

APPLYING ZERO TOLERANCE TO CORRUPTION

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I – THE STATE OF CORRUPTION IN INDIA

The Prime Minister while addressing the nation on 16.10.99, after the elections observed as follows:

"One of our immediate tasks will be to firmly put down terrorism, which has come to cast its cruel shadow on innocent people. Our message is loud and clear; the life of every citizen under our dispensation is precious. In our fight against terrorism, we will be guided by the principle of zero tolerance. The same principle of zero tolerance will apply while dealing with corruption that had bred contempt for the law. One of the first legislations we will take up is the Lok Pal Bill so that the rot can be checked from the top. A broad consensus already exists on electoral reforms to weed out the muscle and money power. We propose to soon introduce in Parliament, a comprehensive electoral reform bill".

2. The use of the expression "zero tolerance" by the Prime Minister represents a very significant and an important shift in the perception of Government of India especially at the level of Prime Minister, on the issue of corruption.

3. The Prime Minister focused sharply on the area of corruption and has also indicated the strategy to deal with the problem of corruption by using the expression 'zero tolerance'. Zero tolerance became a popular expression when Rudolph Giuliani, the Mayor of New York applied it to tackle crime when he became the mayor of one the most crime ridden cities of the U.S. He succeeded spectacularly. One interesting aspect of applying the principle to crime is that the NYPD focused on the petty and small infractions of the law instead of the large crimes. This counter intuitive approach by some curious logic seems to have brought excellent results by not only nabbing scofflaws but bigger time criminals also.

4. The approach to tackling the menace of corruption in our country has so far been lackadaisical. The Supreme Court judgment in the Vineet Narain's case was a major step in ensuring that the CVC was made into a statutory body and more important have supervisory powers over the CBI so far as the anti corruption cases are concerned. The CVC was also to play an important role in another important agency, the Enforcement Directorate.

5. India's economy today is a standing monument to the corruption and inefficiency of four specific departments namely, Customs, Central Excise, Income Tax and the Enforcement Directorate. It is the evasion of the taxes and the failure of these departments to check illegal activities that has crystallized into the large percentage of black money in the economy. The quantum of black money has been estimated from Rs.40,000 crores to Rs. 100,000 crores. Whole industries today depend on the black economy. The film industry, a substantial part of the construction industry and a large number of small industries are run on the basis of black money. I wonder, if by some magic and by applying the principle of zero tolerance, we are able to eliminate the menace of corruption what will happen to all the people who were employed in these black money financed sector to the economy? I am not defending black money but I am only highlighting the vested interests who will bring pressure and try to nullify the implementation of the zero tolerance principle of the Prime Minister.

6. Our elections also involve a lot of black money and it is this use of black money in elections which has also brought about the criminalization of politics highlighted by the Vohra Committee. After all, the story of the Hawala scam started by the police stumbling to the Jain diaries in their effort to trace the money received by the Kashmir militants. The scam brought out the linkage between the corrupt businessmen, politicians, bureaucracy and the criminals. The 1993 Bombay blasts which took away the life of 300 people was made possible because RDX could be smuggled by allegedly bribing a customs official with Rs.20 lakhs. The Prime Minister therefore is very right in applying the principle of zero tolerance both to corruption and to terrorism. We see that there is a close link between the two.

7. As CVC, I have been for more than a year focusing on this area of corruption and trying to see how we can improve our situation. In fact India is ranked 66 out of 85 in the Corruption Perception Index 1998 by the German non-government organization Transparency International based in Berlin. This means that 65 countries were perceived to be less corrupt than India and 19 were perceived to be more corrupt. The entire Corruption Perception Index of 1998 can be seen in Annexure-1. My goal as the CVC is to see that before I hand over charge on September 2, 2002, India's rank improved from the current level of 66 to say at least 40 if not 30.

8. For achieving this, what we need is not any compromising sympathetic or soft attitude to corruption. As the Prime Minister has indicated what we need to do is to apply the principle of zero tolerance. How do we translate this principle of zero tolerance into action? After careful consideration, this is what I think should be done to make zero tolerance an operation principle to put down corruption.

9. Zero tolerance means that no case of corruption will be tolerated and the corrupt would be punished. In our system the bribe giver and the bribe take are both guilty. The only exceptions are the Members of Parliament. According to the judgment of the Supreme Court in the JMM case, the bribe receiving MP who has to do some activity within the Parliament is not guilty but the briber giver, even if he is a Member of Parliament, is guilty.

