

**Booklet Brought Out on the Occasion of the
Left Parties Campaign Against Corruption
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Big Corporates-Politicians-Bureaucrats Nexus: The Fountainhead of Corruption

Corruption has become a major public concern in India following the exposure of successive scams under the UPA regime. The brazen attempts by the UPA government to protect the corrupt have failed and currently a former Minister and two MPs of the ruling combine have been put behind bars. In a developing country like ours, where millions of people still suffer from acute poverty, hunger and lack of socio-economic opportunities, the pillage of public resources through corruption amounts to a crime of a very serious nature. Besides impeding economic development, accumulation of ill-gotten wealth through corruption is widening inequalities and ruining the moral fabric of our society. People are justifiably outraged at this state of affairs.

In order to combat corruption, however, we need to understand the root causes behind it. The mega-scams that are unfolding today - the 2G spectrum allocation scam, CWG scam, KG basin gas scam etc - show how thousands of crores worth of public resources have been illicitly cornered by a section of big corporates, bureaucrats and ministers. Moreover, corrupt ministers have been allowed to remain in the government for months and the investigations manipulated, in order to obstruct the course of justice.

While corruption in high places has been a feature of our political system for many decades, what has emerged as a dominant trend in the post-liberalization period is a thorough distortion of the policy-making process at the highest levels of the government. A nexus of big corporates, politicians and bureaucrats has matured under the neoliberal regime and made our system more vulnerable to cronyism and criminality. This is also why economic growth has such an iniquitous impact, allowing a few corporate entities and rich individuals to reach the top of the global wealth lists, even as the bulk of the population suffers from stagnant and insecure living standards.

CPI (M) believes that in order to combat corruption and ensure that the benefits of economic development are widely spread among the people and not cornered by a few, this nexus of big corporates, politicians and bureaucrats has to be thoroughly exposed and dismantled.

Neoliberal Regime: Scams Galore

The beginning of the liberalization process in India in the 1980s was accompanied by the Bofors scandal, which tainted the Prime Minister's office for the first time in the post-independence period. Since the full-fledged implementation of neoliberal reforms in 1991, we have seen a secular rise in the magnitude and sophistication of corruption and financial crimes — from the

stock market, hawala and telecom scams of the Narasimha Rao era, to the murky defence deals, the UTI scam and the fire sale of underpriced public assets under the Vajpayee government, to the 2G spectrum allocation, CWG, KG basin gas and other scams unfolding under the present Prime Minister's tenure. While the Bofors scam involved kickbacks of Rs. 64 crore, each of the scams happening nowadays is worth tens of thousands of crores. At the State level too, scams have proliferated related to the grabbing of mineral resources and land by big corporates and real estate developers, with 'business friendly' state governments acting as 'facilitators'. This exponential growth of corruption and the process of neoliberal reforms are not merely coincidental; the former has been a direct outcome of the enmeshing of big money, vested interests and politics, brought about by the latter.

2G Scam: The 2G spectrum allocation scam is the biggest scam unearthed in recent times. The former Telecom Minister A. Raja disbursed 122 2G licenses and spectrum in January 2008. Rather than auctioning these licenses and spectrum, they were allocated on a totally arbitrary first-come-first-served basis, at prices that were fixed in 2001. In the meantime, the mobile subscriber base in India had increased from 40 lakh in 2001 to nearly 30 crore in 2008, thereby substantially enhancing the market price of spectrum, which is a scarce resource. CPI (M) had objected to the tainted process of 2G spectrum allocation in 2008 itself, which was ignored by the Prime Minister.

As per the CAG report, the beneficiaries of the under priced spectrum allocated in 2008 include all the major corporates in the telecom sector, from Tata Teleservices and Reliance Telecom to Bharti, Vodafone, Idea etc. Besides, two real estate players, Unitech and DB Realty (Swan) also received underpriced spectrum and made huge windfall gains by selling their equity to foreign companies, Telenor and Etisalat, respectively. The CAG has calculated the loss of government revenue on account of the allocation of under priced spectrum to be in the range of Rs. 57666 crore (on the basis of the value of equity sold by Swan to Etisalat) to Rs. 176645 (on the basis of the spectrum price discovered through the 3G auction in 2010).

