

**17<sup>th</sup> Mary Clubwala Jadav Endowment lecture:  
“Ending Corruption ..... How to clean up India?”**

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I feel honoured to have been called upon to deliver this Year's Mary Clubwala Jadav endowment lecture. Mary Clubwala Jadav was much splendored personality who is an eternal source of inspiration for generations of people, particularly women. She was a trailblazer in many areas and her contribution to the society lives through many institutions. The Madras School of Social work is just one of them. In the context of the life time work of Mary Clubwala Jadav, the most appropriate theme for this year, I thought would be the problem of corruption. It seems to have become a grave disease of our entire society. The dramatic effect of this disease is that our country is suffering a problem of multiple organ failure when it comes to good governance.

Just recall what has been taking place since the year 2010. This year was so notorious that it was named as the year of corruption. A series of scams and mega scams hit the nation one after the other. The mother of all scams was of course the 2G scam estimated to have caused a gargantuan loss of Rs. 1.76 lakh crores to the public exchequer. The Commonwealth Games scam was a close second. There were also scams in other sectors like sports, life insurance and the corporate sector, and, what was unique was that even sectors which were considered to be relatively free of corruption like the armed forces and the judiciary were also exposed as being not so clean. The Adarsh housing scam in Mumbai, demonstrated that even the top brass of the armed services may be involved in corruption. Judiciary was a sacred cow and the perception was that this was one of the credible organizations, of the society, but it was in 2010 when questions were raised about the integrity of the highest judicial authority like the Chief Justice of the country. Senior lawyers Prashant Bhushan and Shanti Bhushan filed a PIL in the Supreme Court in which an affidavit was filed that out of the 16 immediate past chief justices of India 8 have

been corrupt, 6 have honest and about the 2 the jury was still out. All these developments had a dramatic impact on the society and corruption became the national topic number one. The pent up anger and frustration of the citizens found expressions especially through two civil society movements led by two charismatic leaders. Anna Hazare focused on the issue of Jan Lokpal as the solutions to fight corruption and Baba Ramdev focused on the \$1.4 trillion salted

away in tax heavens by Indian who evaded tax and indulging in corruption. The year 2011 was dominated by these two social movements. In fact some have gone to the extent of saying that if 2010 was the year of corruption, 2011 was the year of the response of the civil society to the corruption scams.

2012 is described as the year of judgment because elections are due in some five major states when we will know whether corruption in the ultimate analysis matters as an issue of public concern, when it comes to elections which constitute the foundation of the democratic process of governance.

As a person who has spent 42 years in government and who also happened to be the central Vigilance Commissioner of the country from 1998 to 2002, I had to deal particularly with the issue of corruption. As an insider within government I have seen the dynamics of corruption within the government and as a retired person for more than a decade, I have been watching from outside the reactions of the society to the corruption scandals of the country. It has been the unwritten maxim of the media that bad news make good copy. The corruption scams in the last three years have been providing enormous opportunity to the media particularly the electronic media for improving their TRP and the print media to wax eloquent on how things should be corrected.

One can approach the issue of corruption from two angles, either positively or negatively, I am basically an optimist My optimism is based on the fact that whatever may be the weakness of our democracy and whatever may be the weaknesses of our society, we have an inherent capacity for survival and a capacity for making corrections in

our system. Just look at the way we have developed in the last sixty years of governing ourselves. There were people like Winston Churchill who said that our leaders were men of straw and if India became independent and allowed to govern itself it would lead to anarchy. But this tragedy has not happened. In fact, many other countries which had become independent along with us have failed to maintain the form and spirit of democracy and practice it. We have continued to maintain the democratic system and have regular elections. In fact, the Indian Elections Commission has become a model for the rest of the world.

But it is not merely the elections process. In the Constitution also aberrations when they take place have been duly corrected. Perhaps the most significant aberration was the Emergency imposed by Indira Gandhi in 1975. But major and long lasting corrections took place after elections of 1977, when Indira Gandhi and her people were decisively humiliated by a massive defeat in the elections. The Constitutional Amendments made have ensured that imposing emergency again by any future prime Minister or government is almost impossible. At the legislative level, the imposition of the President's rule was a very common feature in the past. Thanks to the growth of the regional forces and the emergence of coalition politics, it is now a day's almost impossible to invoke the President's rule in any state to suit the convenience of the ruling party at the centre. Even when an attempt for setting up a National Centre for Counter terrorism was made by the Home Ministry, recently, enormous opposition came from the states on the ground that they were not consulted and the centre was stepping on the turn which was exclusively of the states.

Perhaps the most significant in the corrections process in the series of ruling by the Supreme Court which have laid down the fundamental principles by which this country is to be governed. The Constitution is elaborate and defines the functions of different organizations for governance namely the legislature, the judiciary and the democracy. One big operational concept is the concept of basic structure of the Constitution. This is a unique contribution of the Supreme Court. While the Parliament is empowered to make any law, there is a

limitation or Lakshman rekha on this power. So the Parliament is empowered to make any law so long as the government enjoys the majority, they cannot pass any law, which goes against the basic structure of the constitution. This includes the fundamental rights of the constitution. Any law which infringes the fundamental rights is immediately struck down by the Supreme Court.

The court has also been laying down guidelines for ensuring the independence and effective functioning of different organizations. Perhaps the most significant is the Election Commissions. Thanks to the formidable, brilliant and highly energetic, Chief Election Commissioner T.N. Seshan, the Elections Commission was able to effectively perform its role as a constitutional body entrusted with the most important task of ensuring free and fair elections. The judgments of the Supreme Court in the actions taken by the Election Commission have ensured that the elections are held in free and fair manner. For example, the recent controversy about the code of conduct highlights the fact that once elections are announced, the Election Commission is supreme and it is empowered to execute its directives effectively and quickly. The attempt at making them statutory and thereby causing a delay in the process was frowned upon by the media and leaders of public opinion and the government wisely withdrew such an attempt.