10. The efforts made in the past to check corruption have failed precisely because the guilty under the existing system of judicial process do not generally get punished. The conviction rate in the Indian courts is only 6%. There are three crore cases pending in the Indian courts. The average time taken for disposal of cases ranges from 10-20 years is another important aspect. So far as anti-corruption cases handled by the CBI are concerned, as of August 1999, 1173 cases are pending investigation, 501 cases of which are less than one year, 644 cases are between 1-5 years and 28 cases are more than five years. When it comes to prosecution, the figures are more pathetic. As of August 1999, 3484 cases are pending as given in Annexure-2.

11. But any attempt at improving the judicial system and speeding up the disposal of court cases is within the jurisdiction of the courts themselves headed by the Supreme Court and the Chief Justice of India. Therefore as CVC there is nothing much I can do so far as overhauling the judicial system to ensure prompt effective punishment of the corrupt is concerned. We have to explore other areas which are within the jurisdiction of the Government and the CVC.

12. How do we still implement the zero tolerance strategy for checking corruption which means prompt effective punishment of the corrupt? To begin with, we have to understand the mechanics of how India became so corrupt a country. As I see it, the growth of corruption in India after Independence has taken place through a two-stage process. The first stage was the corrupting of the institutions and the second stage was the institutionalization of corruption. Experts can go on

to analyze what was the exact point of time when the corrupting of institutions started in India. We inherited from the British a working bureaucracy and we gave ourselves a constitution with the three major wings executive, judiciary and the legislature to ensure effective governance of the country.

13. As I see it, 1975, when emergency was imposed, is the watershed so far as Stage –I is concerned. The principle that the bureaucracy must be committed was articulated. This meant that the bureaucracy must be committed not to the Constitution but to the Government of the day. From this started the systematic deterioration of the bureaucracy which became highly politicized. We inherited the British system of the permanent civil service and the changing political executive dependent on elections. What we have today is the veneer of British system of permanent civil service which is supposed to be politically neutral but what we have in effect is the spoil system of the United States. Andrew Jackson's famous dictum "let the victors have the spoils" is being practiced. We therefore find the spectacle of the bureaucrats getting aligned politically and labeled as belonging to this political leader or that. Naturally, with ever change of government, massive transfers of bureaucrats at various levels take place to ensure proper alignment of the political frequencies of the bureaucrat and their political masters.

14. As we look at the corruption scene today, we find that we have reached this stage because the corrupting of the institutions in turn has finally led to the institutionalization of corruption. As the Prime Minister pointed out, the failure to deal with corruption has bred contempt for the law. When there is contempt for the law and this is combined with the criminalization of politics, corruption flourishes. It is the honest public servant who tries to implement the law who becomes a misfit under such a situation.

15. As of today, entire sections of our public life have become corrupt as people like S.S. Gill in his book THE PATHOLOGY OF CORRUPTION have pointed out. As I see it, there are five key player's in our Indian corruption scene. There are the corrupt politician (neta), the corrupt bureaucrat (babu), the corrupt business (lala), the corrupt NGO (jhola) and finally the criminal (dada). There are five reasons why our system encourages corruption. These are (i) scarcity of goods and services, (ii) lack of transparency, (iii) red tape and delay due to obsolete rules and procedures which are time consuming and encourage speed money, (iv) cushions of legal safety which have been laid down by various pronouncements of the courts and CATs on the principle that everybody is innocent till proved guilty. The net result is that the corrupt are able to engage the best lawyers and quibble their way through the system. Shakespeare pointed out in his MEASURE FOR MEASURE that laws are like scarecrows. They are initially installed to scare the birds. Once the birds realize that the scarecrow is a harmless doll, they build their nests on it. (v) Finally, biradri or tribalism, where the corrupt public servants protect each other. We talk about people being thick as thieves not thick as honest men!

16. These five reasons are a mutually reinforcing vicious cycle of corruption. This can be tackled only by setting in motion a virtuous cycle of anti-corruption which will help achieve the goal of zero tolerance. Three elements are needed for this virtuous cycle. The first is the simplification of rules and procedures so that the scope for corruption is reduced to the minimum. One can deal with corruption like one deals with Malaria. One can either give medicine to those who have been affected by the disease or prevent the breeding of mosquitoes. Simplification of rules and removing the red tape that causes delay is like removing the stagnant pools which encourages the mosquitoes of corruption.

17. The second element of virtuous cycle should be transparency and empowering of the public. Here the need for a Freedom of Information Act (FOIA) is very obvious. There is an urgent need for applying information technology in every citizen public office interface so that the common citizen can have access to information that he needs.