Despite the exposure, the UPA government refused to take action against A. Raja till the Supreme Court intervened to take over the investigation. Finally, the CBI arrested Raja and the former Telecom Secretary in February 2011. Subsequently, the promoter of Swan telecom and five more top corporate executives from DB Realty, Unitech and Reliance ADAG group have also been arrested. With further revelations of Rs. 200 crore kickbacks paid by DB Realty to Kalaignar TV, a DMK MP who owns 20% stake in the TV channel, alongwith its CEO, have also been put behind bars. Several more corporate executives from the major telecom companies have been questioned by the CBI and it is possible that more arrests will be made in the coming days. Thanks to the Supreme Court, action has been initiated against some of the corporates, bureaucrats and ministers involved in the 2G scam.

It has also been made clear in the CAG report that the Prime Minister and other members of the Cabinet were fully aware of the dubious acts of A. Raja as the Telecom Minister. The role of the other Cabinet ministers in the entire affair is being looked into by the JPC and the PAC. The Prime Minister is yet to come up

with a satisfactory explanation on why nothing was done to stop the illegal allocation of licenses and spectrum despite prior warnings from several quarters. It was recently revealed by the Department of Economic Affairs before the JPC that the then Finance Minister P Chidambaram had meetings with the former Telecom Minister Raja in May 2008 following which they had reported their “agreed position” on the 2G spectrum allocation to the Prime Minister. No minutes of these meetings were recorded. This brings the former Finance Minister’s role into question. Moreover, the new Telecom Minister from the Congress is refusing to act and recover the lost revenues from the corporate beneficiaries of the scam. The Congress is therefore not above board in the 2G scam.

CPI (M) has been demanding that full market price be recovered from the companies which secured the 2G licenses and spectrum illegally in 2008 to recoup the losses to the national exchequer, or their licenses cancelled and re-auctioned. This will be the litmus test for the government.

Another Telecom Scam: Another Minister of the UPA government from the DMK, Dayanidhi Maran, has recently resigned from the cabinet. It is noteworthy that the CPI (M) had vehemently opposed the policy decision to raise the FDI limit in the telecom sector to 74% when Maran was the Telecom Minister (from 2004 to 2007). CBI is now investigating allegations that Maran forced the former owner of Aircel to sell his company to another Malaysia based company, Maxis, owned by a business tycoon of Indian origin. After Maxis acquired Aircel, it was granted 14 licenses to operate in various parts of the country. It is alleged that the Maxis owner in return invested Rs. 800 crore in Sun TV, which is owned by Dayanidhi Maran’s brother. The Sun TV network has emerged as the largest media conglomerate in the country today and Sun Direct (in which the Maxis owner invested money) has become the largest DTH service provider. This is a classic example of how crony capitalism works. CPI (M) demands thorough investigation of the allegations against Dayanidhi Maran and Sun TV and strong action if the charges are proven.

CWG Scam: A huge amount of public resources were looted and squandered in the run up to the Common Wealth Games held in October 2010 in New Delhi. Despite many reports appearing in the media regarding the messy preparations for the games and absurdly overpriced contracts awarded to favoured companies by the CWG Organising Committee headed by Congress MP Suresh Kalmadi, the government failed to prevent the misdeeds. After the games were over, the central government appointed a committee under former CAG V.K. Shunglu, which came out with revelations of corruption against several persons. Subsequently, Kalmadi has been arrested and charge sheeted by the CBI alongwith his cronies in the CWG Organising Committee for awarding a contract to a Swiss firm (Swiss Timing) to install a Timing-Scoring-Result system for an exorbitant price, causing a Rs. 95 crore loss to the exchequer. The Shunglu Committee has also indicted the then Prasar Bharati chief and Doordarshan DG for improperly awarding broadcasting rights of CWG to a UK based company SIS Live causing a loss to the exchequer of Rs. 135 crore.

