

National Seminar on Fighting Crime related to Corruption

Valedictory address by shri M Veerappa Moily, Union Minister for Law & Justice – 13.09.2009.

Shri Ashwani Kumar, Director, Central Bureau of Investigation, Shri T K Vishwanathan, Secretary Law, Shri Kamalendra Prasad, Director, National Institute of Criminology & Forensic Science, Ld. Spl. Judges, Senior officers of the CBI, Ladies & Gentlemen.

2. It is my privilege to be amongst senior officers from police, prosecution and judiciary. It is a laudable effort on the part of Central Bureau of Investigation and National Institute of Criminology and Forensic Sciences, New Delhi to organise a 2-day National Seminar on the issue of **'Fighting Crimes Related to Corruption'**.

3. The menace of corruption is an important issue that is bothering the policy makers, administrator and the general public for a long time. There is an emerging global consensus that fighting corruption and building 'good governance' are essential for the socio-economic development of any nation. The prevalence of corruption undermines social cohesion, wider participation of citizens in economic and political processes, distorts allocation of resources and delivery of public services particularly damaging the interest of the poor and marginalized sections of the society. It also hinders the economic growth by skewing public and foreign investments, distorting the markets and weakening the rule of law. The corruption essentially undermines the credibility and effectiveness of the State and its instruments. The prevalence of widespread corruption and ineffective anti-corruption interventions in this country has led to public cynicism. We have chosen the system of democracy in our pursuit of growth and prosperity of our people and the corruption is a major hindrance in our pursuit.

4. In the words of Aleksandr Solzhenitsyn: "The line separating good and evil passes not between states nor between classes... but through the middle of every human heart".

If governance is by men who are derelict, the governed will suffer. We have to keep in mind Plato's injunction:

"The punishment suffered by the wise who refuse to take part in government, is to suffer under the government of bad men"

The focus should be on e-governance and systemic change. An honest system of governance will displace dishonest persons. As Gladstone so aptly said, "The purpose of a government is to make it easy for people to do good and difficult to do evil".

"Rivers do not drink their waters themselves, nor do trees eat their fruit, nor do the clouds eat the grains raised by them. The wealth of the noble is used solely for the benefit of others."

5. The constitutional vision of strong and prosperous India where freedom, equality of opportunity, rule of law is guaranteed to its citizens can never become a reality if we do not address the issue of corruption in our polity, economy and society in general. The fight against corruption is not only a moral imperative but an economic necessity for a nation aspiring to emerge as a global player. Corruption discourages investment (foreign/domestic), harnessing of best technologies, resources etc. that requires transparency, fair play and is an

impediment for integration with global economy. The issue of fighting corruption and building good governance are of paramount importance for achieving rapid economic development.

6. The six perceived governance quality measures, each an aggregate of a number of sub-measures, are: voice and accountability; absence of political instability and violence; government effectiveness; reasonableness of the regulatory burden; the rule of law; and the absence of graft. Of these, the last two are the most directly significant in the context of ethical governance. 'Rule of law' measures whether crime is properly punished or not; enforceability of contracts; extent of black market; enforceable rights of property; extent of tax evasion; judiciary's independence; ability of business and people to challenge government action in courts etc.

7. Robert Cooter's study shows that a society with high levels of corruption, has low levels of social interaction and weaknesses of the rule of law.

8. Two studies by Isham, Kaufmann, and Pritchett demonstrate that societies with high levels of corruption have low levels of mass participation in politics and weak protection of civil liberties. The study by Easterly and Levine establishes that a society with large incidence of corruption is characterized by deep ethnic divisions and conflicts.

9. In fact, as the Santhanam Committee on Prevention of Corruption wryly remarked, 'Article 311 of the Constitution as interpreted by our courts has made it very difficult to deal effectively with corrupt civil servants'. Even after Article 311 was amended, the panoply of safeguards and procedures still available is interpreted in such a manner as to make the proceedings protracted, and therefore, effete in the ultimate analysis. There is no gainsaying that the provisions of Article 311 have come in the way of bringing the corrupt civil servants to book. Article 311 would require a revisit.

(i) **Strict enforcement of law** : The rule of law is an important element for good governance. The enforcement of contracts, plugging of leakages, ensuring bureaucratic accountability, punishment for the corrupt & dishonest, blocking the growth of black markets, minimizing the tax evasion, accessibility to the aggrieved to challenge the decision of the states and its instruments in a court of law etc. are the test of prevalence of rule of law. The people facing criminal charges continue to hold key positions, inordinate delay in the issue of sanction for prosecution and huge pendency of cases before the court are indicative of lax and ineffective enforcement. There is a need for effective intervention by anti-corruption agencies to make a dent on the gigantic problem facing the system. A swift and certain action against the corrupt, dishonest, delinquent elements in the system can only make the corruption a **high risk and low return business**.

