

Don't Degrade Corruption Prevention & Detection to a butt of Jokes

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INDIAN Finance Minister Arun Jaitley has put global anti-corruption watchdog, Transparency International (TI), in a tight spot.

With Mr. Jaitley declaring Union Government as totally corruption-free, TI might have to now alter the global Corruption Perception Index (CPI). This is notwithstanding the unpleasant ground reality in the country that would be elaborated later.

TI would be under perceived 'moral pressure' from the world's largest political party, BJP, to create a new category of national governments that have declared themselves as corruption-free! It is a different issue that the self-certification and self-attestation has been crafted by maiming diverse anti-corruption channels.

Under CPI, the countries are ranked on a scale extending from 'highly corrupt' to 'very clean'. TI has so far never declared any country or national government as a totally clean entity or as a zero-corruption entity.

TI's approach towards gauging corruption can be sensed from the very first sentence of TI's brochure on CPI 2014. It reads as: "Poorly equipped schools, counterfeit medicine and elections decided by money are just some of the consequences of public sector corruption."

The Brochure says:

"Corruption is a problem for all countries. A poor score is likely a sign of widespread bribery, lack of punishment for corruption and public institutions that don't respond to citizens' needs. Countries at the top of the index also need to act. Leading financial centres in the EU and US need to join with fast-growing economies to stop the corrupt from getting away with it. The G20 needs to prove its global leadership role and prevent money laundering and stop secret companies from masking corruption."

To take the discussion forward, one needs to enlarge the definition of graft. But before doing that, we should recapitulate Mr. Jaitley's repeated claims on eradication of corruption that he has been making since the beginning of 2015.

As put by Davos-dated newswire story filed on 22nd January, "Finance Minister Arun Jaitley on Thursday said the word 'corruption' has not even been whispered since the new government came to power."

He apparently believes that people have accepted as gospel truth a radio jingle played during the Lok Sabha poll campaign. The jingle played a frightened lady's voice embodying corruption as stating that I am running away as Modiji is coming.

In the current month, Mr. Jaitley has at least thrice talked about NDA's achievement in weeding out corruption on three separate occasions. On 9th May, he thus stated 'corruption' has been removed from India's political dictionary under Prime Minister Narendra Modi.

It is a fact that no major corruption scandal has so far hit the headlines under the Modi raj. This, however, does not mean that there has been no corruption at different levels of governance system.

Like adultery, corruption is consensual and is thus hard to detect. The Government has to enforce robust procedures and systems to detect corruption, which neither giver nor buyer is normally willing to disclose. Transparency is both the key to avoiding and unearthing irregularities in governance that may or may not constitute corrupt practices. Modi Government suffers from colossal transparency deficit.

At operational level of governance, instances of corruption are aplenty. Anyone can verify this from the index of press releases available on Central Bureau of Investigation's (CBI's) website.

The fact about prevalence of graft in the top echelons of bureaucracy can also be ascertained by flipping through the replies to Parliament questions put over the last six months.

Maximum number of alleged bribery cases has occurred in different entities controlled by Finance Ministry. Recall the arrest of Syndicate Bank CMD's arrest by CBI in November 2014 in Rs 50-lakh corruption scam. Recall the arrest of Chief Commissioner of Income Tax, Jodhpur in April 2015 in Rs.15- lakh graft case. We can list several such registered cases to dispel the myth that the word 'corruption' has not been whispered under Modi raj.

As regards corruption at the political level, the days of ruling party functionaries or ministers negotiating and accepting wads of currency notes from favour-seekers are gone. Much filth has flown in the Yamuna since the Tehelka's 'Operation West End' bribes-giving sting on NDA Government and BJP during 2000-2001. One need not spoil Modi Sarkar's one-year celebrations by recalling one of the most shameful chapters in the Indian history of corruption.

Politicians have now become wiser. So have elite cadre officials. They accept bribes as equity in listed or unlisted firms. They also take unsecured loans from obscure private firms connected in some ways with the favour-seeking corporate houses. They accept bribes as consultancy fees that are paid to obscure Indian or overseas firms controlled directly or remotely by politicians.

They facilitate corporate donations to NGOs and trusts with which they are affiliated. This is distinct from rampant 'sharing' of government grants doled out to hundreds of NGOs every year. Certain lawyer politicians accept assignments at hefty fees from companies whose cases they decided when they were in power. The decision-makers also seek inducements in form of funding of foreign trips and education of their children. They also seek returns by asking for appointment of their recommended persons in favour-seeking private firms.

The political class and elite civil cadres have thus graduated from accepting cash to crafting quid pro quo deals, which perhaps need to be articulated in the legal definition of corruption.

The issue whether there have been any UPA-type quid pro deals under Modi Government can only be known if the Government resorts to proactive disclosure of its decision-making process on various policy matters and business deals. Leave aside stingy ***suo moto*** disclosure under Section 4 of the Right to Information Act (RTI), flow of information under other provisions of the Act has become tighter under the NDA Government.

