Corruption and the crisis of governance in India

Corruption has reached such alarming proportions in India that it has undermined all institutions of democracy, precipitating a crisis of governance. C Raj Kumar casts his critical eye at recent legislative, judicial, institutional and civil society initiatives to combat the scourge.

Corruption in India is a problem that has serious implications for both protecting the rule of law and ensuring access to justice. Corruption is pervasive in India, undermining the effectiveness of all institutions of governance. Since independence, successive governments have attempted to take numerous measures to reduce the levels of corruption in the country, including legislative and institutional measures. However, a lack of political will and commitment in taking concrete steps to eliminate corruption has meant most of these measures have fallen short of their intended results. Corruption in India is not merely a law enforcement issue where the existing laws of the state are violated and can be remedied merely by more stringent law enforcement. Rather, it is a much more fundamental problem that undermines the very social fabric of Indian society. The scourge of corruption has permeated every political and bureaucratic institution, rotting the apparatus of governance from top to bottom.

A cohesive approach

At the first level, this would require recognition of a fundamental right to corruption-free governance in Part III of the Constitution. This right is expected to empower Indian citizens to rightfully claim that governmental conduct needs to be free from corruption. If it is not, a violation of their constitutionally recognised rights has taken place. Constitutional sanctity has acquired legitimacy in the Indian context largely due to the fact that India has been functioning as a constitutional democracy since its independence.

While corruption of all forms — political, administrative, bureaucratic, and corporate — is rampant in India and has steadily increased in the last 60 years, the political system of electoral democracy by and large has been stable. Even so, this cannot be taken for granted as democracy without the rule of law cannot protect the rights of the people. Corruption in India has affected development policies and the Indian citizenry has been deprived of their economic and social rights.

At the second level, legal and institutional mechanisms need to be formulated to combat corruption. Enforcing the rule of law continues to be the single most important impediment to the effectiveness of anti-corruption laws, and thus the larger issue of establishing a rule-of-law society in India needs to be addressed immediately. This would require progressive efforts towards revamping the
enforcement machinery, empowering the citizenry, and promoting transparency and accountability in governance.

The third level comprises institutional reforms in the form of strengthening institutions, such as the National Human Rights Commission (NHRC) and the Central Information Commission (CIC), and the right to information. There is a need for the NHRC to revamp its mandate in light of massive institutionalised corruption that has not left any institution in India untouched. All human rights are violated because of corruption. The NHRC must ensure that its investigations take note of the fact that corruption is the root cause of many violations of human rights. The purpose of the NHRC’s new initiatives should be to ensure the protection of human rights and promotion of corruption-free administration as a sine qua non for good governance. Furthermore, promoting transparency and accountability is an important requirement for corruption-free governance. The Indian experience has demonstrated that recognition of the right to information in India is an important step in ensuring corruption-free service.

**Forming an anti-corruption body**

Fighting corruption has become the most pressing issue for Indian policymakers. While a number of approaches have been used to fight corruption in India, none of them have been effective so far. Given the complexities of multi-layered police and other law enforcement agencies that are working in India, it is important to develop a more focused approach to combating corruption. The proposal to establish an Independent Commission Against Corruption (ICAC) in India recognises the inherent challenges of any institutional approach to reform in India, given the bottlenecks and obstacles for enforcement of the rule of law. A number of institutions entrusted with the responsibility of fighting corruption and to ensure probity in governance have not been successful. Establishing an ICAC in India will not be the panacea for all ills relating to corruption. There has to be a multi-pronged strategy to fight corruption, which will have a legal framework, an institutional mechanism, an investigation and prosecution machinery, a public awareness and education strategy, civil society empowerment approaches and a whistleblower-protection mechanism. The fight against corruption will work only if all the above strategies are formulated, bearing in mind that corruption is a serious problem of governance that violates human rights and undermines development.

The proposed ICAC in India should be a stand-alone autonomous institution and should not be under any ministry of the government, including the Prime Minister’s Office. The ICAC should be established as an institution akin to the Election Commission of India. In fact, it would be appropriate for its establishment to be made through an amendment to the Constitution of India, which will provide a constitutional status to this commission. If this is not possible, given the political complexities of amending the constitution, it may be established by legislation. But the powers, functions and level of independence of ICAC should be in conformity to the guarantees that are provided to the Election Commission of India. Historically, anti-corruption institutions that have been established in India have not enjoyed institutional independence or functional autonomy. All investigative bodies including the police and law enforcement agencies have come under one or more ministries of the Government of India or the state government. This has made the independent and autonomous functioning of these institutions dependent upon the leadership, integrity and impartiality of the heads of these institutions. While this is necessary and critical to the success of the ICAC, it is important to develop a more sustainable process and procedure-oriented institutional mechanism for ensuring independence.

**Restoring faith in governance**

Recently, Indian civil society activism against corruption has been given a fillip in the form of Anna Hazare’s campaign that proposes the establishment of an independent, powerful and effective institutional mechanism in the form of a Lokpala, akin to the independent commission against corruption (ICAC) in Hong Kong. While this is not the first time that Indian civil society has been galvanised to fight against corruption and seek transparency and accountability in governance, this particular movement has had, unlike the previous ones, a strong acceptance among the citizenry.

People have begun to lose faith in the ability of parliamentary institutions and the political process to ensure good governance. The efforts to establish an independent Lokpal are important not only because of the need to fight against corruption, but also to restore the public’s trust and faith in parliamentary democracy.

There is no doubt that the institutional design of Lokpal as an independent, impartial and effective mechanism will be the sole factor for its success. The social expectations generated not just by the Anna Hazare movement, but also by the human rights violations committed against people on account of corruption.