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Unravelling the Anatomy of Legal Corruption in India: Focusing on the ‘*Honest Graft*’ by the Politicians

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Abstract

Corruption in India is ubiquitous and may be broadly identified as illegal and legal. This paper delves into the typology of legal corruption in India, which, apart from abuse of discretionary power, and tactical law and policy making, also includes – not so well documented – use of information advantage and the externality impact of such information by politicians to make gains. The paper, by analyzing the growth rates in assets of some politicians in the Mumbai Metropolitan Region, finds that the elected politicians experience a higher growth in their assets as compared to the market growth. The findings strongly support the existence of this form of legal corruption in India. The paper recommends that practices of ‘misuse’ of information advantage by politicians to make legal gains could be reduced by enforcing greater transparency via dissemination of relevant information in public domain. These measures must be backed by broad based reforms – that are commensurate with the current level of economic development – that would bring about system-wide changes in an effort to lower overall corruption in the country.

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1. Introduction

Corruption is a generic term, largely evolving out of the inefficiencies in the design of the governance system. It manifests itself in different forms in different environments and the nature and extent of its pervasiveness is affected by the institutions underlying the system. Corruption is not only a product of the system; it feeds back into the system, and, in the long run, has a significant impact on the macro outcomes of an economy. Corruption has had a differential impact on economic growth across countries; a phenomenon that has been widely researched. Besides affecting economic growth, corruption also has considerable impact on sustainable development (Aidt 2010).

While corruption is an umbrella term and has been recognized in literature to be difficult to define; for the purpose of this paper we accept the conventional definition of corruption, which is essentially, private gains made from the abuse of public office.¹ There exist different classes of 'public' corruption involving four types of actors: politicians, bureaucrats and other public servants, private elite, and the general public. Each class of corruption involves permutations and combinations of different actors, with at least one principal protagonist from the public sector. This paper focuses only on a particular type of corruption by politicians in India, where the incidence of corruption is significantly high.²

Further, the paper recognizes corruption to be multilayered as well as multifaceted and existing within the realm of illegality as well as legality, requiring analysis through lenses of incentives, law, political institutions and ethics. While illegal corruption or blatant corruption is perchance straightforward to identify and hence translates into an enforcement (implementation of law) problem, identifying legal corruption poses a formidable challenge. The paper recognizes that there exist in literature two types of corrupt practices that, according to us, form part of legal corruption in India – the use of discretionary power and tactical law and policy making. This paper further proposes that

¹ While corruption exists in the private sector as well, it is of little interest for the purpose of this paper.

² India has consistently ranked low in terms of indices measuring perceptions of corruption. India ranked 87 in the Corruption Perception Index published by Transparency International in 2010, well below Brazil, Ghana and China.

information advantage (about the prospect of large infrastructure project, say) - and the externality impact of such information (say, in terms of hike in property rates), exploited by the politicians before the market discounts them, is an important means by which legal gains may be made in India. Thus we propose that the existing typology of corruption, which is classified as legal and illegal corruption with sub-categories of illegal corruption and, possibly, legal corruption, must be extended to include acts of using information, available with key positions in public office, to make private gains as a part of legal corruption.

This paper focuses on politicians (in India), highlights the possibility of their exploiting public office for personal gains in a legal manner. By assessing the growth rates of assets of some of the politicians in the Mumbai Metropolitan Region (MMR) in India, we validate our conjecture about the existence of legal corruption in India. The paper is divided into 7 sections including the introduction. Section 2 reviews the dominant discourse on corruption as reflected in the literature. Section 3 gives a background on corruption and provides a typology of legal corruption in India. Section 4 is an illustrative snapshot that is divided into statement of hypotheses, background and data, and findings. Section 5 provides a set of recommendations. Section 6 outlines the limitations of the empirical study and provides an agenda for future research. Section 7 concludes.

