapa’s demise was followed by the 104 year-long rule of the Rana Oligarchy (1846-1953). Rana rulers infamously used the state coffer as pocket money and kept the people in the darkness of illiteracy, poverty and religious dogmas. During the reign of Rana, the gap between the elite and the poor expanded and a number of communities were marginalized. In those times, corruption was hidden from the public. At present, corruption cases are brought to the attention of the public through media exposure. In present day Nepal, people are frustrated because the impunity which protects the corrupt is apparent.

While corruption is a criminal offence in Nepal, the Nepalese people are forced to bribe government officers if they want to receive official services. Corruption happens

¹ See http://www.tinepal.org/CPI_press_release2011.pdf

² ‘PM Bhattarai: Corruption has crossed tolerable limits’, Nepal Horizon news, <http://www.nepalhorizons.com/news/english-news/pm-bhattarai-corruption-has-crossed-tolerable-limits/>

³ See report at <http://www.oagnep.gov.np/>

at all levels of the government, from the smallest units such as the local Village Development Committees, all the way to the top Ministries in Kathmandu. Corruption and bribery are routine crimes committed by senior officers and powerful political leaders, and raising one's voice against them is difficult.

Recently, Nepal's Commission for Investigation of Authority (CIAA) has said that dozens of corruption complaints are lodged against the five sitting ministers,⁴ including Deputy Prime Minister and Minister for Home Affairs Bijaya Kumar Gachhadar on charges of amassing money and property in transferring high profile officers in plummy posts. Health Minister Rajendra Mahato, Physical Planning and Works Minister Hrydesh Tripathi, Irrigation Minister Mahendra Yadav and Forest Minister Wakil Musalman are among the others against whom complaints are filed.

What took place on 29 February 2012 is only one example of the corruption prevailing in Nepal. On this day, the personal assistant to the Forest State Minister was caught red-handed taking bribes from the poor people of Mugu, a remote district in Nepal.⁵ The police later seized a recorded phone call made by the Forest State Minister himself, where he was directly demanding a bribe from the Mugu people. Another case of corruption took place a few months back in the village of Sitapur Village Development Committee (VDC) in Siraha district. Here the villagers staged a hunger strike to denounce the corruption committed by the VDC Secretary. Despite their hunger strike and written complaint, the Chief District Office and Local Development Officer were unwilling to investigate the case and did not take action against the guilty. Instead, the secretary was merely transferred to another VDC. More than 160 high profile corruption cases are pending before the Supreme Court.⁶

While summarizing each individual case would fill up volumes of books, a few high profile corruption cases which have made headlines within the last few weeks should be mentioned here. On 2 March 2012, a newspaper reported that the Minister for Agriculture and Cooperatives Nanda Kumar Dutta was involved in the illegal export of betel nut to India, to the value of an estimated 900 million rupees.⁷ A few days later, Under Secretary at the Foreign Employment Promotion Board Murari Nepal was arrested on the charges of embezzling Rs 40 million (USD 50,000) while serving as a Local Development Officer (LDO) in Bara district.⁸

The Sudan scam is another black smear on the face of Nepal, where a number of high profile police officers, including the Inspector General of Police, were convicted and sent to jail on charges of corruption amounting to nearly Rs 290 million (USD 36

⁴ 'Five minister under CIAA scanner', *Ujyaalo Online*, 24 February 2012, http://unn.com.np/index.php?pageName=news_in_english_details&id=4058.

⁵ 'Minister's PA caught red-handed taking bribe', *ekantipur.com*, 29 February 2012, <http://www.ekantipur.com/2012/02/29/top-story/ministers-pa-caught-red-handed-taking-bribe/349748.html>.

⁶ Bimal Gautam, 'SC anti-graft strategy to clear case backlog', *Republica*, 25 May 2011, http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=31513.

⁷ 'Minister Datta aids illegal betel nut export to India', *Republica*, 5 March 2012, http://www.myrepublica.com/portal/index.php/ads/rss.php?action=news_details&news_id=32501.

