

THE POLITICS OF CORRUPTION

The World Bank President, James D. Wolfensohn, during the recent spring meeting of the IMF and the World Bank had focussed on corruption, underlining that Harvard University research had shown, that corruption was a major issue causing concern to voters. The World Bank President had asserted clearly to governments, that if there is corruption, the World Bank would black-ball any project, emphasising, that eliminating corruption has to be started at the highest levels of authority, stating that it needs to be cured at the top or that it will not be cured at all.

In the World Bank Staff Working Paper No. 580, on The Effects of Corruption on Administrative Performance, David J Gould and Jose A Amaro-Reyes reported:-

"Corruption ... is pervasive in the countries of Asia, Africa and Latin America. The government monopoly of economic activities in developing countries, when combined with conditions of political "softness" widespread poverty and socioeconomic inequalities, ambivalence towards the legitimacy of government and its organisations and systematic maladministration, provides fertile grounds for corruption, which ... has a deleterious, often devastating effect on administrative performance and economic and political development, for example corroding public confidence, perverting institutions' processes and even goals, favouring the privileged and powerful few, and stimulating illegal capital export or use of nonrational criteria in public decisions."

Robert Klitgard of Bolivia in his book "Controlling Corruption" at page 23 deals with the definition of corruption, thus:- " The literature on corruption contains several useful definitions. A widely cited definition of "corruption" is:- `behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status-gains; or violates rules against the exercise of certain types of private-regarding behaviour."

In the introduction to corruption, in his book at page 7, Robert Klitgard, citing several authorities, outlines corruption through history as given separately framed.

POLICY & VIEWS ON CORRUPTION

Responding and reacting to public opinion and concerns, the government policy statement to Parliament by Her Excellency President Chandrika Bandaranaike Kumaratunga on January 6th, 1995, on the government economic policies, inter-alia, pronounced:- "In the name of privatisation, the past regime had engaged in virtual daylight robbery of valuable national assets ... Many of these ventures were grossly undervalued by reducing their sale price by as much as 2/3rd or 3/4th of the actual value ... Nowhere in the entire world would you come across such brazen pillage and plunder of a people's wealth ... The Government's approach to privatisation will be distinguished by full transparency and accountability, which have been notoriously absent in the past. There will be no crony privatisation in the future ... We have also to ensure that the process of government is transparent and free of corruption, and that everyone in public life is accountable for their actions."

Foreign Minister Lakshman Kadirgamar, a President's Counsel and an alumnus of Oxford University, in his opinion dated March 22nd, 1995, to the Cabinet of Ministers, inter-alia, exhorted:- "I would strongly press on my colleagues, with respect, the fundamental desirability of making clear to the private sector, both local and foreign, that this Government means what it says - that it will not tolerate malpractice in the market and that it will not condone and perpetuate (or to use a colloquial expression `white wash') malpractice where it has occurred. What has occurred in

the Puttlam Cement affair is a gross and calculated fraud on the Government and people of this country. This Cabinet must not condone it in the name of trying to placate the stock market. In the long run stock exchange and a private sector stimulated by dubious means will again fall into disrepute, to the detriment of the national interest, as it did under the previous regime." Again on January 19th, 1996, Minister Lakshman Kadirgamar in his letter to Her Excellency the President, inter-alia, prevailed:- "I repeat that I am deeply troubled. Those of us who wish to see that at least the basic tenets of honest Government are observed by our Government cannot rest content until this matter is fully investigated"

Justice Minister G.L. Peiris, a professor of law, also an alumnus of Oxford University, announcing the Hilton settlement on 30th June 1995 emphasised:- "The settlement signed with the Japanese contractors, also conforms to the major planks of the People's Alliance government's election manifesto of combating the pillage and plunder of national resources and the government's commitment, which has brought about the large scale saving. However, this settlement has nothing to do with the punitive action which the legal machinery will take against the offenders by the Special Presidential Commission on Bribery and Corruption." Again, Justice Minister G.L. Peiris in moving the revesting orders on certain failed privatised enterprises in Parliament, exhorted that the government will invoke criminal and civil jurisdiction against those, who caused loss to the state. Former Finance Minister Ronnie de Mel readily agreed and even urged the government to do more to bring those, who have erred to book.

ANTI-CORRUPTION LAWS

The laws specifically framed and presented to Parliament by Justice Minister G.L. Peiris, enacted unanimously in October 1994 by Parliament, under the government's commitment to prevent such pillage, plunder and loss to the state is found in Section 70 of the Bribery Act, as amended by the Bribery [Amendment] Act No. 20 of 1994, which reads:- "Corruption: 70. Any public servant who, with intent, to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favour or advantage on himself or any person, or with knowledge, that any wrongful or unlawful loss will be caused to any person or to the Government, or that any wrongful or unlawful benefit, favour or advantage will be conferred on any person - (a) does, or forbears to do, any act, which he is empowered to do by virtue of his office as a public servant; - (b) induces any other public servant to perform, or refrain from performing, any act, which such other public servant is empowered to do by virtue of his office as a public servant; - (c) uses any information coming to his knowledge by virtue of his office as a public servant; - (d) participates in the making of any decision by virtue of his office as a public servant; - (e) induces any other person, by the use, whether directly or indirectly, of his office as such public servant to perform, or refrain from performing, any act, - shall be guilty of the offence of corruption and shall upon summary trial and conviction by a Magistrate be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one hundred thousand rupees or to both such imprisonment and fine."