Corruption and Hypocrisy

Corruption and hypocrisy ought not to be inevitable products of democracy, as they undoubtedly are today.

- Mahatma Gandhi

10. Independence of the judiciary is inextricably linked with judicial ethics. An independent judiciary enjoying public confidence is a basic necessity of the rule of law. Any conduct on the part of a judge, which demonstrates a lack of integrity and dignity, will undermine the trust reposed in the judiciary by the citizens. The conduct of a judge should, therefore, always be above reproach.

Independence of Judiciary

“A judiciary independent of a king or executive alone is a good thing; but independence of the will of the nation is a solecism, at least in a republican government”.

- Thomas Jefferson

11. The Law Commission in its 195th Report, examined the draft Judges (Inquiry) Bill, 2005. It stated:

Judicial independence is not absolute. Judicial independence and accountability are two sides of the same coin. The present proposals in the Bill of 2005 together with our recommendations for enabling the Judicial Council to impose ‘minor measures’ including stoppage of assignment of judicial work are constitutional. They ought not to be viewed as an encroachment on Judicial Independence by the Executive or by the Legislature.

(i) **The internal vigilance and departmental action** : There is a perception that public services have largely been exempted from the imposition of the penalties due to complicated procedures that have arisen out of the constitutional guarantee against the arbitrary and motivated actions. The people who abuse public office for private gain at the cost of the public and national interest are being shielded from facing swift and stringent punishments. There is a feeling that the protection given to the public servants under Art. 311 of the Constitution of India is being used to create obstacles for expeditious punitive action. A huge body of jurisprudential precedents have further complicated the issue resulting in the distortion of real intent of the provision itself. There is a need for rationalization and simplification of procedures to prevent the corrupt and dishonest elements in the system from cornering the benefit of the constitutional safeguards.

12. Out of 153 cases for sanction, 21 cases were pending for more than 3 years, 26 cases between 2-3 years, 25 between 1-2 years. The departmental enquiries are soft-pedalled either out of patronage or misplaced compassion.

(i) **Good governance**: The fight against corruption calls for multi-pronged strategy as the problem is essentially systemic. It is important that those vested with power are made accountable and their functioning is made more transparent. Social Audit through empowered, autonomous and credible citizen groups is another way by which the check on corruption at cutting edge level is to be attempted. The system need to be fine tuned to make it easy for a honest, upright, committed public servant to take bold decisions quickly and to make it difficult for the self serving public servants to indulge in loot of the public money and aggrandize his personal wealth. If there is an effective solution to the menace of corruption it is good governance and it alone can help restore the credibility of the State and to win back the confidence of people in our public institutions. A major part of a good governance system is an efficient, effective and fair criminal justice system.

13. Abraham Lincoln, it has been said: -

“I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country.....an era of corruption in high places will follow, and the moneypower of the country will endeavour to prolong its reign by working upon the prejudices of the people until the wealth is aggregated in a few hands and the Republic is destroyed.”

14. The views evolved in UN Economic & Social Commission for Asia & the Pacific are almost identical. It holds that “Good Governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the view of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.”

15. While we all know that cancer of corruption has seeped into the blood stream of our polity, the million dollar question that stares us in the face is what can be done other than what we have been doing in the name of combating this evil all along. If a part of human body suffers from gangrene, doctors might advise surgery. When gangrene spreads to all nooks and corners, probably surgical amputation cannot be the mode of management. The punitive methods in the form of criminal law on corruption and disciplinary action for breach of conduct rules of the public servants on one hand and preventive measures in the form of pro-active vigilance on the other may need to be strengthened and the loopholes plugged. But, to my mind, this may not suffice. As history shows, unscrupulous elements have always been one step ahead of the law. We need to do something over and above law enforcement.

16. I was heading the 2nd Administrative Reforms Commission constituted by Government of India and the 4th Report submitted by the Commission dealt exclusively with the issue of **ethics in governance** including issues related to anti-corruption strategies. We had looked at the whole gamut of issues related to ethics, in public life, legal frameworks, institutional framework, social infrastructure, systemic reforms and international cooperation. We had made host of recommendation for electoral reforms including certain amendment to the Representation of Peoples Act – 1951 which have also been recommended by UN Convention against Corruption, establishment of watchdog agencies like Lokpal and Lokayukta, appointments to constitutional and statutory bodies, anti-defection measures, code of conduct for people occupying public offices, code of conduct for all professionals etc.