The Shunglu Committee has also indicted various departments under the Delhi State government and the central Urban Development ministry, alongwith agencies like the DDA, NDMC, MCD, PWD etc. for time and cost overruns, financial irregularities and misappropriation of funds allocated for rebuilding the city infrastructure and constructing the games village. Delays and improper payments made by the DDA to Emaar MGF, the company that built the games village, have caused over Rs. 1200 crore loss to the exchequer. The DDA's bailout package for Emaar MGF amounting to Rs. 766 crore has also been questioned. Undue gains have also accrued to the contractors who undertook projects for building flyovers, street lighting, streetscaping etc.

The Delhi Lieutenant Governor Tejender Khanna and Chief Minister Sheila Dikshit have also been indicted. The Delhi government, on its part, has rubbished all the findings of the Shunglu Committee. This response is typical of the Congress, which has been trying to defend the guilty in all the corruption scandals. Congress leader Digvijay Singh has publicly defended Kalmadi. Once the final CAG report on the CWG is placed in the parliament, the role of the central government, Delhi government and the other agencies will become clearer.

CPI (M) demands strong action against all the officials and corporate beneficiaries of the CWG scam. Kalmadi and Co. are not the only scamsters involved. The role of all the agencies involved in the CWG, including the Delhi State government, which has been indicted by the Shunglu Committee must be scrutinized by the CAG and action taken against the guilty by the CBI. Cover-up attempts will not be tolerated.

KG Gas Scam: The other big scam which is presently unfolding relates to the Production Sharing Contract between the central government and the Reliance Industries on natural gas extracted from the Krishna-Godavari (KG) basin in the Bay of Bengal. A draft Performance Audit report of the CAG has already questioned the way the RIL was allowed to artificially inflate its development cost from \$2.5 billion in the initial contract to \$8.8 billion. When this was done in 2006, CPI (M) had strongly objected to this and alerted the then Petroleum Minister, who ignored the matter. Now the CAG has indicted the Director General of Hydrocarbons (DGH) and the Petroleum Ministry of conniving with the RIL, indulging in "irregularities and bending rules" to "oblige" RIL in the KG basin gas fields, leading to a massive and as yet "unquantifiable" loss to the national exchequer. Independent estimates suggest that total loss to the government would be to the tune of \$10 billion or around Rs. 45000 crore.

The draft CAG report also points out that as per the Production Sharing Contract, Reliance should have relinquished 95% of the exploration area after a specified time period so that such areas could again be re-auctioned. Instead, the Petroleum Ministry and the DGH has declared the entire exploration area as "discovery area" allowing Reliance to retain this illegally. The loss to the exchequer – as per CAG – is difficult to quantify but "huge".

The fixing of the gas price at \$4.2 per unit by an EGoM headed by Pranab Mukherjee in September 2007 was another decision taken by the UPA government, which has massively favoured the RIL. The CPI (M) had objected

to this too. The RIL had itself admitted in the court proceedings between it and Anil Ambani's RRNL and NTPC that its cost price of gas was a maximum of \$1.43 and it was willing to sell gas to NTPC at \$ 2.34 in 2004. There is also evidence showing that NTPC and the union power and fertiliser ministries were opposed to the fixing of the gas price at such high levels. Yet the domestic gas price was linked to the price of crude oil in the international market by the UPA government and the price of gas fixed at \$4.2 per unit.

CPI (M) had demanded action against the former DGH for colluding with the RIL and causing loss to the exchequer. He has recently been booked by the CBI in a 2005 case where he had awarded a contract to a US based company GX International at an inflated cost against kickbacks, causing a loss of Rs. 400 crore to the exchequer. This person needs to be arrested immediately. The role of the then Petroleum Minister also needs to be probed. CPI (M) has further demanded that the faulty pricing formula in the Production Sharing Contract with the RIL be amended forthwith so that the loss to the exchequer can be recovered. CPI (M) has also demanded a delinking of the domestic gas price from international crude oil price and fixing of gas price based on a cost-plus formula. The hesitation of the government in taking these steps expose the influence of the Reliance group on the Congress led government.

Other Scams: Several other scams have occurred in the recent period, which follow the similar pattern of ministries bending the rules to favour corporate entities against kickbacks. At the central level, there was the IPL scam where the MoS External Affairs had to resign following the exposure of his wife being given 'sweat equity' in Kochi IPL, on whose behalf he was openly canvassing. There was also the controversial deal between ISRO's Antrix Corporation (which comes under the PMO) and Devas Multimedia, for S-band spectrum which was subsequently annulled, following exposures of huge losses to the exchequer owing to the deal. Allegations of wrongdoings have been made in the import and export of items like wheat, rice, sugar and onions in the past few years.