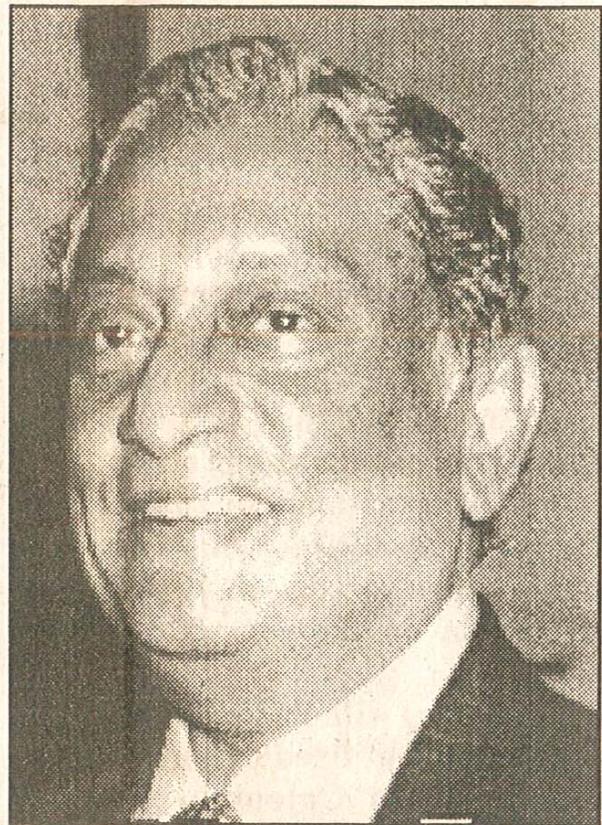
It is quite clear therefore, that a public servant, who knowingly causes loss to the government or confers any wrongful or unlawful benefit, favour or advantage on himself or on any person, by participating in making of any decision or by carrying out an act, as a public servant, is liable to be dealt with under this Act. As defined in the Act, amongst others, a public servant, who would be so accountable, includes a Minister and a Deputy Minister.

IS IT MERE IRRITANT OR THORN ?

Pronouncement of generalised policies, with such high moral values and the enactment of such legislation, would appear to be much easier, than dealing with political and international realities in the contemporary world. The Supreme Court of this country, presided by the Chief Justice, upheld the landmark Hilton Case, as a strong prima-facie case of fraud, observing, inter-alia, that, but for the interim injunctions, like Pyrrhus after the battle of Asculum in Apulia, might well be constrained to state, "One more such victory and we are lost." As a consequence, the settlement resulted in the Japanese writing-off a colossal sum of Rs. 10,200 Mn. on claims made against state guarantees.



G. L. Pieris



Lakshman Kadirgamar

However, In this instance, to both Ministers Lakshman Kadirgamar and G.L. Peiris, this was a mere irritant. Minister Kadirgamar stating:- "The finalisation of this settlement has removed irritants of an otherwise cordial relationship between our two countries. This is a very happy occasion for us, as we witness a closed chapter, which caused much concern for all of us"; and Minister G.L. Peiris stating:- "Today marks a happy day for the government of Japan and Sri Lanka following the signing of the dispute settlement agreement, which was a constant irritant, which may have marred the otherwise healthy and strong relations, which Japan and Sri Lanka enjoyed over the years." To the former Japanese Ambassador, Yasuo Noguchi, as stated in his interview with *The Sunday Leader* of April 27, 1997, this was a thorn in the economic relationship and an example of trouble they might face after investing in this country. Clearly they were all

unconcerned, that such irritant or thorn in the side was worth Rs. 10,200 Mn. to this developing country of the South.

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Some Social Conditions Underlying Corruption

Political scientist Samuel P. Huntington in his classic book on political development put forth several propositions about the conditions favouring corruption in government.

- * Corruption tends to increase in a period of rapid growth and modernisation, because of changing values, new sources of wealth and power, and the expansion of government.
- * There tends to be less corruption in countries with more social stratification, more class polarization, and more feudal tendencies. These conditions provide a more articulated system of norms and sanctions, which reduces both the opportunity for and the attractions of corrupt behaviour.
- * In Latin America, the "mulatto" countries have more corruption than the "Indian" or "mestizo" countries; black Africa also has a high degree of corruption. As the cause Huntington cites not race itself but rather the associated phenomenon in these countries of the "general absence of class divisions."
- * A country's ratio of political to economic opportunities affect the nature of corruption. If the former outweigh the latter, then people will enter politics in order to make money, and this will lead to a greater extent of corruption.
- * If foreign business is prevalent, corruption tends to be promoted.
- * The less developed are political parties, the more prevalent is corruption.