2. A Review of Literature on Corruption

Several empirical studies demonstrate the negative relationship between the levels of corruption and economic growth (Mauro 1995, 1997; Tanzi and Davoodi 1997; Mo 2001; Meon and Sekkat 2005; Pelligrini and Gerlagh 2004; Swaleheen 2011). However, not all scholars are of the opinion that corruption is necessarily detrimental for an economy. For instance, it has been shown that when institutions are weak, corruption has no impact on growth (Aidt et al 2008, Méon and Weille 2010). This is so largely since the growth potential is low, making downward risk negligible. However this in no way reflects a view that corruption is a positive thing for growth. Further when formal institutions are inefficient they create incentives for corrupt practices, leading to the emergence of informal institutions, which, in those circumstances, are the *only* and hence

‘efficient’ private response.³ The adaptive nature of these informal institutions ensures their perpetuation, and hence leads to a situation where corruption is ‘locked-in’ (taking a life of its own) and ceases to be an efficient solution.⁴ Hence, corruption in such cases evolves out of the inefficiencies in the design of the governance system; its extent depends upon the type of formal institutions that are inefficient and its perpetuation depends on the adaptive nature of the informal institutions.⁵

Besides elucidating the macroeconomic impacts of corruption, much research focuses on clarifying the inherently complex concept of corruption. Discussions on the definition of corruption have been provided in Johnston (2001) and Kurer (2005). However, it has been recognized that providing a precise definition is extremely difficult (Gardiner 2002, Tanzi 1998: 564). Jain (2001: 73) opines that the general consensus has been to define corruption as *‘acts in which the power of public office is used for personal gain in a manner that contravenes the rules of the game’*. The first half of the definition implies that pursuit of personal gains could be antithetical to broader public interest, especially when the two are pitted in a zero-sum game. What we understand by the rules of the game is critical for what qualifies as corruption. If the rules of the game are only ‘legal’ rules, then illegal acts alone could be termed as corrupt. However, as noted by Lancaster and Montinola (1997: 188-189) *‘[a] [...] group of scholars [...] note that not all illegal acts are corrupt, and conversely, not all seemingly corrupt acts are illegal. [...] [T]his group of scholars argues that corruption must be defined to include behaviour that deviates, not only from written rules, but also from norms or moral standards sanctioned by the public’*. This view is also reflected in Bardhan (2006: 342) when he states, *‘there are many activities that are highly corrupt, but at least by the country’s law they are not illegal [...] Just as corrupt things are not necessarily illegal,*

³ This could be attributed to the fact that corruption ‘acts as grease’ when it helps circumvent the inefficiencies of the existing institutions. It must be noted that the ‘greasing the wheel’ hypothesis has been criticized (Wei 1999).

⁴ We recognize similar reasoning in Aidt (2009: 288) who states that *‘...cumbersome procedures that corruption is supposed to help overcome may be created and maintained precisely because of their corruption potential..’*

⁵ Bardhan (1997) suggests that the persistence of corruption can be attributed to initial conditions of a society. Goel and Nelson (2010) provide empirical evidence that corruption persists due to inertia of the past institutions. Mauro (2004) argues that persistence of corruption traps countries in a vicious circle of high corruption and low growth.

they are not necessarily immoral either'. Thus it would be pertinent to have a broader view of the rules of the game including not just formal laws, but conventions, and behavioral and moral standards of society. Hence, illegal or blatant corruption involves the use of public office for private gains by violating a formal law (thus deriving its existence and perpetuation due to weak enforcement mechanisms) whereas legal corruption is the use of public office for private gains in a manner that may be legal but violates social norms or moral standards of society. For instance, the use of private information by public officials to make gains may not always be illegal as per extant laws, but it is against social norms, and hence may be termed as corrupt (Glaeser and Goldin 2006: 8). Glaeser and Goldin term such practices – which, according to politician George Washington Plunkitt, are '**Honest Graft**' – as a form of legal corruption. Menes (2006: 81) describes how Plunkitt made use of private information of upcoming project of bridges to purchase land around that area and sold it later to make gains.

Corruption in public offices manifests itself in different forms.⁶ Jain (2001) posits that the existence of corruption depends upon three conditions - discretionary powers, economic rents associated with those powers and a low probability of detection or penalty. According to Jain (ibid: 73-75) corruption can be classified as grand corruption, bureaucratic corruption and legislative corruption.⁷ Jain refers to grand corruption as corruption that involves framing and implementation of policies by political elite in order to divert allocation of resources in a manner that serves their private interest. Further, he refers to bureaucratic corruption as corrupt practices by bureaucrats in their interactions with the political elite or the general public, and legislative corruption as the act of influencing voting behavior of legislators through bribing or vote-buying. Thus, corruption involves different groups of actors viz. politicians, bureaucrats and other public servants, private elite, and the general public. In this paper, we go slightly beyond the above characterization and examine the particular aspects of 'legal' corrupt practices by politicians.

