

## **A reflection on corruption in India**

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Corruption in India has permeated every level of society; from senior bureaucrats and politicians, to high ranking public servants to professionals to criminals to lowly clerks and street vendors. Interested groups have documented numerous cases of corruption throughout the country, ranging from corrupt police officers, to government officers in charge of welfare schemes to local thugs in cohort with local officials. In fact, the two biggest challenges to tackling corruption in the country are corrupt police officers and corrupt civil servants. These are the two legs upon which the realization of the rule of law and protecting citizens' rights are based; when these cannot be relied upon, what are the chances of fighting against corruption? Corruption is a crime, and crimes are to be contested by law and its enforcement. Ultimately, all societies must be based on the supremacy of the law, and this law is to be articulated and protected by various mechanisms. Without government officers to transparently and in good faith run the government machinery in accordance with people's needs and wishes, and without police officers to protect people's rights and maintain law, society cannot function effectively. Furthermore, corruption if unchecked will simply eat away at rule of law, as well as public institutions, democratic principles and mechanisms of good governance, leaving society in anarchy.

### **Recent corruption scams**

Recent scandals in India have revealed the extent of political involvement in corruption, as well as the incestuous relationship between business and politics. They have also revealed the enormous amounts of money involved, which is particularly worrying for a country where a significant number live below the poverty line, and where the gap between the rich and poor is ever increasing. According to a report by US based group Global Financial Integrity, India lost USD 462 billion between 1948-2008, due to corruption, tax evasion and other illicit financial practices.<sup>1</sup>

Most recently, the appointment of PJ Thomas as head of India's anti-corruption watchdog, the Central Vigilance Commission (CVC), has been deemed illegal by the Supreme Court, on the grounds that Thomas himself faces corruption charges:

As Food Secretary in Kerala in the early 90s, Mr Thomas campaigned aggressively for the import of edible oil from Malaysia. It later emerged that the price paid for the oil - palmolein - was unjustifiably high. He has since been charged with corruption and conspiracy.<sup>2</sup>

PJ Thomas was appointed by the government in 2010; in fact, prime minister Manmohan Singh headed the committee that oversaw his appointment. As head of the anti corruption body, Thomas was to investigate allegations that millions of dollars were stolen by officials running the Delhi Commonwealth games in October 2010.

According to an article published in *Al Jazeera*, the Commonwealth Games budget ballooned three times to an estimated USD 6 billion, with the CVC receiving complaints alleging that up to USD 1.8 billion was misappropriated. An initial report by the CVC into the Games confirmed the use of sub-standard construction materials in a host of building contracts and deliberate cost overruns.<sup>3</sup>

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<sup>1</sup> "India lost \$462bn in illegal capital flows, says report," *BBC News*, 18 November 2010, <http://www.bbc.co.uk/news/world-south-asia-11782795>.

<sup>2</sup> "Thomas no longer CVC: Supreme Court," NDTV, 3 March 2011, <http://www.ndtv.com/article/india/thomas-quits-as-cvc-supreme-court-says-appointment-was-illegal-89084>.

<sup>3</sup> "India sack Delhi Games chief," *Al Jazeera*, 24 January 2011, <http://english.aljazeera.net/sport/2011/01/2011124205821776668.html>.

Thomas was also looking into claims that former telecoms minister Andimuthu Raja was responsible for India's largest ever scandal, costing the country almost USD 40 billion: "Mr Raja stands accused of abusing his position and manipulating government policies to award licences for mobile networks at throwaway prices to companies that rewarded him privately with huge kickbacks."<sup>4</sup>

As Thomas was Telecom Secretary till he was made Central Vigilance Commissioner, the Supreme Court, monitoring the CBI's investigation into the telecom scam, suggested that it would be inappropriate for Mr Thomas to preside over an inquiry that could subject his own actions in the Telecom Ministry to scrutiny.

Another scam involving huge amounts of money and directly affecting the country's poorest citizens is the food scandal in Uttar Pradesh. According to BBC's Geeta Pandey, enormous amounts of food grains and fuel, meant to be distributed through the public distribution system or given to the poor under welfare schemes like food-for-work and school meals for poor children, have been stolen over the years and sold on the open market.

The scale is immense. It involves thousands of officials from top-level bureaucrats to middle-level officers to ground-level workers. It also involves thousands of transporters, village council leaders and fair-price shop owners.

It stretches across 54 of the state's 71 districts, and investigators say the food is carried out of the state and sometimes even beyond Indian borders to Bangladesh and Nepal.

India's top investigating agency - the Central Bureau of Investigation (CBI) - once tried to withdraw from the case saying it did not have the manpower to deal with it. It said it would require the registration of 50,000 police cases.

One official said that if all the guilty are convicted, a new jail may have to be built to accommodate them...