At the level of states, the BJP government in Karnataka is under the stranglehold of the Reddy brothers of Bellary, who have siphoned off crores of rupees in illegal mining of iron ore. There are serious allegations of a multi-crore land scam against the Chief Minister Yeddyurappa too, who denotified land meant for public projects and allocated it to his sons and other BJP leaders. The Adarsh Housing society scam was exposed in Maharashtra, where a multi-storied building meant for the family of Kargil martyrs was constructed violating rules and regulations and apartments were allotted in the names of relatives and friends of Ministers, senior bureaucrats and army officers, who had nothing to do with the Kargil war. The names of four former Chief Ministers of Maharashtra - Ashok Chavan, Vilasrao Deshmukh (Union Rural Development Minister), Sushil Shinde (Union Power Minister) and Narayan Rane - have been linked to wrongdoing. Another scam in Maharashtra involves the private luxury township of Lavasa being built in Pune district. Following the stoppage of work on the project due to violation of environmental regulations, it was alleged that family members of Union Agriculture Minister Sharad Pawar had owned stakes in the promoting company when it got clearance for the

project from the Maharashtra government. All this shows how the state governments led by the Congress and the BJP are mired in corruption.

The Scourge of Black Money

Black money is the income that accrues to persons in violation of law. This can be due to evasion of taxes or other forms of illegal activities like receiving bribes and kickbacks, arms or drug dealing or financing of terrorism. Although it is difficult to quantify, it is generally believed, even in official circles that the amount of black money in India has reached enormous proportions. It is the rich and the powerful persons in India who possess and deal with black money, especially big businessmen and ruling class politicians. There is much evidence to suggest that huge amounts of black money are also stashed abroad in offshore bank accounts and tax havens. The existence of black money and its outflow abroad amount to a huge drain on the country's resources. This wealth rightfully belongs to the nation and if recovered, can be used on social welfare projects and poverty eradication.

However, rather than cracking down on the criminals who possess black money, successive central governments have treated them with kid gloves. VDIS (Voluntary Disclosure of Income Schemes) have been announced giving amnesty to tax evaders provided they disclose their income and pay taxes at prevailing rates. Such schemes have utterly failed to check black money generation or to bring back black money from abroad. CPI (M) has always stood for unearthing and confiscation of black money in all its forms. Following the global financial crisis in 2008, there was an initiative by the advanced capitalist countries to crack down on tax havens and secret bank accounts. It was in this backdrop that the demand to crackdown on black money and bringing back money stashed in offshore bank accounts gained currency within India.

Estimates of Black Money: The Global Financial Integrity (GFI), a Washington based think tank, published a study authored by former IMF economist Dev Kar in November 2010 on illicit financial flows from India. As per this study, India lost a total of \$213 billion in illicit financial flows (or illegal capital flight) between 1948 and 2008. These illicit financial flows were generally the product of corruption, bribery and kickbacks, criminal activities and tax evasion. The present value of these illicit financial flows was calculated to be at least \$462 billion (over Rs. 20 lakh crore). Total capital flight represented approximately 16.6% of India's GDP in 2008.

High Net-Worth Individuals (HNWIs) and private companies were found to be the primary drivers of illicit flows out of India's private sector, besides the underground economy based on crimes. As per the GFI study, the Indian private sector shifted away from deposits into developed country banks over time towards increased deposits in offshore financial centers (OFCs). The share of OFC deposits increased from 36.4% in 1995 to 54.2% in 2009. Approximately 72% percent of India's illicit assets end up outside of the country. Significantly, the GFI study noted that deregulation and liberalization in the post-reform period of 1991-2008, accelerated the outflow of illicit money from the Indian economy.