⁸ The CIAA found that the former LDO was involved in doling out money to local politicians and consumers groups without following government guidelines and embezzled development budget and budget for Parliamentarians' Development Fund.

million).⁹ The corruption occurred in connection to a procurement of Armed Personnel Carriers and logistics for the personnel deputed for the peacekeeping mission under the United Nations flag in Darfur, Sudan.¹⁰ However, the Commission for the Investigation of Abuse of Authority (CIAA) did not file a case against then Home Ministers Bhim Rawal, Bam Dev Gautam and Krishna Prasad Sitaula and then Home Secretaries Govinda Kusum and Umesh Mainali, despite the parliamentary committee's recommendation and huge public pressure. The investigating committee reported that they had been threatened while investigating the case, but did not disclose who had threatened them.¹¹ It is still not clear to the committee and the Nepalese public why the Home Ministers and Secretaries have not been prosecuted.

Politicization of crime

When politicians are held accountable they protest and claim that they are being targeted for their politics, as in the corruption case against a former minister. In 2002 the CIAA filed a corruption case against the incumbent (now former) Minister for Information and Communication Jaya Prakash Prasad Gupta.¹² In a controversial verdict passed in 2007, the Special Court acquitted him due to "insufficient evidence". The CIAA appealed to the Supreme Court.

Overturning the verdict of the Special Court, the Supreme Court on 21 February 2012 found Gupta guilty of having "accumulated money and property from unknown sources while holding public offices in different capacities since 1992". The Supreme Court ordered him to be fined Rs 8.4 million (USD 100500) and to be sent to jail for 18 months.

After the verdict Mr Gupta tried to ascribe his crime to political circumstances: "This is not punishment for me but for the movement that I have launched."¹³ He was referring to the political nature of the Madhesi movement. "I have been penalized for what I did in the past, and what I have been doing now is for the Madhesi people and to forward the Madhesi cause," he said. Gupta's political party, MPRF-R, supported his claim that he was being sentenced for his political activities and not for the crimes

⁹ 'Sudan scam: Special Court hands down jail sentence, hefty fine to three former IGPs, agents', *Nepal News*, 13 February 2012, <http://www.nepalnews.com/home/index.php/news/2/16676-sudan-scram-special-court-hands-down-jail-sentence-hefty-fine-to-three-former-igps-agents.html>.

¹⁰ Ex-IGPs Om Bikram Rana, Hem Bahadur Gurung and Ramesh Chanda Thakur were sentenced to a two-year jail term each and fined Rs 170.6 million, Rs 64.8 million and Rs 40 million respectively.

¹¹ 'Gyawali puzzled CIAA failure in dragging Nepal Home Ministers in Sudan scam', *Telegraph Nepal*, <http://www.telegraphnepal.com/headline/2011-06-10/gyawali-puzzled-ciaa-failure-in-dragging-nepal-home-ministers-in-sudan-scram>.

¹² 'CIAA arrests under-secy Nepal for misusing Rs 40 million', *Nepal News*, 5 March 2012, <http://www.nepalnews.com/home/index.php/news/19/17130-ciaa-arrests-under-secy-nepal-for-misusing-rs-40-million.html>.

¹³ Kiran Chapagain, 'JP Gupta jailed for graft, fined Rs 8.4m', *Republica*, 22 February 2012, http://myrepublica.com/portal/index.php?action=news_details&news_id=32037.

he committed, and decided to let him remain the Chairperson even after his conviction.¹⁴

General Secretary of the MPRF-R, Atmaram Sah, commented that, “The apex court’s anti-Madhes sentiment reflects since the verdict on the oath of the Vice-President, voters’ registration, integration of Madhesi youths in the national army, citizenship and postal road to Gupta’s case.” Such comments by a national political leader may provoke racial hatred among the communities of Nepal. There were also reports of Gupta’s henchmen chanting against the verdict in his support. Criticizing and chanting against a court decision in public comprises contempt of court. Such acts should be prosecuted in order to discourage future recurrences. Moreover, such demagogic tactics are dangerous, because they appeal to the emotions of the people and pressurize the government.

The accusations Gupta levelled at the Supreme Court were mirrored in an earlier case from 2011, in which the Supreme Court fined ex-minister Chiranjivi Wagle with Rs 20.3 million and an 18 months jail sentence.¹⁵ After the sentence was passed Wagle termed the verdict unconstitutional and said, “I will not take up arms or leave the country, but tolerate the injustice and fight a legal battle to defend myself.” He also indirectly indicated that the Apex Court’s verdict was unjust and he was being wrongfully incarcerated. Talking to the media, Wagle’s daughter claimed that the action against her father was “unjustified as everybody in power has amassed wealth”. Her logic is a perfect example of the general thinking of the Nepalese people.