17. We had specifically looked at the way anti-corruption law has evolved in India in the post-independence period. The issue of **collusive bribery** was also looked into in great detail. The Sec. 24 of the Prevention of Corruption Act - 1988 provides protection to the victims of corruption in a bribery case. However, in a collusive corruption, there is no victim, both bribe giver and the bribe taker are the beneficiaries at the cost of public exchequer. Our inability to deal with such crimes undermines the efficacy of the anti-corruption regime. Therefore, an offence could be classified as collusive bribery if the outcome or the intended outcome of the transaction leads to a loss to the State, public or public interest. We need to consider legislative changes in contract laws, protection of witnesses, corruption by foreign & international public organizations, confiscation of assets on the lines of UN Convention against Corruption. All this will help in curbing collusive corruption. These are some of the issues which need greater debate and scrutiny.

18. You are aware that India is a signatory to the UN Convention against Corruption. To ratify the same, there is requirement for certain changes in existing rules and procedures which can be brought about only by suitable legislations. In this regard I shall like to make a special mention of Articles 6 & 36 of the Convention. These articles require that Preventive and Specialized Investigation anti-corruption bodies/authorities need to be established and that they should have necessary independence so that they are able to carry out their functions without any undue influence. In order to fully comply with these articles, the State Anti-Corruption Organizations and CBI have to be made functionally autonomous/independent by removal of provisions such as pre-enquiry permissions [under section 6A of DSPE Act and Vigilance Manuals of State Governments], prosecution sanctions

[section 19 of Prevention of Corruption Act, 1988], power to file appeals, engagement of counsels, budgetary resources and appropriate training, etc. We also look forward to a stage when even private sector will be brought within the ambit of anti-corruption agencies as envisaged in the UN Convention against corruption.

19. A host of initiatives have been taken by Government of India for administrative reforms, e-governance, restructuring of democratic institutions, reengineering of processes to minimize the opportunities for corruption and to strengthen the democratic institutions. The enactment of the Right to Information Act - 2005 to bring greater transparency in governmental functioning, enactment of the CVC Act -2003 for the independent functioning of the Central Vigilance Commission, setting of Serious Fraud Investigation Office for the investigation of serious corporate frauds, appointment of Ombudsmen for various sectors etc. are some of the examples. However, there is an urgent need for the strengthening of anti-corruption regime in the country. A comprehensive study of sectoral spread of corruption, innovative modus operandi adopted by the corrupt public servant in collusion with outsiders and devising suitable strategy to deal with the same is necessary for effectively combating corruption.

20. Another issue of great concern is the huge pendency of cases in various courts including the Appellate Courts. Indian judiciary is known for its independence, quality jurisprudence and its commitment for upholding the fundamental rights of the people. However, delays in trials lead to a general perception that the corrupt continue to hold official power despite criminal cases pending against them.

Comparison of Persons Convicted for Bribery

Year				Rate per 100,000 inhabitants		
Country	1998	1999	2000	1998	1999	2000
India	654	684	-	0.07	0.07	-

21. The delivery of expeditious and qualitative justice is important for strengthening the rule of law; building a fair, just and equitable society. The judicial system need to be strengthened to cope with the pressure of the pendency of cases and capacity building in terms of manpower, training, material resources, technology, specialization etc. should be our priority for meeting the emerging challenges. There are a large number of vacancies at all levels of judiciary. The State governments and the High Courts need to work in co-ordination for the immediate filling up of vacancies. It is extremely important to attract young and talented persons to the judicial profession so as to bring in a new work ethics in its functioning. The use of information technology in the record keeping, listing and allocation of cases etc. is extremely important for bringing in speed and transparency in the functioning of the courts. The computerisation of the Supreme Court of India and a large number of High Courts of States has been completed. However, a lot needs to be done for the computerisation of trial courts and subordinate courts as the highest pendency of cases are in these courts. The other options of Alternative Dispute Resolution Methods such as, Lok Adalats, Mediation, Negotiated Settlements, Arbitration etc. need to be pursued vigorously for reducing the pendency. The Criminal Procedure Code-1973 has been amended for making provisions for Plea Bargaining which need to be made popular among the judiciary, law practitioners and contending parties. The Govt. of India has enacted the Grama Nyalaya Act-2008 providing for setting up of Panchayat Level courts for expeditious dispute resolution at the grass-root level which can help in bringing down pendency in the trial courts and to achieve greater social harmony in our villages. The Govt. is one of the biggest

contributor to litigations and hence, our Govt. is proposing a National Policy on Litigation so as to limit the scope of the litigation to essential issues involving questions of law and of great public interest.

Our Govt. is resolved to strengthening the physical and human resources of the judicial system as we believe that “ **Investment in Judiciary is investment in business/ economic development of the country**”. We are pursuing the matter of greater financial allocation for the Judiciary with Planning Commission and have also been urging/promoting the various State Govts. for creating the necessary physical infrastructure.