"The subsidised supplies were siphoned off and sold in the open markets at much higher rates. In government records, they were shown to have been distributed among the people," says Vishwanath Chaturvedi, who filed a petition in court in 2005 demanding that those involved be punished...

"The scam was so brazenly carried out that when we checked vehicles which were used to carry grains, we found that the registration numbers were of motorcycles, scooters and even bicycles."

The micro-economy around the stolen supplies was estimated to be worth \$7.45bn (£4.8bn) in the year 2004-2005.

In December 2007, officials told court they had evidence to show that supplies were stolen from 2002 to 2007.

Mr Chaturvedi says the practice continues and if you calculate for the last 10 years, it adds up to more than \$42.6bn (£27.5bn).<sup>5</sup>

Not only do these corruption scams indicate political involvement, but they also indicate a breakdown in the country's rule of law institutions; how else could such incidents occur, not once, but multiple times, and at the levels they did? The slow response to these incidents, including

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<sup>4</sup> "Thomas no longer CVC: Supreme Court," NDTV.

<sup>5</sup> Geeta Pandey, "India's immense 'food theft' scandal," *BBC News*, 22 February 2011, <http://www.bbc.co.uk/news/world-south-asia-12502431>

holding people accountable, further shames the country's governance mechanisms and political will. When compared to the recent convictions of parliament members (MPs) in the UK for false expenses, the situation in India can truly be said to be dire. As reported by Sandra Laville and Polly Curtis in *The Guardian*, the MPs under investigation were immediately barred from their political parties while many others were required to pay back the fraudulently claimed money.<sup>6</sup> Speedy investigations were followed by effective trials, with those found guilty of false accounting sentenced to between 12-18 months imprisonment.<sup>7</sup> Furthermore, an agency was constituted to oversee MPs' expenses, salaries and so forth.<sup>8</sup>

Why does this not happen in India? The country's ongoing corruption scandals have recently sparked considerable public angst, culminating in quite a few protests throughout the country, as well as the launching of numerous anti-corruption websites:

One, [Ipaidabribe.com](http://Ipaidabribe.com), is run by Raghunandan Thoniparambil, a retired official from the elite Indian administrative service. The site was launched four months ago and more than 3,000 people have posted their own stories of graft.

On one day alone – 30 December – those posting on the site included a restaurateur forced to pay 25,000 rupees (£350) to clerks to have his dossier forwarded to senior officials at a Delhi licensing department, a traveller who had to give 100 rupees (£1.30) to get a berth on the otherwise full express train, a dozen or so drivers who had to pay traffic police after being accused of fictitious offences, and travellers intimidated into paying customs officials large sums to allow electrical and other goods into the country.

“The aim is not to identify people but to identify the problem,” Thoniparambil told the Guardian.

“Crowdsourcing is a way of finding out what is happening but won't alone alter anything. We need change from within government that is properly monitored.”<sup>9</sup>

Indeed, change from within the government is exactly what is needed. Protest and publicity are but one step on the ladder to change and the elimination of corruption. Without an institutional environment conducive to reform and accountability, public protest cannot do more than creating awareness. For concrete change to occur and legal action to take place, there must be functioning mechanisms to receive and act on complaints, whether of corruption, inefficiency or malpractice.

Another civil society response has been to urge the government to pass an anti corruption law. A weak law has been pending in parliament for several decades now, with no strong action being taken by any government to modify and enact it. A civil society version of the law, the 'Jan Lokpal bill' also exists. Veteran activist Anna Hazare began an indefinite fast on April 5, demanding that the government rewrite the bill and pass it without further delay. As of April 9, the government agreed to set up a committee to draft the bill and to bring it to the 'monsoon session' of the parliament.<sup>10</sup>

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<sup>6</sup> Sandra Laville and Polly Curtis, “MPs charged over expenses could face up to seven years in jail,” 5 February 2010, *Guardian*, <http://www.guardian.co.uk/politics/2010/feb/05/mps-expenses-criminal-charges-jail?intcmp=239>.

<sup>7</sup> See ‘Criminal charges’ in “United Kingdom Parliamentary expenses scandal”, *Wikipedia*, [http://en.wikipedia.org/wiki/United\\_Kingdom\\_Parliamentary\\_expenses\\_scandal#Criminal\\_charges](http://en.wikipedia.org/wiki/United_Kingdom_Parliamentary_expenses_scandal#Criminal_charges).

<sup>8</sup> Editorial, “MPs' expenses: Not a special case,” 6 January 2011, *Guardian*, <http://www.guardian.co.uk/commentisfree/2011/jan/06/mps-expenses-not-special-case>.