So far Chiranjivi Wagle is the only big shark that has been caught in the CIAA’s net after the political changes of the 1990s. The net of CIAA is truly magical in that it only catches small fish, while the bigger fish easily make their escape.

Ineffective measures against money laundering

To fight corruption, Nepal has passed several anti-corruption laws like the Corruption Prevention Act 2002, the Commission for the Investigation of Abuse of Authority Act 1991, the Good Governance Act 2007, Civil Service Act 1993, Impeachment Act 2002 (IA), Military Act 2003 (MA), Judicial Council Act 1991 (JCA), Money Laundering Control Act 2007 (MLCA) and the Interim Constitution of Nepal 2007. Likewise, Nepal has ratified the United Nations Convention Against Corruption (UNCAC) in March 2011.

With the aim of curbing corruption Nepal gave constitutional status to the CIAA. In total, there are 12 state level anti-corruption agencies to prevent, investigate and prosecute corruption cases.¹⁶ Among them the CIAA is the main institution with the power to investigate and prosecute corruption cases.

¹⁴ ‘Behind bars for corruption, Gupta still remains party's head’, *Nepal News*, 25 February 2012, <http://www.nepalnews.com/home/index.php/news/2/16946-behind-bars-for-corruption-gupta-still-remains-partys-head.html>.

¹⁵ ‘Wagle arrested, sent to slammer’ *Kathmandu Post*, 17 March 2011, <http://www.ekantipur.com/the-kathmandu-post/2011/03/17/top-story/wagle-arrested-sent-to-slammer/219531.html>.

¹⁶ After his seizure of power on 2 February 2005, the King Gyanendra established The Royal Commission for Corruption Control (RCCC) which arrested many political leaders on charges of corruption. Yet on 13 February 2006 the Supreme Court found it unconstitutional and it was scrapped immediately.

But under article 120 (1) of the Interim Constitution of Nepal 2007, the CIAA cannot investigate Constitutional Officials and military officers. Constitutional Officials can only be removed if two thirds of the parliamentary/Constitutional Assembly members pass a motion of impeachment, while military officers can be investigated and prosecuted only by a three-member committee headed by the Deputy Attorney General, with the other members being officers from the Defence Ministry and Legal Department of the Nepal Army. Furthermore, the CIAA can only prosecute the person in question after retirement or removal from the post. As already mentioned, most of the high profile corruption is committed by ministers and high profile government officers; this provision has thus bound the hands of the CIAA and they are unable to prevent, investigate and prosecute corruption cases against constitutional officers, judges, military officers and other high profile officers as long as they are in office. Delayed action on recommendations to pass impeachment has also hindered the justice system. It was recommended by the Constituent Assembly Chairman in August 2010 to impeach Justice Ran Bahadur Bam for instance¹⁷, who is facing corruption charges, but his case is still pending before the Constituent Assembly.

Apart from these high profile corruption cases, there are a multitude of cases that go unreported. According to a research paper ‘Criminal Justice Response to Corruption in Nepal’,

The success rate of the corruption cases is quite low and 60 percent of the corrupt activities are out of the scope of the law and among the cases registered in the courts, around 60 percent result in conviction. In the absence of physical presence of CIAA in the local level and no sensitization on people, the common people generally do not know where to report the bribery cases [Surya Prasad Parajuli, 2008, http://www.unafei.or.jp/english/pdf/RS_No80/No80_23PA_Parajuli.pdf].

By establishing a Special Court and a CIAA, the government of Nepal appeared to avert national pressure and meet its international obligations. In actual fact however, legal loopholes, political pressures and government indifference have caused the anti-graft bodies to fail at holding the country’s rampant corruption in check.