22. Paolo Mauro’s study indicates that high levels of corruption are associated with lower levels of investment as a share of the GDP in a cross-section of the countries studied. Mauro demonstrates that countries with high levels of corruption invest very little in human capital and in particular, investment in education is only minimal. This is because education provides fewer opportunities for corruption when compared to other types of more capital intensive public spending such as infrastructure and defence. Knack and Keefer’s study shows that high levels of corruption mean reduced investment, a lack of credible guarantees of property and contract rights, and poor institutionalization of the government. A study by Shang-Jin Wei linking corruption to international investment proves that corruption acts like a tax on foreign direct investment. While a one point increase in the tax rate reduces FDI by 5 per cent, an increase in the corruption level from that of Singapore to Mexico is the equivalent of 32 percentage point increase in the tax rate. In another study, a one standard deviation (2.4) improvement in the corruption index is associated with over a 4-percentage point increase in the investment rate and half a percentage increase in the annual growth rate of per capita GDP.

23. I was told that you have discussed various issues such as, legal constraints regarding sanction for prosecution, stay on trial proceedings and appreciation of electronic evidence etc. in the various sessions held during the seminar. You must have also deliberated on various issues related to the reasons for delay in investigation, trial of cases, poor rate of conviction and strategies to overcome the same. There are 9310 cases of Central Bureau of Investigation pending before various courts and more than 2000 cases are pending for more 10-years. A large number of these cases are against dishonest and corrupt public servants and their associates who have allegedly played havoc with the system in their pursuit of self-aggrandisement. The delay in the trial of these cases essentially means delay in effective action against the corrupt elements and relief to the ordinary citizens of this country who are victims of corruption. Therefore, the law officers appearing in these cases need to make all out efforts for overcoming the legal hurdles created by the defence advocates. A co-ordinated effort is needed on the part of the police officers, law officers and the judicial officers to secure early disposal of the cases. Govt. of India proposes to set up **71-new CBI courts** for dealing with the cases investigated by the Central Bureau of Investigation and I am sure these additional courts will help in expediting the trial of anti-corruption cases. The impact of anti-corruption efforts of the Govt. will be felt, if the cases are registered and trial is completed in a time frame of 2 to 3 years. A coordinated effort on the part of all the stakeholders in the system will lead to effective anti-corruption interventions and help building good governance. Moreover, it is important that even as petty cases are solved, the big fishes should not escape punishment. There should be *zero tolerance* for corruption.

24. Apart from this, I would suggest the following Reforms to Curb Corruption:

- a. The scope of Prevention of Corruption Act should be widened to include:
 - Gross perversion of the Constitution and democratic institutions amounting to willful violation of the oath of office.
 - Abuse of authority by unduly favoring or harming someone
 - Obstruction of justice
 - Squandering public money

-Collusive bribery

- b. The Corrupt Public servants (Forfeiture of Property) Bill as suggested by the Law Commission should be enacted without further delay.
- c. Steps should be taken for immediate implementation of the Benami Transactions (Prohibition) Act 1988.
- d. There should be statutory protection for whistleblowers and victim protection.
- e. A multi-member Lok Pal at the national level and Lok Ayuktas at the State level should be set up under the Constitution.
- f. False Claims Act should be enacted.
- g. Article 311 of the Constitution may be repealed along with the Article 310 and legislation should be passed under Article 309 to provide for the terms and conditions of service of public servants including necessary protection against arbitrary action.
- h. Prior sanction should not be necessary for prosecuting a public servant who has been trapped red-handed or found in possession of assets disproportionate to known sources of income.

25. The focus should be on e-governance and systematic change. An honest system of governance will displace dishonest persons. As Gladstone so aptly said, "The purpose of a government is to make it easy for people to do good and difficult to do evil".

We always find alibi for our lapses by quoting trespass from other democratic institutions, by resorting to a blame game. The executive/ civil services blame interference by the political executive or legislatures and vice-versa; legislators blame the judiciary and vice-versa- the main problem lies in each one leaving the space for the others to occupy. If any one of the democratic institution leaves space, the mafia or extra- constitutional authority occupies that space. Realization of its own authority and discharging its sphere of responsibility, developing accountability and responsiveness are the real solutions to the conflicting situations of eroding democratic polity.

I would like to quote here an ancient subhashit (good message):

“ Rivers do not drink their waters themselves, nor do trees eat their fruit, nor do the clouds eat the grains raised by them. The wealth of the noble is used solely for the benefit of the others”

26. I will await the recommendations of this National Seminar, I promise to extend all help and cooperation from my Ministry for the implementation of the recommendations. Our Government is committed to strengthening the Criminal Justice System. I once again congratulate Director, Central Bureau of Investigation and Director, NICFS for organizing this conference, which has provided a platform for exchange of ideas between investigators, prosecutors and judiciary.