<sup>9</sup> Jason Burke, “Indian corruption backlash builds after ‘year of the treasure hunters’,” 2 January 2011, *Guardian*, <http://www.guardian.co.uk/world/2011/jan/02/india-corruption-backlash-treasure-hunters>.

<sup>10</sup> See “India wins again, Anna Hazare calls off fast,” 9 April 2011, *Times of India*, <http://timesofindia.indiatimes.com/india/India-wins-again-Anna-Hazare-calls-off-fast/articleshow/7921304.cms>.

## Institutional reform

At present, India's entire justice system is geared to serve political rather than public interests, as well as being mired in corruption. In such a system, there is no chance of individual complaints being heard and processed. When politicians and government officers themselves are corrupt, they will do little to clean up such scams and hold persons responsible. In a statement of December 2010, the Asian Human Rights Commission (AHRC), a regional rights body, noted that

[...] in the lower house of the Indian Parliament, the Lok Sabha, out of the 152 sitting members accused of criminal charges of varying nature, 72 are suspected to be involved in criminal cases of a very serious nature. These are offenses which, if investigated and proved, would fetch imprisonment for the accused for a period of not less than seven years... the BJP [Bharatiya Janata Party] has 17, and the INC [Indian National Congress] has 12 of their representatives against whom crimes of a very serious nature are alleged.<sup>11</sup>

In the sentencing of British MP David Chaytor for false accounting on 7 January 2011, *BBC News* reported judge Justice Saunders noting that the MP expenses scandal had "shaken public confidence in the legislature and angered the public," and that "These offences have wider and more important consequences than is to be found in other breach of trust cases. That is the effect they have had and will have in the confidence the public has in politicians." Most importantly, he noted that MPs' behaviour must be "entirely honest if public confidence in the parliamentary system and rule of law is to be maintained".<sup>12</sup> This being the case, one must wonder what Justice Saunders would have to say about the large number of Indian parliamentarians being suspected of serious crimes, and their impact on not only public confidence, but the political and justice system as a whole.

Aside from corrupt (and criminal) politicians, India suffers a corrupt police force. It is an open secret that police officers, irrespective of their ranks, pay bribes to ministers and other politically influential persons for securing promotions, transfers and for preventing disciplinary action. The selection and appointment to the state police service has been referred to as 'resembling a public auction'. According to the AHRC, in the state of Manipur, as of October 2010, appointment to the rank of Sub-Inspector of Police required bribes paid to the state Chief Minister, Mr Okram Ibobi Singh, or his representative, ranging from Rupees 1,400,000 to 1,800,000.<sup>13</sup> Transparency International's report on India for the past several years has ranked the Indian police as one of most corrupt government agencies in the country and in the world, while the UN Rapporteur on Torture has reported that police officers in India routinely use torture as a tool for extortion of money from the poor.

Despite this, according to a press release issued by the Indian government on 24 February 2010, only 75 police officers were tried for corruption in the past three years. This lack of prosecution spotlights the lack of complaints made against police officers, as well as the absence of investigations. India's police force is ill equipped to deal with criminal investigations in a professional, efficient manner. Without effective police reform (including amending the decades old, colonial Police Act), it is not possible to improve the country's rule of law and human rights situation.

Linked to police reform is the reform of all justice institutions, which at present are clearly malfunctioning. This is indicated not only by the way these institutions have dealt with recent corruption cases, but also by members of these institutions themselves being implicated in such

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<sup>11</sup> AHRC, "Stop talking and start acting," 22 December 2010, AHRC-STM-267-2010, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-267-2010/>.

<sup>12</sup> "MPs' expenses: David Chaytor jailed over false claims," 7 January 2011, *BBC News*, <http://www.bbc.co.uk/news/uk-politics-12127327>.

<sup>13</sup> AHRC, "Stop talking and start acting".

cases.

The most recent suspect is the former Chief Justice of India who is presently serving as the Chairperson of the National Human Rights Commission, Justice K G Balakrishnan. The government, despite the substantial and incriminating circumstances against Balakrishnan, has failed to undertake a thorough investigation in the case. A Public Interest Litigation filed in the Supreme Court is pending against the government, in which the Court has already expressed its displeasure about the slow pace of the investigation on the allegations against the former judge. In addition to the former judge, a former Union Minister is also facing investigation for corruption.<sup>14</sup>

The ongoing case of black money stashed abroad is a good study of poor criminal investigation and procedure. Amongst other aspects, India's Supreme Court has to date voiced displeasure regarding the following: Enforcement Directorate (ED) officials not subjecting Hasan Ali Khan to custodial interrogation; Mumbai Principal Sessions Judge M L Tahaliyani's order of granting bail to Khan and rejecting the ED's contention against it; and, the government's lack of investigation into other individuals stashing money abroad.<sup>15</sup>