⁶ A strand of literature refers to corruption within the public sphere as political corruption. Philp (1997) provides a conceptual analysis of political corruption. A broad overview of the causes, processes and effects of political corruption is given by Heywood (1997).

⁷ An extension of this typology is available in Shah (2007: 235-236).

Public officials - especially politicians and bureaucrats due to the positions they hold -enjoy an information advantage that enables them to pursue their personal ends as their actions are not easily monitored by citizens. This information asymmetry makes it amenable to study the relationship between these groups using a principal- agent framework. One of the earliest applications of principal-agent models is found in Rose-Ackerman (1975, 1978). Laffont (2000) provides a detailed analysis on contracting between politicians, bureaucrats and the public using principal-agent models. The principal-agent framework has also been used to elucidate the problem of asymmetry of information and monitoring of public officials (the agent) by citizens (the principal), that has lead to opportunistic behavior by the agents (Shah 2007: 241-242).⁸ This moral hazard problem can be curtailed by strengthening certain political institutions as well as conflict of interest rules. These institutions – which include governance regimes, voting rules, and freedom of press amongst others – influence the level of corruption and their impact on society.⁹ Thus reforming the underlying political institutions – which would redress the flaws in the governance system – would be critical in curbing corruption. For such reforms to be successful, they must be customized depending on the context of a country’s quality of governance for them to work successfully (ibid: 243-249). Thus, one size does not fit all, the type and extent of reform that could usefully be attempted is context dependent – almost in an organic manner – on the stage of development of a country.

Moreover, Persson et al (2010) state that curtailing corrupt practices not only requires reforms that increase the cost of corruption to the agent but also a principal who would be willing to enforce such anti-corruption reforms. They further posit that in the

⁸ Lambsdorff (2007: 81-82) uses the principal –agent model with government as principals and bureaucrats as agents to explain bureaucratic and political corruption.

⁹ Alt and Lassen (2003) study the impact of political institutions on political corruption. Kunicová (2006) provides a comprehensive review of theoretical and empirical research conducted on effects of various democratic institutions on corruption. Kunicová and Rose Ackerman (2005) study the effects of electoral rules on levels of corruption. Montinola and Jackman (2002) establish that democratic practice after a threshold level inhibits corruption, and Lederman et al (2005), determine that political institutions such as democracy, freedom of press and others help lower the level of corruption. In democratic societies, there exists a correlation between lower perception of corruption and public disclosure of politicians’ incomes, sources of income, and conflicts of interest (Djankov et al 2010). Political institutions such as decentralization in public governance significantly reduce corruption in the long run by breaking the monopoly of power at the centre (Shah 2006). This is especially true when decentralization takes place in the presence of a free press (Lessmann and Markwardt 2010).

absence of such ‘principled principals’, corruption needs to be regarded as a problem of collective action. This is a **fundamental incentive problem** (why should those who benefit from the extant system exert to bring about a change in the circumstance). Hence the presence of certain political institutions along with anti-corruption reforms may be necessary but not sufficient to reduce corruption. This is exemplified by the case of India, where the anti-corruption measures along with special monitoring authorities have failed to deter corruption.

3. Corruption in India

3.1. Literature Review

Corruption in India is ubiquitous.¹⁰ It is present at all levels, be it the sanctioning of driving licenses (Bertrand et al 2007) or Centrally Sponsored Schemes such as the (Mahatma Gandhi) National Rural Employment Guarantee Schemes (Shankar et al 2010). Much of this is in the form of blatant corruption.¹¹ Thus, corruption has been conspicuous in all public offices and at all levels in the country leading to heavy leakages in the economy and impeding development.¹² Linkages between corruption and India’s economic growth have been established in Bhattacharyya and Jha (2009). They show that economic growth reduces overall corruption in India but has little effect on the corruption perceptions. However, Heston and Kumar (2008) postulate that the extant institutions of administration and associated corruption impede India from reaching its ‘true growth potential’. Corruption is also related with the country’s other macro variables. Charron (2010) by analysing data from a survey conducted by Transparency International and Centre for Media Studies finds that wealthiness, education and decentralisation are negatively correlated to level of corruption across states in India.¹³

The linkages between corruption, and growth and development, essentially governed by political institutions in place, which, in India, are inefficient, have opened up spaces for corrupt practices. For instance, the functioning of the political institution of decentralization is scrutinized by Véron et al (2006), in a study on the Employment

¹⁰ Lee and Oh (2007) state the corruption in India ranks high in both pervasiveness and arbitrariness.