TRANSPARENCY INTERNATIONAL ON CORRUPTION

Transparency International in its introduction on corruption, has analysed the phenomenon as follows:-

"It is an unfortunate but inescapable fact of life that corruption appears to be endemic in human nature. Although we may wish to think otherwise, experience suggests that Henry Ward Beecher captured the human condition when he said that - "there is no man that lives that can't be broken down, provided it is the right temptation, put in the right spot." Oscar Wilde overstates it even more stylishly:- "I can resist anything except temptation."

The evidence is all around us. To the extent that systems permit be they town planning procedures in Britain, government contracts in Italy or Spain, or lucrative development contracts in Nigeria or Kenya those involved, in both the public and the private sector can find Oscar Wilde's temptation irresistible. Societies, both developed and developing, are as corrupt as their institutions allow. This is, of course, not to suggest that there are no public servants and private sector individuals, whose integrity is beyond reproach. But equally it would be absurd to deny the evidence of our age; owing to a combination of susceptibilities and opportunities, levels of corruption are at least as high as they have ever been.

The consequences of corruption are devastating enough in developed countries, where institutions and even whole economies have been undermined. In developing countries the position is far worse. There, what had previously concerned a relatively small number of countries has spread, like a cancer, to become a major international problem. In developing countries during the 1980's, large scale corruption in major government influenced contracts became the rule, rather than the exception to the extent that it has become one of the most damaging factors in third world development. Signs are that the situation in the second world is becoming even worse.

Although the problem of corruption is broadly based, nowhere is it more damaging than in international business transactions. It is a readily demonstrable fact that too often decisions are being taken to proceed with ill-conceived projects, and that the wrong plant is not only being purchased but at inflated prices. Environmental and other crucial considerations are being ignored in the pursuit of undertakings that will make those in public office rich, and suppliers in the North profitable. Many of the people of the South and East, for whom aid is intended, are left watching their leaders plunder public funds and conspiring with international companies and development agencies in the North a spectacle supported by some governments in the North, who encourage corrupt practices by permitting bribes to be deductible for income tax purposes.

As a consequence, the modus operandi for the corruption of public officials has ceased to be a topic spoken of only in whispers and by dubious characters; it is now openly discussed by professionals with seemingly impeccable credentials as part and parcel of everyday business life. But at the same time the taboo has now been broken. Corruption is at last out in the open as a topic of legitimate professional analysis and discussion.

It is important to stress that the crux of the problem does not simply lie in the countries of the South, where civil servants in particular may be vastly underpaid and so particularly susceptible to temptation. It lies at least equally and arguably even moreso with those in the rich countries, who offer the bribes; with the corrupters, who corrupt those, who might well otherwise remain honest. It should also be noted that, whereas a number of countries of the South and East are seeking to redress the problem, overall (if with some significant exceptions) the attitudes of those in the North is distinguished by an air of complacency. In this process the real victims are among the world's most poor — those least able to afford it."

NORTH-SOUTH RESPONSIBILITY

George Moody Stuart, in his book "Grand corruption in third world development", commenting on the cancerous spread of corruption, identifies the prime responsibility of dealing with this cancerous growth as that of the North:-

"The Prime Responsibility: Perhaps there is no benefit to be gained from apportioning the blame for the rapid spread of grand corruption. I am certainly not concerned with attempting to prove that it was the newcomers rather than the old-established companies and countries which were responsible. I believe, however, that there is relevance in recognising and accepting that the initiatives must originally have come from the payers rather than from the receivers, which conflicts with the usual assumption that the payers have always been the reluctant partners in any transaction. If the cancer of grand corruption in the South is to be eliminated, it can only be achieved by drastic surgery; and the initiative for this must come from the North."

Though the World Bank President, James D. Wolfensohn's policy direction on corruption riddled projects seems to be in the right perspective, however, black balling a project in a developing country, due to corruption caused by powerful socio-political influences emanating from the developed countries, without punitive measures and penalties against those from the developed countries, who are so responsible for having peddled such corruption, would be unfair and inequitable. The very threat of black balling a project under such circumstances would only weaken the strength, courage and will of a developing country, to deal with the scourge of corruption, even where it has surfaced.

Ironically, the developing country would be poorer by such black balling of project, whereas, should not the project continue and the miscreant developed country appropriately penalised and such funds appropriated to be spent on socio-economic projects in the developing countries; lest it be relegated as a thorn in the side by the developed countries and acquiesced to as irritants by lame duck politicians of the developing countries?

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