18. The third element is effective punishment. This is where we have to go beyond depending only on the judicial system and see what other weapons can be thought off so that the effective punishment of the corrupt is ensured. Today corruption is a low risk high profit business. The principle of zero tolerance resulting in effective and prompt punishment should increase the risk. This should be the most important single element in the virtuous cycle to eliminate corruption.

19. In the light of the above background I would suggest the following plan of action which as CVC I will try to implement to the extent it is within my jurisdiction. All other authorities can try to see how it can be implemented so far as their areas are concerned. If nothing else, this action plan can become a basis for evolving an effective strategy to implement the Prime Minister vision of applying the principle of zero tolerance to check corruption.

II – THE ZERO TOLERANCE ACTION PLAN

1) *Corruption perception index of all Government departments, public sector enterprises, banks etc.*

20. The Transparency International ranks countries on the basis of corruption perception index. There is a need urgently to make an exercise through any of the competent bodies like IIMs, industry associations, academics, psychologists and so on to list out in the order of corruption perception index all government organizations, public sector enterprise and banks. The list must rank other organizations. All the departments, ministries, the public sector enterprises, the banks, which are within the purview of the CVC. The need for such a listing is because of the recent experience of World Bank observation that the Delhi Development Authority (DDA) is the most corrupt organization in India. The World Bank Report was based on the observations made by Shri K J Alphons and this led to a protest by the DDA officials. Last year, when someone observed that the Delhi Air, Customs were the most corrupt, there was a strike which was ultimate called off after the striking employees had their way. The peculiar aspect of our government systems and public organization is that while every body will concede that these organizations are corrupt, the moment anyone makes a statement officially in a report or in public, it becomes a matter of defending the "fair name" of the office. As every office can put the people and the rest of the government to harassment by going on strike or go slow they can protest and have their way. This bluff must be called. In other words, zero tolerance of corruption should begin with zero tolerance of the so called "reputation" of government departments or organizations which are known to be corrupt but which behave like an angry porcupine the moment someone mentions about their being a corrupt organization in a report like the World Bank Report. Every year this list can be published. We can then watch whether efforts are being made to bring down the level of corruption. This will also help authorities to focus attention on the most corrupt departments. It is also possible that the honest public servants in these various departments will be moved by a sense of shame and try to check corruption in their respective departments.

2) **Zero tolerance of corruption should be a principle not only from the demand side of public servants and government departments but also from the supply side.**

21. The bribe giver is equally guilty under the Prevention of Corruption Act. If we go by the Supreme Court judgment in the JMM case, the bribe receiving MP may not be guilty but the bribe giving person, even if he is an MP, is guilty of corruption. So, the Chambers of Commerce and the whole business and industry should come together emulate the 34 OECD countries who have signed the anti bribery convention. It may be recalled that the United States in 1970s enacted the Foreign Corrupt Practices Act (FCPA) by making the American companies which give bribe in the third world countries guilty and liable to be prosecuted within US. Thanks to the American initiative, 34 OECD countries had by 1997 signed the anti bribery convention. The World Bank is also realizing that a country which is perceived to be corrupt gets at least 20% less FDI. If a country is perceived to be more corrupt, it gets 35% less FDI. The South East Asian experience from 1994 also has shown how crony capitalism and lack of control in the financial sector can lead to disaster. Hence, the emphasis on corporate governance. The Chambers of Commerce, especially CII, ASSOCHAM and FICCI should come together and openly sign an anti bribery convention and ensure that their members will not bribe. If in the principle of zero tolerance we only focus on the receiving side of corruption, we will be missing the total picture and we will be tolerating the giving side.

3) **Annual property returns by Members of Parliament and Ministers**

22. The JMM judgment also laid down that the Members of Parliament and Members of Legislative Assemblies are public servants. The Prime Minister has already indicated in his speech that one of the first legislations the government will be to take up the Lok Pal Bill so that the rot can be checked from the top. Even before the Bill is passed, to check the rot from the top, one step can be taken. Public servants who are employees of the Government or government organizations give their annual property returns to the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha as the case may be? I had informally discussed this with some of the MPs and their reaction was positive. This will help in setting up a healthy tradition to check corruption in public life.

4) **Mobilizing the youth to fight corruption**

23. Intolerance of corruption can be bred in the culture of the people if we are able to use our education system to send the right signals. Like the National Cadet Corps, we should think of a National Vigilance Corps. We must encourage in colleges and educational institutions anti-corruption clubs who can work in close coordination with the CVC. The members of the NVC may be authorized to check and expose cases of corruption which will result ultimately in effective punishment. This may be one method by which the entire nation can be mobilized to fight corrupt and the principle of zero tolerance will have an added meaning.