Swiss Bank Accounts: Switzerland is infamous for its banking secrecy laws, which encourage tax evaders, frauds and scamsters across the world to deposit their illicit funds in Swiss banks without the fear of their names being disclosed to their respective governments. In recent times Swiss banks like the UBS, Credit Suisse and others have been under pressure from the US and European governments to crack down on money laundering and reveal the names of tax evaders maintaining accounts in them. It is believed that out of the \$5 trillion worth of assets of foreign clients presently being managed by the Swiss banks, a substantial share is that of Indians (the largest share as per some sources).

This has recently been confirmed by Wikileaks founder Julian Assange, who has received a data list of clients of Swiss banks from a former banker Rudolf Elmer (who has been imprisoned by the Swiss authorities). Assange said that he clearly remembers Indians names in the list – which he hinted at making public in future – and criticized the Indian government for not adopting a proactive approach in recovering the money.

The CPI (M) has demanded that these illicit funds stashed in the Swiss banks by Indians be confiscated and repatriated to India. However, the UPA government's attitude towards this has clearly been lackadaisical. The government had received a list of 26 Indians from the German government in 2010 who have secret deposits in the LGT Bank in Liechtenstein. This list has been submitted to the Supreme Court in an ongoing case on black money but the government has refused to make the list public citing compulsions under tax avoidance treaties. This is a specious argument since illicit funds concealed in offshore bank accounts, which amount to money laundering, are not covered under tax avoidance treaties. The deposits by 18 resident Indians in LGT Bank (5 out of 26 are NRIs and 3 could not be prosecuted) amount to a total of around Rs. 40 crore, against which a tax demand of Rs. 24 crore has been raised by the IT department.

That this is just a tip of the iceberg has been revealed in the case involving the Pune based businessman Hasan Ali Khan and his aide Kasinath Tapuria. Khan and Tapuria have tax demands worth Rs. 50000 crore and Rs. 20000 crore raised against them by the IT department. The Enforcement Directorate found documents during a raid at Hassan Ali's Pune residence in 2007 suggesting a deposit worth over \$8 billion (over Rs. 35000 crore) in UBS. Despite this, Hasan Ali was never interrogated rigorously till the Supreme Court intervened recently and put them under ED custody. It has been reported that in the recent interrogations Hasan Ali has revealed the names of several corporate heads, politicians and arms dealers whose money he has helped to launder. The government has also been repeatedly indicted by the Supreme Court over the lack of progress in unearthing black money.

Mauritius Route: A major conduit for tax evasion and money laundering is through the Mauritius route. India's Double Taxation Avoidance Agreement (DTAA) with Mauritius allows companies with an office address in that island country to escape paying capital gains tax in India. The fact that this treaty is being thoroughly misused can be seen from the fact that out of the \$132 billion (Rs. 5.9 lakh crore) of total FDI inflows into India between April 2000 and April 2011, \$55 billion (Rs.2.4 lakh crore) or 41.5% came from Mauritius alone.

During this period the FDI inflows from Singapore was \$13 billion, \$9.5 billion from the US and \$6.6 billion from the UK. Why is it that a small island country like Mauritius accounts for over 8 times the amount of FDI inflows into India from the US, the largest economy of the world. This happens because MNCs and FIIs across the world set up offices in the Mauritius to invest into India and enjoys profits without having to pay taxes.

It is widely believed that much of the FDI routed through Mauritius is actually Indian money being round tripped and laundered. It is noteworthy that some of the recent scams in India, like the 2G scam or the IPL scam, involved channeling of funds through shell companies set up in Mauritius. The FIIs further make use of financial derivative instruments called Participatory Notes (PNs) to receive funds from undisclosed sources and investing them in the equity, debt and derivative markets. Currently, the total value of PNs is almost 20% of all assets under the custody of FIIs registered with the SEBI. The former National Security Advisor had remarked that even terrorist financiers are investing in Indian stock markets through these PNs and the RBI had recommended their total prohibition.

The CPI (M) has been consistently demanding the scrapping of the DTAA with Mauritius and a ban on PNs. Under pressure from the Left parties during the UPA-I government's tenure, negotiations were initiated with the Mauritian government to plug the loopholes in the DTAA. However, there has been little progress on this so far. The main reason is the tremendous pressure built by the Indian corporates, MNCs and FIIs to maintain status quo. FIIs are also being allowed to make investments through PNs. It is important to build counter-pressure on the government in this regard.