¹¹ See for example ToI (2008), Reuters (2010), and India Today (2010).

¹² Accounts of political and administrative corruption in India have been provided by Tummala (2009).

¹³ Regional fractionalization, income inequality and media are statistically insignificant.

Assurance Scheme in rural West Bengal (State in India), and it is seen that the absence of vertical accountability fails to check corruption and could also lead to corrupt networks between local elected officials, local government officers and community representatives. These inefficiencies in political institutions have bred corruption in the public sphere.

Corruption in India is not a recent phenomenon. Singh (1997) opines that the seeds of ‘political corruption’ were sown during the Nehruvian era and it was further institutionalized during the time of Mrs. Indira Gandhi.¹⁴ Ahmad and Brookins (2004), after analyzing data from newspaper reports on corruption in three South Asian countries – India, Bangladesh and Sri Lanka, find that 59 percent of all reported corruption cases involved politicians and most of these cases fell in the collusive category. According to Ahmad and Brookins, collusive corruption refers to corrupt deals where the two parties involved have incentives in keeping the deals concealed. There also exists coercive type of corruption, which involves deals where at least one party has incentive in exposing the deal (ibid.). Such types of coercive corruption are prevalent at lower levels of administration in India. ‘Harassment bribes’, where individuals bribe officials in order to get things they are legally entitled to, are one such kind of coercive bribes predominant in India. Basu (2011) opines that such harassment bribes need to be curbed by changing the existing law in a manner that protects the bribe giver from punitive action so that he is incentivized to report such incidences. Thus, *we recognize that each of these several types of corruption needs to be tackled in a unique, context dependent manner and with a specific instrumentality.*

We see that corruption has become entrenched in the political fabric of the nation. Since the Election Commission’s mandate requiring candidates contesting elections to declare assets, several questions have been raised regarding the wealth of assets and the relation as well as legitimacy of their *known* sources of incomes.¹⁵ However, most politicians have been able to provide *legal* (and hence valid) explanations for the sources of incomes. Hence we perceive that the significant corruption in the political class falls

¹⁴ This is not to say that either of them was corrupt but rather that their personalities and their styles of functioning, which were starkly different, led to a process of deinstitutionalization (especially in the latter case) and allowed those surrounding them to reap benefits through political corruption.

¹⁵ See for example, TOI (2010), Economic Times (2010) and The Hindu (2011).

within the ambit of legality. The following sub-section delves into the question of what constitutes exploitation of public office to make personal gains in a legal manner in India.

3.2. Typology of Legal Corruption In India

Given the definitions of illegal and legal corruption, legal corruption would depend upon the extant legal system and social norms which may differ from country to country. Thus what constitutes legal corruption would depend upon the specific country context. This paper holds that, in India, private gains by public officials can be made in a legal manner either by making use of (1) discretionary powers bestowed on the politicians, (2) tactical law and policy making¹⁶ (3) by exploiting the information advantage enjoyed by politicians.¹⁷

The use of discretionary powers for personal gains is a practice that is well recognized in literature. Although these can be controlled to a certain extent by ensuring that all regulations are completely code based without any exceptions or exemptions, to conceptualize and implement such regulations is difficult and could undermine flexibility and adaptability or responsiveness of any 'live' system. However, the Right to Information Act (RTI) and the vigilance of supervisors (civil society and media) have enabled citizens to be abreast of abuse of discretionary power by public officials, leading to severe criticism and *exposes*, thus reducing the misuse of discretionary power against social norms.

Besides gains that are secured through the discretionary power, politicians can serve their own interest by resorting to tactical law and policy making. It involves passing laws and policies which, although ostensibly increase public welfare, also give politicians plenty of opportunity to take advantage of the loopholes. Any bill has to be passed by the legislature for it to be law. When interest groups buy votes within the legislature, such acts fall within the purview of illegal corruption.¹⁸ However, when there exists a grand

¹⁶ This is a form of 'grand corruption', discussed earlier. This is also endorsed by Tanzi (2006:37) who in his lecture refers to such corruption as '*legal corruption at a grand scale*'.

¹⁷ It is important to distinguish between the nature of means employed to make private gains and the nature of the gains themselves. We recognize that private gains accrued through legal means may be legitimate or illegitimate. Moreover, all legitimate gains are necessarily made through legal means. Curbing illegitimate gains made via legal means only requires the strengthening of the enforcement mechanisms. However, curbing legitimate gains made by legal means would be a formidable challenge.