5) **Central Vigilance Commission Bill must be made into law**

24. The CVC Bill which could not be passed into law must be taken up immediately in the Parliament and passed into law. This must be the first step to make the concept of zero tolerance

of corruption a meaningful expression. A statutory CVC can be the key instrument to fight corruption.

6) Trap and speedy disciplinary action through departmental action

25. We now come to the most important aspect of effective punishment. Today the punishment is possible under two circumstances. One is through prosecutions and another is through departmental actions. Looking to the slow pace at which the cases are disposed of in the judicial system, effective punishment through the prosecution route may not be possible. We should therefore focus on departmental action. The CVC has already directed under its directive dated 18.11.98 that all departmental action should be completed within six months. This must be now rigidly imposed and implemented in letter and spirit.

26. In every organization people who are corrupt are well known. Such corrupt public servants must be trapped with the help of CBI or police as the case may be. I have already directed that the CBI or the police must give within four days of a trap case, photocopies of all the documents duly authenticated to the departmental authorities. While police will pursue the prosecution process in the courts, the departmental authorities should start action immediately against the corrupt. At the end of two months, after due inquiry, such trapped corrupt people must be dismissed. This will send the right signal that the corrupt will be punished and the PM's concept of zero tolerance will be translated into action. There will be no double jeopardy because while the prosecution will be on criminal aspect, the departmental action will be based on the misconduct aspect.

7) Encourage whistle blowing and pass the Whistle Blower Act

27. Corruption is like AIDS. AIDS comes out of uncontrolled sexual behavior. Corruption comes about due to uncontrolled financial behavior. It is either a case of financial rape or financial adultery. Financial rape is where an Inspector visiting a factory can demand his cut for giving the requisite clearance. The industrialist at that time is a victim. Wherever there are cases of financial rape, probably arranging traps will be easy. Financial adultery is where the public servant and the citizen collude to cheat the system. It could be the Chairman of a bank and a corrupt industrialist or it could be a corrupt minister or a corrupt secretary or a corrupt CMD of a public sector colluding. In such cases, we should encourage whistle blowing. In Britain and other countries like United States and Australia, there are Whistle Blowers Act or Public Disclosures Act which protect their right. The CVC has already issued orders on 18.11.98 that even juniors can complain and act as whistle blowers against their seniors who are corrupt. CVC has also issued orders that the names of those who complain will be kept secret. Having a Whistle Blowers Act will further strengthen the system. CVC has already taken up the matter with the Chairman, Law Commission and the Law Commission is drafting an act on the lines of the Public Disclosure Act of U.K.

8) Freedom of Information Act for empowering the public

28. Empowering the public is another of ensuring that the corrupt are brought to book. Therefore there is need for quickly enacting a Freedom of Information Act. Work has already been done and sooner it is implemented, if necessary even through an ordinance, the better.

9) E-governance and the use of information technology to check corruption

29. This is the age of information technology. The Prime Minister has gone on record to say that Information Technology (IT) is India's tomorrow. In Andhra Pradesh we are seeing what is possible by wide application of IT. The entire government departments must make it easy for every citizen who interacts with Government of India to get all information freely and also get his various works done faster. For example, in Andhra Pradesh, the registration and transfer of property which normally takes a long time under the present practice is done in a few hours instead of weeks or months as in other States. We can contrast AP experience with what happens in the Delhi Development Authority where again we are dealing with transfer of property or the registration offices in Delhi and in other states. Extensive use of information technology to check corruption should be part of the zero tolerance approach to corruption.

10) Remove obsolete laws through sunset principles

30. Obsolete laws and time consuming bureaucratic [procedures are the breeding ground for corruption. We should implement through out the Government of India to principle of the sunset laws so that no law will be on the statute book for more than five years or ten years nulls it is re-enacted and repopulated after careful examination. This will automatically ensure that obsolete laws do not clutter the system.

31. Government of India have already taken action to appoint the Jain committee which has recommended that out of the 2500 administrative laws, about 1300 should be scrapped. This can be done at one go so that the Government of India is not hampered by the presence of obsolete laws and time consuming procedures which are breeding grounds for corruption.

11) Remove laws and systems that promote corruption

32. Many a time, the path to hell is paved with good intentions. Legal and administrative measures taken with good intentions produce the opposite results. The Sick Industries Companies Act (SICA) and the BIFR are an excellent example. They have helped the colluding and corrupt industrialists and officials to escape punishment. SICA and BIFR must be scrapped.