India's judiciary faces its own problems, with court delays being the biggest obstacle to those seeking justice. This is largely due to insufficient staffing, with the population-judge ratio at 10.5 judges for every million Indians; the lowest ratio in the world. The huge number of cases pending in India's courts gives further rise to corruption:

A bail petition that requires a mere Rupees 2 court fee stamp to be affixed, to be called in the bench on the same day or on the subsequent day will require the payment of bribes ranging from Rupees 300 to 1000 to an array of court officers, which in most cases also include the Public Prosecutor and even the adjudicating judge. A visit to the Magistrate Courts at the national capital will prove this true, in addition to the fact that the entire place resembles a festival ground in chaos. Trial court lawyers everywhere in India know that unless they pay bribes to the court staff, the court would never take up their applications and petitions. It is a sad irony that it is this same court system that will have to deal with corruption cases.<sup>16</sup>

Such failings of justice institutions as well as the practice of corruption that drives them provides the wealthy and connected with an environment of privilege and concession when they are charged and investigated of corruption. They also benefit from court delays and the misinterpreted provision of the Criminal Procedure Code for prior sanction to prosecute.

### **Making use of technology to fight corruption**

The widespread use of information technology in today's world has done much for increasing public awareness and supporting movements for democracy and liberty. From the Saffron Revolution in Burma in 2007, to the recent wave of protests in the Middle East, blogs and social networking sites have played a significant role in generating public participation and solidarity. Apart from information and awareness sharing however, information technology can be used in various ways to protect and safeguard human rights, from increasing the use of computers and fax machines to minimize court delays, to using proper forensic equipment to streamline criminal investigations.

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<sup>14</sup> AHRC, "An apology will not end corruption," 10 March 2011, AHRC-STM-040-2011 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-040-2011>.

<sup>15</sup> See "SC criticises govt for not probing into source of black money," 28 March 2011, Times of India,

<http://timesofindia.indiatimes.com/india/SC-criticises-govt-for-not-probing-into-source-of-black-money/articleshow/7806363.cms>, and "Black money trail: SC extends Hasan Ali's custody by 3 days," 21 March 2011, Times of India, <http://timesofindia.indiatimes.com/india/Black-money-trail-SC-extends-Hasan-Alis-custody-by-3-days/articleshow/7755275.cms>.

<sup>16</sup> AHRC, 'Stop talking and start acting', 22 December 2010.



In the same way, information technology can also be used to eliminate corruption. Uttar Pradesh's state food commissioner for instance, in response to the food scandal there, noted that, "As a first step, we have digitised the entire list of BPL card-holders and weeded out 400,000 fake cards. To stop pilferage, we have decided to fit in GPS devices in trucks and fuel tankers to track their movements."<sup>17</sup> These are both important steps in reducing opportunities for corruption, as well as increasing efficiency, particularly as much corruption takes place in the country due to a prevailing atmosphere of complacency and inevitability.

Prior to this, the Indian Railways made use of computerized ticketing:

The ticket booking system in the Indian Railways was marred with petty corruption and gross inefficiencies many years ago. The reason was that a scarce resource, available seats, were allocated by local clerks who often misused that allocation power to extract bribes and curry favors for hapless consumers. Computerizing the entire booking system has taken that power away from Indian Railways employees and booking tickets is now a breeze. Similarly, digitizing the entire land and property records in the state of Andhra Pradesh by the former Chief Minister Chandrababu Naidu cleaned up the system that had made buying and selling property in the state a nightmare.<sup>18</sup>

In this manner, incorporating information technology into the reforms of justice institutions will go a long way in eliminating corruption in the country.

Despite the severity of the problem in India, and despite political rhetoric regarding the necessity to eliminate corruption, India has not yet ratified the UN Convention against Corruption. The Convention contains many useful principles and declarations regarding public and private sector corruption, as well as international cooperation and technical assistance. If nothing else, India can use it as a blueprint for removing corruption from its ranks. The present debate regarding the anti-corruption bill in parliament can benefit greatly from the Convention, which clearly lays out the various 'crimes' of corruption and how they may be dealt with.

Perhaps the considerable public angst against corruption should focus itself on reforming key institutions, signing up to and complying with relevant international treaties and holding its government representatives responsible for their actions (and inaction). Only then can there be some genuine progress towards political change and the elimination of corruption.

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<sup>17</sup> Geeta Pandey, "India's immense 'food theft' scandal".

<sup>18</sup> Bhagwan Chowdry, "Using IT to fight corruption and inefficiency in India," 25 August 2010, *Huffington Post* [http://www.huffingtonpost.com/bhagwan-chowdry/using-it-to-fight-corrupt\\_b\\_690609.html](http://www.huffingtonpost.com/bhagwan-chowdry/using-it-to-fight-corrupt_b_690609.html).