¹⁸ Amendments to the Development Control Regulation (DCR) 58 by the Government of Maharashtra is an interesting case where a law was passed unopposed in the State Legislature even though it cost the city of

collusion in the legislature (as in the well-known case of Amendment of DCR 58 in Mumbai), without any illegitimate money transfers, in order to serve private motives of the legislators in the guise of enhancing public welfare, it can be classified as legal corruption. Gains can also be made by politicians by exploiting the time taken between the conception of a law till the law is passed by the legislature to reposition themselves and secure their stake in any possible change (see for example the case of ULCRA in Mumbai, in Pethe 2010a). Also, political elite, in collusion with bureaucrats, legally can frame policies that may open up avenues for serving their private interests.¹⁹

The first two classes have been discussed extensively in literature. This paper rather focuses and expounds the abuse of information advantage by politicians as an important class of legal corruption. To elaborate, politicians need to take decisions on certain policies or projects and thus are privy to certain information much before it is made public. If a large infrastructure project (say) is likely (as it must) to have an externality impact on values of some assets, the politicians can strategically undertake transactions in the relevant domain so that later, when the information about that project becomes public, and the externality effects are realized, they will have profited from such transactions in a 'legitimate' manner. Since the relevant transactions are in land or property markets, which are not very well functioning in the formal sense in India in general and MMR in particular, the ability of the politicians to get comfort from the enforcers or bouncers becomes important distinction as compared to the general public. The paper proposes that most politicians make legitimate gains through legal means and thus perform better than the markets. The following section goes onto test this proposition.

4. An Illustrative Exercise

In order to gauge the extent of legal gains made by politicians, this section assesses the asset growth rates of two cohorts – politicians who won elections in 2004

Mumbai considerable amount of land that could have been used for affordable housing or preserved as open spaces. For further reading on DCR 58 refer to Pethe (2010b) and Weinstein and Ren (2009).

¹⁹ Thus, tactical law and policy making includes *some aspects* of legislative and grand corruption.

and the ones who lost elections in 2004. We classify the former as ‘winners’ and latter as ‘losers’.

4.1. Hypotheses

In this exercise we test the following two main hypotheses:

Hypothesis 1: Winners beat the market.

Along with the institutionalized illegal corrupt practices that come with different posts, politicians in power (winners) also possess with them, some information, that, if used strategically -before being discounted by the market - would enable them (in an insider trading mode) to make gains greater than what could be accounted for by market returns.

Hypothesis 2: Both winners and losers beat the market.

Only winner politicians – by law – have access to, not all, but some undisclosed information. However, political networking (strategic collusion across party lines) may also enable losers to have access to such information, before it is made public. If this is the case then there is possibility that both the cohorts –losers and winners- can be in a position to strategically use this undisclosed information to reap gains greater than possible market returns.

There are some additional interesting hypotheses that spring out of these (related to candidates’ parties and the party in power) but we will not go into them in this paper.

4.2. Background and Data

Elections in India are of three kinds - the General elections for the Lower House (Lok Sabha) of the Parliament, the State elections for the State Legislatures of each state, and the Municipal Elections for the urban local governments that is, the Municipal Councils and Corporations. Acting upon the ruling by the Supreme Court in 2003, the Election Commission of India made it mandatory for candidates standing for any election to provide a complete disclosure of their own assets as well as the assets of their spouses and dependents.²⁰ Since the State Election Commissions has not introduced such disclosure norms for Municipal Elections, there is no information on assets of the candidates in past elections, restricting the analysis to the General and State Elections. The list of assets is exhaustive and is broadly divided into movable and immovable

²⁰Please refer to Express India (2003)

assets. Movable assets comprise cash, bank deposits, bonds debentures and shares, other financial instruments, vehicles, jewelry, and other movable assets. Immovable assets are classified into agriculture land, non-agricultural land, buildings, assets, and others immovable assets.