33. The same is true of some rules and conventions. The banking secrecy practices help willful defaulters to escape punishment. Why keep the names of willful defaulters of banks secret? In fact, they must be publicized so that corrupt people cannot exploit the system at the cost of honest tax payers and depositors.

34. VDIS is another example of such legalized corruption blessed by the Government. In a Government that practices zero tolerance, such VDIS schemes should never be considered.

12) Enact Corrupt Public Servants (Forfeiture of Property) Act

35. We now come to some next measures that can be taken to specifically ensure that zero tolerance gets a new meaning. So far the only effective method for punishment is the trap and speedy departmental action as mentioned in point 6 above. As corruption is a low risk high profit business in our country, what we need is to make it a high risk activity. The Law Commission has already drafted the Corrupt Public Servants (Forfeiture of Property) Act. This Act has already been

recommended by the CVC on 1.1.99 to the Cabinet Secretary, Law secretary, Home Secretary and Personnel Secretary for implementation. It is high time this was done on high priority like the Lok Pal Bill so that the property of the corrupt public servants who are having wealth beyond their legal means of income, can be confiscated without the present elaborate procedure. As this has been drafted by the Law Commission headed by a Supreme Court Chief Justice, the constitutional validity and sustainability have already been gone through in drafting the legislation. Therefore on this ground there need not be any doubt. What is needed is speedy action to give teeth to the concept of zero tolerance of corruption.

13) Implement the Benami Transactions (Prohibition) Act 1988

36. Another action that can be taken immediately is to prescribe procedure for confiscation of benami property under section 8 of the Benami Transaction Prohibition Act (BTPA). BTPA was passed in September 1988. It is surprising that even though Section 5 provides for confiscation of benami property and section 8 says that Government can prescribe rules, for more than 11 years, nothing has been done by the Government to prosecute the rules under this Act. In fact, the CVC took up the matter with the Revenue Department on 7.1.99. The net result is that the Revenue Department now wants to scrap the Act! I can understand that if the Act is weak, it requires to be strengthened to carry out the valuation process. The Law commission fortunately has not agreed with the Revenue Department to scrap the BTPA. The Supreme Court has upheld the validity of the Act and therefore it is high time that rules are prescribed so that the confiscation of benami property is also implemented by the CVC so far as public servants are concerned.

37. The term zero tolerance has 13 letters. The 13 points of the action plan above will help to implement the zero tolerance concepts literally in letter and spirit!

38. Initiation of action urgently on all the above points will go a long way to give full meaning to the expression zero tolerance visualized by the Prime Minister and will help in realizing the vision of making India a less corrupt country.

ANNEXURE-1

TRANSPARENCY INTERNATIONAL

CORRUPTION PERCEPTION INDEX

1. Denmark	21. Botswana	45. Malawi	66. Bulgaria
2. Finland	22. Spain	46. Brazil	67. Egypt
3. Sweden	23. Japan	47. Belarus	68. India
4. New Zealand	24. Estonia	48. Slovak Republic	69. Bolivia
5. Iceland	25. Costa Rica	49. Jamaica	70. Ukraine
6. Canada	26. Belgium	50. Morocco	71. Latvia
7. Singapore	27. Malaysia	51. El Salvador	72. Pakistan
8. Netherlands	28. Namibia	52. China	73. Uganda
9. Norway	29. Taiwan	53. Zambia	74. Kenya
10. Switzerland	30. South Africa	54. Turkey	75. Vietnam
11. Australia	31. Hungary	55. Ghana	76. Russia
12. Luxembourg	32. Mauritius	56. Mexico	77. Ecuador
13. United Kingdom	33. Tunisia	57. Philippines	78. Venezuela
14. Ireland	34. Greece	58. Senegal	79. Colombia
15. Germany	35. Czech Republic	59. Ivory Coast	80. Indonesia
16. Hong Kong	36. Jordan	60. Guatemala	81. Nigeria
17. Austria	37. Italy	61. Argentina	82. Tanzania
18. United States	38. Poland	62. Nicaragua	83. Honduras
19. Israel	39. Peru	63. Romania	84. Paraguay
20. Chile	40. Uruguay	64. Thailand	85. Cameroon
21. France	41. South Korea	65. Yugoslavia	
22. Portugal	42. Zimbabwe		

ANNEXURE-2

Break up of 3484 prosecution cases which are pending as of August 1999

Length of Pendency	Cases
Less than 2 years	841
2-5 years	1198
5-10 Years	818
10-15 Years	432
15-20 Years	125
20-25 Years	49
25-30 Years	20
Over 30 Years	1
TOTAL	3484