Special Court in controversy

Nepal established the Special Court in 2009 under section 101 (2) and section 3 of the Special Court Act-2059 to hear corruption cases filed by the CIAA under State Cases (Crime and Punishment) Act-2046, relating to cases to be prosecuted and defended by the government of Nepal, and the Money Laundering Control Act-2064 (2007).¹⁸

Immediately after its establishment however, the Special Court came under fire. The Special Court acquitted a string of high profile political leaders, government officers and high profile police officers. The cases filed by the CIAA before the Special Court did not lead to any punishment and the public reacted with outrage. The Court gave a clean chit to many high profile politicians, including Gupta, ex-ministers Khum

¹⁷ See <http://www.nagariknews.com/politics/party-politics/37953-2012-03-14-03-18-49.html>.

¹⁸ The report by Asia/pacific Group on Money Laundering has done a research on judiciary system and efforts to curb the crime of money laundering. Please visit: http://www.nrb.org.np/fiu/pdf/Mutual_Evaluation_Report_of_Nepal_2011_20680821.pdf.

Bahdur Khadka, Govinda Raj Joshi and others on purely technical grounds,¹⁹ leading people to suspect foul play. A source close to Chief Justice Bhupdhoj Adhikar stated, “He used to influence the then chief justices and gave clean chits to corrupt politicians, chiefs of the security forces and bureaucrats on technical grounds”.²⁰

The Supreme Court later ordered action to be taken against the three Special Court Judges who acquitted Gupta in 2007, but this order is yet to be implemented. Similarly, in a 2010 case where the Supreme Court ordered for action to be taken against a group of judges who committed a “grave mistake” while handling a corruption case against former Defence Secretary Chakra Bandhu Aryal,²¹ nothing has been done so far.

It is worrying that the judges entrusted with passing verdicts against corrupt officials are themselves facing inquiries by the Judicial Council. Overall, there are more than 200 complaints against 60 judges, and in most of the complaints the judges are accused of indulging in financial irregularities.²² Complaints are also pending against the Chief Justices of the Appellate Court.

Government

unwillingness

The unwillingness of the government to enforce the decisions made by the courts has fostered impunity and encouraged criminal activity. The Nepalese people have lost all faith in the law and do not believe that justice will be carried out. Data collected from courts across the country show that 100,000 court verdicts have not been implemented and the Chief of Judgment Execution Directorate (JED) stated that “The exact number of convicts enjoying impunity could be more than 300,000 as most of the verdicts have more than three convicts.”²³

At present, Nepal has got the largest Constituent Assembly of 601 members and the biggest cabinet of 49 ministers in its history. Among the people in power many are involved in corruption, bribery, misuse of authority, smuggling and other illegal activities. Under these circumstances, if there is no anti-corruption body which can investigate and prosecute them, how can these persons be held accountable?

The CIAA has no authority to prosecute and cannot take prompt action against corrupt ministers and constitutional officers. The government is in on the game and is easily corrupted. In Nepal it is common that a corrupt minister will donate a

¹⁹ ‘Landmark precedent’, *Republica*, 23 March 2011,

http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=29491.

²⁰ ‘Spl Court judge who acquitted Gupta was mired in controversy’, *Kathmandu Post*, 21 February 2012, <http://www.ekantipur.com/the-kathmandu-post/2012/02/21/top-story/spl-court-judge-who-acquitted-gupta-was-mired-in-controversy/231816.html>.

²¹ ‘SC revisits Special Court corruption verdict’, *Republica*, 22 March 2011,

http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=29459.

²² ‘JC shortlists complaints against 12 judges’, *Kathmandu Post*, 1 March 2012,

<http://www.ekantipur.com/the-kathmandu-post/2012/03/01/top-story/jc-shortlists-complaints-against-12-judges/232142.html>.

²³ ‘300,000 cons on the loose’, *Kathmandu Post*, 16 November 2010, <http://www.ekantipur.com/the-kathmandu-post/2010/11/16/top-story/300000-cons-on-the-loose/214890/>.

percentage of the profits from corruption to the party in order to cover party and election expenditure, thus also protecting himself from criticism and legal liabilities.

Even worse, the government has not appointed a Chief of the CIAA in the last five years. In the absence of its head the CIAA cannot function swiftly and effectively. The CIAA must be given special powers, enough manpower, sufficient funds and modern equipment in order to check Nepal's rampant corruption. The CIAA should also ensure that the complaints made by the public are heard on time. Ideally, the CIAA should also provide easily accessible information on what legal actions one can take to curb corruption. It should establish a hotline, erect complaint boxes and let the public know which actions are being taken against corrupt officers at the local level. Furthermore, as no one is to be trusted with regards to corruption, a small special unit should be granted the authority to monitor the CIAA.