We examine the assets of candidates who stood for the general elections or the elections of the Maharashtra State Assembly elections held in 2004 as well as the general or state elections held in 2009.²¹ We restrict the sample to those candidates who have contested elections from constituencies in the MMR²². Our sample contains 27 candidates who won elections in 2004 and re-contested in 2009 – for the purpose of the paper this class of politician is termed as winners - as well as 27 candidates who lost elections in 2004 and re-contested in 2009 – termed as losers. Among the winners, 4 won seats in the general elections and the remaining 23 won seats in the (Maharashtra) state elections in 2004. The winners of general elections become Members of Parliament (MPs) whereas those who won state elections are Members of Legislative Assembly (MLA). Among the losers, 5 contested the general elections and the remaining 22 contested the state elections in the year 2004.

Information regarding candidates' assets was procured from their affidavits available on the website of the Election Commission of India.²³ These assets were classified into the following broad categories: cash and bank deposits, bonds shares debentures, other financial instruments, vehicles, jewelry, other movable assets, and property²⁴, and the growth rates for each of these assets are calculated. We analyze the growth in the assets for candidates contesting in the general and state elections separately.

In order to estimate the market growth rates, we use a number of indicators, which represent the real estate market, stock market and bank deposits. The growth rate for real estate market is calculated as the growth rate in the average property prices in Mumbai

²¹ As this is not a finger pointing exercise the list of candidates has not been provided here but is available with the authors.

²² MMR is the most populous urban agglomeration in India and is also expanding at a fast rate. More importantly, it is a nucleus of business and commerce witnessing rising property prices and investments in many infrastructure projects. The region contributes significantly to the state and nation's economy and both the center and the state governments have a stake in the region.

²³ http://eci.nic.in/eci_main/index.asp (as viewed on July 24, 2011).

²⁴ Property is sub-divided into agricultural land, non agricultural land, buildings and other immovable assets.

between 2004 and 2009.²⁵ Data on property prices in Mumbai have been procured from Times Property – a weekly supplement in the Times of India. The growth rates in stock markets are estimated using two market indices viz. S&P CNX 500 computed by the National Stock Exchange (NSE) and the Sensex computed by the Bombay Stock Exchange (BSE). The growth in the average annual term deposit interest rate between 2004 and 2009 is estimated in order to calculate the percentage increase in returns on bank deposits.²⁶ The growth rates are computed for two different periods corresponding to the periods of general and state elections. Hence, we have market growth rates between the periods march 2004 to march 2009 corresponding to the election periods of the general elections and growth rates between the periods September 2004 to September 2009 corresponding to the election periods for the state elections.

4.3. Findings

An estimate of how the assets of the candidates have grown and the performance of the markets in the inter-election periods have been provided in Table 1. We find that, prima facie, the asset values of both winners and losers have increased considerably. Table 1 also gives a sense of the growth in real estate market, capital markets, and bank deposits by providing the growth rates in certain indicators.

²⁵ The immovable assets of the candidates include rural and urban properties outside Mumbai as well. However, since property prices in Mumbai have been increasing sharply as compared to prices in other areas, by considering only Mumbai, we are arriving at a growth rate that might overestimate the market growth in the values of immovable assets. However, we recognise that there may exist cases where property value change due to the land use conversion might not be correctly represented by our indicator.

²⁶The weekly term deposit rates can be found on the following website :

<http://www.rbi.org.in/scripts/WSSViewDetail.aspx?TYPE=Section&PARAM1=4> (as viewed on July 24, 2011).

Table 1 – Growth Rates In Asset Values of Candidates versus Market Growth Rates

Actual asset change for Candidates (in Per cent)		
Type of Candidate	General elections - March 2004 – March 2009	State Elections - Sept. 2004 - Sept 2009
Winners	208.2 (1.15)	243.05 (1.03)
Losers	204.2 (1.26)	135.62 (0.94)
Market Growth Rate (in Per Cent)		
Indicator	General Elections	State Elections
NSE (S&P CNX 500)	64.23	184.96
BSE (Sensex)	80.26	212.47
Property (Mumbai)	144.72	153.75
Deposit rate	41.93	42.49
Note - Figures in brackets are coefficient of variations of the asset growth rate. ²⁷		

From Table 1 we find that the growth rates of the assets of the winner candidates are higher than each of the market indicators' growth rate²⁸ by a considerable margin. In 2004, the average asset holding of the general election winner candidate and his family was Rs 23.17 million and of the state election was Rs. 16.15 million. The weighted average²⁹ market growth rate³⁰ for the winner candidates of the general election is 97 per cent and for the state elections is 164 per cent.³¹ The winners of general elections were entitled to a salary of Rs. 16000 per month plus allowances³² and the winners of the state

²⁷ For calculating the standard deviation required to calculate the coefficient of variation of the candidates' asset growths, we use candidates' assets as the summation of the assets of the entire family.