Tax Defaulters: A huge amount of arrears of central taxes have accumulated over the years. The total outstanding arrear demand reached Rs. 2.5 lakh crore in 2010. Out of this around Rs. 1 lakh crore was held up because the tax assesses are untraceable or there are no assets to attach from them. These huge tax arrears have accumulated because of the chronic tax defaulters, who are getting away without paying their due taxes. The neoliberal medicine of cutting tax rates to enhance tax compliance has not worked. The IT department has reportedly prepared a list of 551 high net worth individuals and entities who have willfully defaulted or have unpaid taxes worth Rs. 25 crore and above. This list should be made public forthwith and the due taxes collected from them, by attaching their assets wherever necessary.

Root Cause of Corruption

When the neoliberal policies were introduced in 1991 under the aegis of the then Finance Minister Manmohan Singh, it was claimed that such economic reforms will not only lead to greater economic prosperity but also enhance the transparency and efficiency of governance. The neoliberal logic was simple: government is the source of all corruption and therefore privatization and liberalization, by lessening the role of the government, will get rid of corruption. Twenty years after the neoliberal reforms were initiated, this colossal falsehood stands thoroughly exposed.

The real source of corruption lies in the relentless greed for making more and more profits, which prevails under capitalism. In his first volume of *Capital*, Karl Marx quoted British trade unionist T.J. Dunning in a footnote in Chapter 31 to state:

Capital eschews no profit, or very small profit, just as Nature was formerly said to abhor a vacuum. With adequate profit, capital is very bold. A certain 10 per cent will ensure its employment anywhere; 20 per cent certain will produce eagerness; 50 per cent, positive audacity; 100 per cent will make it ready to trample on all human laws; 300 per cent, and there is *not a crime at which it will scruple, nor a risk it will not run, even to the chance of its owner being hanged.*

It is this urge to maximize profits at all costs which creates an environment conducive for corruption. Moreover, as Marx had argued, the development of capitalism leads to the concentration of wealth and assets in the hands of few big monopolies. These monopoly capitalists – the big corporates and financial magnates – seek to trample all laws and regulations in order to make more profits and grow bigger.

Neoliberal globalization has heightened this tendency manifold. The policies of liberalization and privatization have led to a pervasive and brazen dominance of the state and society by the big corporates and finance capital. The perverse consequences of this are seen in the policies pursued in the advanced capitalist countries. The war against Iraq was shaped by big companies like Exxon-Mobil, Bechtel and Dick Cheney's Halliburton, who made enormous profits out of the destruction of the country by grabbing its mineral resources. The state funded bailout packages for the failed financial giants like the AIG and Citigroup after the 2008 financial crisis in the US is another instance. The Wall Street executives who caused the crisis by gambling with other people's money have continued to receive fat bonuses, even as ordinary Americans have lost their homes and jobs and sunk into poverty.

The massive corruption, loot of public resources and generation of black money that we are witnessing in India today is also a fall out of the neoliberal policies being pursued by the ruling class parties like the Congress and the BJP for the last two decades. There is no longer an arm's length that the state is supposed to maintain vis-à-vis private interests, especially the interests of big corporates. Having been enmeshed with big business interests, the state has also become a party to the lawlessness of the rich and the elite. This is inimical to the interests of ordinary people and if not reversed, would completely subvert the functioning of our democracy.

Conclusion

While many voices are being raised against corruption in India today, most anti-corruption campaigns are sidestepping the link between corruption and neoliberal policies. The CPI (M) firmly believes that any anti-corruption movement that only targets politicians in general and refuses to see the nexus of big corporates, politicians and bureaucrats as the fountainhead of

corruption, would be ineffective. In order to combat corruption, we have to build a powerful mass movement to smash this nexus and initiate institutional reforms to insulate the state from vested interests and make it more transparent and accountable to the people. What India needs is a roll back of neoliberal reforms in order to redirect economic policies towards meeting the needs of the people and the ushering in of reforms in the legislature, executive and the judiciary to eliminate corruption and make it more efficient, transparent and accountable to the people.