Lack of government action on dealing with corruption and money-laundering is damaging the reputation of Nepal in international forums. Just recently, the Financial Action Task Force (FATF), an inter-governmental body combating money laundering and the financing of terrorism, threatened to blacklist Nepal if it did not endorse bills on Anti-Money Laundering and Combating and Financing of Terrorism. Fearing the consequences of being blacklisted by the international financial market, Nepal ratified the UN International Convention for the Suppression of the Financing of Terrorism and the UN International Convention against Transnational Organized Crime. But Nepal failed to pass three bills on Controlling Organised Crime, on Extradition and on Mutual Legal Assistance. At a FATF meeting in Paris Nepal was given a two-month deadline to endorse these three bills. But a hardliner faction in the ruling party UCPN-M is in opposition, terming the bills "anti-national".

So far the American Citibank and Washington Bank have suspended their relations with Nepal by requesting that the Nepali Embassy in Washington DC move its accounts to another bank. Though the actual cause behind this move has not been disclosed, experts see it as a result of Nepal's inability to comply with FATF recommendations. If Nepal continues on this path, it will lose its status as a FATF member state. This will have serious consequences for Nepal and will hamper its ability to conduct international business and financial transactions.

A survey conducted by the Central Department of Public Administration at Tribhuvan University in Nepal found that the parliament, the political parties, the central government, CIAA and the police institutions enjoyed a low level of trust.²⁴ Some 83.2 percent of the participants in the survey thought that corruption in Nepal was caused by the lack of political commitment.

What's

next?

²⁴ See

http://webcache.googleusercontent.com/search?q=cache:4PRmlzTkDgMJ:www.pactu.edu.np/contents/project/files/prevalence_of_corruption_and_its_challenge_for_improving_governance_in_nepal_by_dr_tek_nath_dhakal_and_ratna_raj_niroula.doc+Prevalence+of+Corruption+and+its+Challenge+for+Improving+Governance+in+Nepal&hl=ne&gl=np

A weak CIAA cannot control the raging corruption in Nepal. Only strong action by government institutions and the general public can rid Nepal of corruption and bribery. In particular, the Election Commission should take on a more active role and punish corrupt political leaders by not nominating them for election. It should also lobby for the passing of a strict code of conduct where people nominated for parliamentary elections have to meet certain standards and be of good reputation. In the past it has committed the serious mistake of accepting nominations of political leaders who were on trial for charges of corruption. It should also ensure a strict implementation of the election law in order to control the election expenditure of the political parties.

A weak governance system, the absence of the rule of law and respect for human rights, inaction of the anti-graft agencies and political apathy are some of the major causes of corruption in Nepal. Nepal can only prosper if it rids itself of corruption, nepotism and foul political power games. Only then can we hope for a Nepal where development, rule of law, respect of human rights, peace and prosperity is the order of the day. Corruption is an invisible plague haunting Nepal. Every year Nepal receives millions of dollars in foreign aid, but only a small percentage of that money reaches the people in need. The corruption that takes place at all levels of Nepali society has led to inefficiency, injustice and inequality.

It is important that Nepalese people know that no curse was cast on Nepal, but if they do not fight corruption, surely Nepal will be cursed. The public needs to take action against corruption. Common people need to file complaints against corrupt officials and if the authorities fail to act promptly, then one must go to the media and the civil society for support. What is needed in Nepal is a mass movement against corruption. Article 27 of the Interim Constitution of Nepal 2007 guarantees people the right to information. People should make sure that the government and its institutions respect this right and conduct their economic affairs in a transparent and responsible manner. Establishing a right to information help desk, an anti-corruption help desk and hotlines could become powerful tools supporting people in their fight against corruption. The passing of a strong anti-money laundering law and ensuring proactive anti-graft bodies will help solve the problem of corruption. A Nepal free from corruption is not a distant dream, but an actual possibility if people continue to fight corruption courageously.

[Footnote text for first page] Om Prakash Sen Thakuri has been working as a human rights activist in Nepal for the last four years, closely following the country's political developments. He can be reached at opsenthakuri@gmail.com.