Similarly in the case of Central Vigilance Commission, the Supreme Court has also laid down the guidelines so that there is no alternative but to select the right person for the post. In fact, if we want to fight corruption and ensure that current malaise in practically every organ of governance is overcome the solution is simple. We should have the right people occupying the right positions. Secondly, we should have our systems in such a way that only the right people are selected to occupy position of authority. Such a situation has been created especially for the post of Central Vigilance Commissioner thanks to two Judgments of the Supreme Court. The first is the judgment of justice Verma in the Vineet Narain case, popularly known as the Hawala Case which was pronounced on June 18, 1997 and the second one was the judgment by justice Kapadia the current Chief Justice of Supreme Court in the case of PJ Thomas who was appointed as Central Vigilance

Commissioner should be selected by a High power committee consisting of the Prime Minister, Home Minister and leader of Opposition in Lok Sabh thereby ensuring that the person selected has not only a good track record but also is perceived to be politically neutral. Further, the conditions for appointment as CVC are such that the persons selected will not have any temptation for lobbying for any post retirement sinecure. Only one term is given of 4 years for the CVC and thereafter he is barred for life from occupying any office of profit under Central government or state government or any constitutional posts like the Governor or Vice President or President of India.

The second judgment of justice Kapadia introduced the important concept of the integrity of the institution of the CVC, in addition to the integrity of the individual selected for the post of CVC.

These two judgments together have created what I would call a 2T situation. One is transparency in the qualifications required for filling any post and the second T is the introduction of the TINA factor in the selection process, i.e., There is No Alternative but to select the right person. If these two principles, can be applied right across the system of governance, to fill all key posts it will automatically ensure that corruption is eliminated.

In the time available, I can only point out that today's corruptions is because of number of factors. (i) we have a vicious cycle of corrupt neta, babu, lala, jhola and dada syndrome. Political corruption is at the root of all corruption and this leads to corrupt bureaucrats colluding with the politicians and corrupt businessmen taking advantage of crony capitalism and even the NGOs, which are supposed to be civil society organizations are found to have feet of clay. In the context of the controversy about kudankulam, the Prime Minister has pointed out how foreign funds are coming to support such agitations.

Finally, criminalization of politics has become a major issue which is very much in the open domain because in the affidavits filed by the candidates themselves bring out the fact that at least 20% of the

candidates have a criminal records. If we want to ensure that the corruption is checked we must ensure that right persons come to occupy the posts of authority. In this context, the powerful concept of integrity of institution articulated by the Supreme Court in the PJ Thomas case is very relevant. Justice Kapadia pointed out that when the questions was raised about Thomas being one of the accused in the palmolin import case which was before Supreme Court and where the Judgment had not been pronounce one could not take refuge on the principle of natural justice that everybody is innocent till proved guilty. It is one this basis that today, people who are having criminal record and cases pending against them are still elected. Justice Kapadia pointed out that the CVC as an institution to fight corruption, so for a person who is accused in a case is selected even though he might not be convicted, the possibility that he could be convicted and go to jail, compromises the integrity of CVC as an institution.

If this integrity of institution is widely practiced, it will be found that many people who are corrupt and who are occupying positions of authority will not be appointed because they will be violating the integrity of the institution. For example , if the integrity of institution is adopted for the Parliament or legislature, these bodies sanctify the constitution to make laws for the governance of the country, if criminals and potential criminals are appointed it violates the integrity of the institutions like the parliament and legislature as a law making body, so the practice can be introduced by which any person against whom case is pending in a court cannot be permitted to contest the elections till he is cleared in the court of law.

That brings us to the issue of delay in courts and that in time will have to be tackled. In that way, once the principle of this 2T is accepted and the concept of integrity of institution is adopted in practice, a virtuous cycle of chain reactions can start by which right through the system, a cleansing process can be introduced. This in turn will develop its own momentum and there is a way for the country coming out of the clutches of disease of the corruption daunting it today.

If an individual falls sick, doctors can cure him. If sickness is in

different parts of the body, there are experts for different parts of the body to cure them. If our country is having corruption and it is affecting every part of the system, then we have in our constitutional system agencies provided which can act as doctors to clean the system.

As I see there are four doctors, one of course is the judiciary, second is the Election Commission, third is the Comptroller and Auditor General of India and the fourth is the Central Vigilance Commission. If these four bodies are manned by the right people applying the 2T principle, they in turn will be able to create through their action an environment by which the entire cleansing process by applying the 2T principle throughout the system can be initiated. All honest public servants can become virtually like the fifth columnists and secret agents for good governance or like Vibhishana in Ravana's court and try to ensure that the principles of integrity and fairness and good governance are adopted.

The darkest hour is before the dawn. In fact in 1974 in Hong Kong, there was a crisis of corruption when the Police Commissioner himself was so corrupt linked with mafia and escaped with lot of money to England. In Hong Kong they set up an independent Commission against Corruption which has been able to clean up the whole place in less than two years. I wonder whether in the light of what has happened in the last three years 2010, 2011 and 2012, we will be able to initiate a process like what Hong Kong did in 1974. Ultimately, it is in our hands whether we may make use of this opportunity of mega corruption to move towards a better future. For achieving that objective we can do no better than following the advice of our old Taitreya Upanishad:

Sahana vavathu sahanam bhunarthu sahaviryam karavavahai

Tejasvina mahetha masthu maavidh visha vahai

Om shanthi shanthi shanthi!

Let us come together. Let us enjoy together. Let our intellectual strength come together. Let us avoid the twin danger of hatred and the poison of misunderstanding. That way lays progress.