CPI (M) Stand:

Lokpal: For an Effective Anti-Corruption Body

The battle against corruption, in order to be effective today, can be achieved only through a comprehensive reform of our political, legal, administrative and judicial systems and not through one-off or piece-meal measures. The establishment of an effective Lokpal institution is one such measure. This needs to be complemented by other measures. There has to be a grievance redressal set-up for citizens, based on a legislation. There has to be a National Judicial Commission to oversee the higher judiciary; there has to be electoral reforms to check the use of money power in elections which is another source of corruption. Urgent steps also need to be undertaken to reform our tax system to plug loopholes and unearth black money, much of which is stashed in offshore bank accounts and tax havens. Firm steps need to be taken to break the big business-politician-bureaucrat nexus. Only a comprehensive systemic reform can effectively curb corruption.

Lokpal Bill

The institution of Ombudsman, which exists in many countries across the world, has provided avenues to redress public grievances on corruption and abuse of public office. However, the fact that the Lokpal Bill could not be passed in the Indian parliament in four decades exposes the lack of political will to fight corruption. Several governments in the past have taken it up only to shelve it later under various pretexts. The present government has also been compelled to initiate discussion on this bill because of public outcry over successive corruption scandals. It is imperative that a Lokpal Bill which deals with corruption in high places is tabled in the forthcoming session of parliament.

In the wake of the on-going debate on what should be the scope and role of the Lokpal, the Communist Party of India (Marxist) wishes to set out its stand on the main issues concerning the constitution of a Lokpal.

1. Definition of Corruption

Corruption involves a whole range of activities from bribery, influence peddling, patronage or favour, nepotism, cronyism, electoral fraud, embezzlement, kickbacks to officials and involvement in organized crime.

The Prevention of Corruption Act, 1988 has defined the offences that constitute a corrupt act. This definition requires to be widened. The linkage between misuse of public power for private gain or enrichment is a highly restrictive understanding of corruption. In many cases, power is misused to benefit an entity like a private company which is not a “person” as required under the PCA 1988. Often, there may be no traceable kickbacks or embezzlement but there may be a huge loss to the public exchequer and breach of public trust for example through sale of PSUs due to a willful misuse of power.

The definition of corruption has to be widened to include “willfully giving any undue benefit to any person or entity or obtaining any undue benefit from any public servant in violation of laws or rules”.

2. Clarity on Functions

The Lokpal should essentially be a fact-finding body that receives complaints, enquires, investigates and forward cases to Special Courts where prima facie there is a case of corruption for prosecution and punishment in a time bound manner. It should have powers to recommend an enquiry and investigation suo moto. It should oversee the entire machinery related to corruption cases at the Central level. Finally, it should have the powers to recommend executive action and to approach Courts when these are not accepted.

The Lokpal should be entrusted with quasi-judicial powers and autonomy to fulfill these functions in an independent, accountable, transparent and time-bound manner.

The separation of powers between legislature, executive and judiciary is a part of the basic structure of the Constitution. The institution of Lokpal should conform to this basic structure.

An issue to be considered regarding the functions of a Lokpal is whether it will deal with corruption or will it also perform functions of grievance redressal. The CPI (M) favours separation of these functions. There must be a separate mechanism for grievance redressal. This should be set up by a separate legislation. The grievances of citizens about the citizens’ charter etc. should be brought under this set up.

3. Selection & Composition of Lokpal

The Lokpal Act should lay down an objective and transparent criteria such as competence, experience, qualification etc for the selection of candidates for

appointment to the Lokpal. The selection committee should be broad-based consisting of members of the executive, leaders of parliament, members of the higher judiciary, jurists and academicians. The search committee constituted by the selection committee should also be broad-based.

Composition: Apart from the chairperson, there should be 10 members in the Lokpal. Out of these four shall be judicial members, three can be persons with administrative and civil service backgrounds and the other three should be drawn from fields such as law, academics and social service. There should be no member drawn from commerce and industries just as there can be no politician.