It has maimed corruption-fighting institutions. Central Vigilance Commission (CVC) is topless for several months. So is Central Information Commission, which gives crucial verdicts against the ministries that are reluctant to part with information sought through RTI Act. There has been inordinate delay in constitution of Lok Pal, which should play a pivotal role in detecting political corruption.

These concerns aside, Mr. Jaitley's remarks on different occasions also serve as some sort of admonishment to Comptroller and Auditor General (CAG) and the judiciary on handling of potential or suspected cases of graft.

In November 2014, Jaitley reportedly advised CAG to refrain from sensationalizing its findings to get into the headlines. Mr. Jaitley later clarified that his observations were not reported in the spirit of his speech.

On 27th April 2015, Mr. Jaitley bemoaned that the judicial supervision of corruption cases has hindered the ***"whole process of economic decision-making."***

He also pitched for relaxation of Prevention of Corruption Act (PCA), 1988. He believes that the 1988 law was perceived in a regulatory framework when we were still more regulated.

He reportedly said:

"That Act has today to evolve. And the basis of the evolution is that when economic activity is being enlarged in the country, in any economic activity and decision making there would always be new areas to charter out and quick decisions to be taken," he said.

He added:

"Can that decision making be where every decision maker is always on the defensive, cautious of what may eventually happen if a decision is taken one way? Economic decision making can also be trial and error—it may also involve an element of risk taking. Does the 1988 Act adequately distinguish between an act of corruption and an act where a decision maker makes an honest error? I think that Act fails that test."

Mr. Jaitley, who is de facto Deputy Prime Minister, has also been instrumental in regulating the flow of information to the media, thereby reducing the scope for breaking news on bad governance.

As he put it at an event on 29th August 2014, "the media hardly gets to know what the government is doing or about any of its decisions before they are made public."

Mr. Jaitley had reportedly stated: "Conventionally, the Indian media had become part of the establishment – aware of what's going to be decided in the Cabinet, what move is being planned. They could predict a Cabinet or list of Ministers days in advance." That has changed now, he added.

This strategy, coupled with NDA Government's subtle messages to the media that it can invoke Official Secrets Act against it, has changed the entire situation about potential scams.

Modi Government has thus transformed prevention of corruption into an art of killing opportunities for investigative stories. Such news can later snowball an issue into a scam through persistent follow-up reports.

Time has come for Modi Government to resolve the contradiction between its love for secrecy and its urge for adoption of liberal attitude by all stakeholders of democracy towards decisions arrived at under cloak of secrecy.

BJP-led Government should honour its Lok Sabha poll promise to usher in 'Open Government and Accountable Administration'. It can do so by making public all documents on which sensitive economic decisions are proposed to be taken.

The adoption of such standard operating procedure would enable the decision-makers to make timely corrections in their trial and error game. Such a practice would also deter authorities that intentionally take dubious decisions under the garb of secrecy.

The Government should make the Supreme Court a pro active partner in national development by asking it to give its time-bound opinion as to how a proposed decision would fit in the battle of rights among different sections of the society. This would drastically reduce the scope for litigation as the Apex Court would have to strike a balance between the responsibilities of the Executive and unlimited interests of the civil society.

If Modi Government were to make public today all documents relating to 2G scam and coalgate right from their origins in the nineties, the history of these two scandals would have to be re-written. And that would leave top leaders of NDA red-faced. Can the Government accept this challenge?

The Government should immediately desist from patting its back for 'weeding out' bribery. It should first put in place new measures to prevent and detect corruption. It, for instance, can issue an ordinance to enact The Prevention of Corruption (Amendment) Bill, 2013 into law on the basis of recommendations made by Law Commission in its report on the bill submitted in February 2015.

The Bill would make PCA compliant with United Nations Convention Against Corruption (UNCAC). The revised Bill seeks to plug many loopholes in prevention, detection and punishment of bribe-takers and bribe-givers.

NDA Government's road-map for battle against corruption must provide for timeline for empowerment of anti-corruption watchdogs. Ditto for enactment of Foreign Public Officials and Officials of Public International Organisations Bill, 2011 and The Public Procurement Bill, 2012 into laws.

The last but not the least Modi Government should crack the whip on all wings of Government starting with the Prime Minister's Office for non-compliance or partial compliance with comprehensive guidelines for implementation of Suo Moto disclosures under RTI. The guidelines dated 15th April 2013 include annual third party audit of compliance with the disclosure norms.

Why has the Government not shown a single such third-party audit report?

Corruption is like an ocean in which is embedded potential tsunami of issues. NDA Government should thus shed its irrational exuberance on self-certification of corruption-free governance.

It might like to muse over an observation made in a United Nations report published in May 2013.

"Corruption is a challenge that no country or sector can claim to be immune to,"
says the report titled 'Corporate Integrity - Incentives to corporate integrity in accordance with the UNCAC'.