4. Jurisdiction

While corruption in high places has to be tackled on a priority basis, for the ordinary citizen, it is the corruption faced by them in daily life and in dealings with public authorities that also needs to be urgently taken up. Much of this sphere of corruption falls in dealings with authorities at the states-level. The Lok Ayuktas set up on the lines of the Lokpal should bring all state government employees, local bodies and the state corporations under their purview. Further, a citizen's grievances redressal machinery that we have proposed be set up separately, should address all grievances regarding delivery of basic services and entitlements for citizens.

a) Prime Minister: The Prime Minister should be brought under the purview of the Lokpal with adequate safeguards. The office of Prime Minister along with all public servants was brought under the purview of Lokpal by the V.P. Singh Government in 1989 and in all subsequent draft legislations, the Prime Minister has been placed under the Lokpal. In fact a Parliamentary Standing Committee headed by Shri Pranab Mukherjee had made precisely this point while examining the 2001 Lokpal Bill. For the first time since 1989, this government presiding over a large number of scams, is unwilling to ensure accountability of the highest executive office. Clearly, all public servants of the Union Government within the definition in the Prevention of Corruption Act, which includes the Prime Minister, must fall within the purview of the Lokpal.

b) Judiciary: The judiciary too needs to be brought under scrutiny and made more accountable, and the stringent requirement of prior permission and sanction from the Chief Justice to file FIRs and investigate corruption charges has resulted in a de facto immunity to them. But the proposals to bring them under Lokpal encroach upon the constitutionally guaranteed independence of the Supreme Court. If a mere allegation of *mala fide* is enough for the Lokpal to start an inquiry into the actions of judges, it may not allow judges to act without fear.

Complaints about corruption against the judges of the Supreme Court and the High Courts should be handled by a separate body, the National Judicial Commission. This Commission should take care of the appointments in the

higher judiciary and oversee their conduct and enquire into the complaints of corruption. For this, necessary legislation will have to be passed. The Judicial Standards and Accountability Bill, 2010 is woefully inadequate for this purpose.

c) Members of Parliament: At present, the scrutiny of the conduct of Members of Parliament with regard to any corrupt practice is weak and unsatisfactory. For Members of Parliament, Article 105 of the Constitution provides protection with regard to freedom of speech and voting. The real issue is how to ensure that this freedom and protection does not extend to acts of corruption by Members of Parliament.

This can be done through an amendment to Article 105, on the lines recommended by the National Commission to Review the Working of the Constitution”.

Alternatively, if feasible, there can be legislation that if any Member of Parliament indulges in any act of corruption that motivates his or her action in Parliament (voting, speaking etc.), then this act falls within the purview of the Prevention of Corruption Act and the IPC.

5. Lokayuktas

In the states, Lokayuktas should be set up on the model of the Central Lokpal.

6. Protection of Whistleblowers

Whistleblowers must be protected in order to combat corruption. Monitoring and ensuring protection of whistleblowers can be a part of the mandate of Lokpal, but this needs a comprehensive statutory backing. The provisions of the *Public Interest Disclosure (Protection of Information) Bill, 2010* needs to be strengthened and the bill enacted expeditiously.

7. Big Business-Public Servant Nexus

It is necessary to recognise that an important source of corruption since liberalisation stems from the corrupt nexus between big business and public servants. It is necessary for the Lokpal to have investigations in cases which involve business entities to recommend cancellation of licences, contracts, lease or agreements if it was obtained by corrupt means. The Lokpal should also have the power to recommend blacklisting companies from getting government contracts and licences. Similarly, if the beneficiary of an offence is a business entity, the Lokpal should have the power to recommend concrete steps to recover the loss caused to the public exchequer. The government should normally accept these recommendations and act upon it.

Conclusion

The CPI (M) holds that along with a law for setting up an independent Lokpal, simultaneous measures to strengthen the legal and administrative framework against corruption are required. These include:

- ❖ Setting up of a National Judicial Commission to bring the conduct of judiciary under its purview
- ❖ Law to protect citizens' charter for redressal of public grievances
- ❖ Amendment of Article 105 of the Constitution to bring MPs under anti-corruption scrutiny
- ❖ Electoral reforms to check money power in elections
- ❖ Setting up of Lokayuktas in the states to cover all public servants at the state-level
- ❖ Steps to unearth black money and confiscate the funds illegally stashed away in tax havens.