²⁸ Given this fact, it becomes unnecessary to compute the weighted average market growth rate. However, it is computed and compared with actual growth rates for the sake of clarity.

²⁹The weight assigned to each indicator depends upon the proportion of the asset values in 2004 that is represented by that particular indicator. Appendix 1 provides the asset portfolio of the candidates.

³⁰For this exercise, we assign an indicator to each category in the asset portfolio. We assign the capital market indicators - S&P CNX 500 and Sensex - in equal weights, to the categories bonds, debentures, shares, and other financial assets; jewellery; vehicles; and other movable assets. The property assets and other immovable assets are represented by the property price indicator while the category cash and bank deposits is represented by the bank deposit rate.

³¹ The S & P CNX 500 and Sensex growth rates for the state election time period are considerably higher than the corresponding growth rates for the general election time period. This is because these indexes rose significantly between the periods March 2009 and September 2009.

³² This is according to the The Salary, Allowances and Pension of Members Of Parliament (Amendment) Act, 2006. Between the period March 2004 to September 2006, MPs were entitled to a salary of Rs. 4000

elections earn a salary between Rs. 6000 to Rs. 8000 per month plus allowances. Given these salaries and the high average asset bases in 2004, the growth of assets of the winners has been much greater than what their salaries would account for and may be safely ignored. Hence, we can conclude that the winners of both the state and general elections beat the market significantly; we can thus accept Hypothesis 1.

In the case of losers, it is found that the asset values of those who contested in the general elections of 2004 have grown by a much higher rate than each market indicators' growth rate. However, the growth rates of assets of loser candidates in the state elections have been lower than all market indicators' growth rate, barring the deposit rate. The weighted average market growth rate for the loser candidates of the general election is 95 per cent and for those in the state elections is 157 per cent.³³ Thus, while the losers of general elections beat the market, the losers of state elections do not. We could say then, that a weak version of Hypothesis 2 holds true.

On analyzing the coefficient of variation in the growth of politicians' assets, we find that amongst the groups that beat the market viz. General and State election winners, and General election losers, the winners as a *group* appear to make better gains as compared to the General election losers. Hence, winners of general and state elections are much better placed to make substantial as well as assured gains than the rest. Further, the coefficient of variation for the state elections losers who do not beat the market shows that there is little intra-group divergence. We notice in this finding, support to infer that candidates contesting the general elections may already be in a position where they have made substantial gains. Thus they are in a position (via collusive practices), to indulge in rent seeking activities and winning or losing becomes less important. However, this does not hold true for candidates contesting state elections. This points to, in some sense, a hierarchy in contesting elections.

Given the small sample nature of the exercise, we should be careful in not '*over reading*' the numbers here. Yet it is clear that the mean of the holdings of the candidates at the higher level of elections are significantly higher than those at the lower level indicating the entry barriers to elections at the higher level (apart from the incentives that

per month. The Act was further amended in 2010 in which the salary of MPs was raised to Rs. 50000 plus an increase in allowances.

³³The workings are the same as for computing weighted average growth rate for the winners.

must come from excelling at one's chosen profession). So this will temper our finding that winners at state election (in terms of growth rates) do better than the Parliamentary elections. The results also indicate that by the time a candidate enters the higher election arena she has *matured* in the collusive sense. Whether all of this is true across party lines will be interesting line of enquiry (especially with reference to the party in power) but we cannot sensibly or meaningfully pursue this line of inquiry given the smallness of the sample. It is clear though that much more work can be fruitfully undertaken in this area.

5. Recommendations

Our findings suggest that growth rates of assets of politicians in power exceed the market growth rate considerably. The modus operandi used by these politicians to make gains may be illegal (by violating laws) or legal. Illegal corruption is fairly easy to identify and is a supervision and implementation problem which while being difficult is not complex. Moreover, assuming that politicians are tactical enough to disclose only those assets that have been acquired through legal means, it would imply that the increase in the value of the assets (as given in the affidavits) does not show the gains that may have been made illegally.³⁴ Thus growth in asset valuations must have been due to practices that fall within the ambit of legal corruption.

Over the years several anti-corruption laws have been passed and organizations been created in order to reign in corruption in the country.³⁵ However these have proved to be inefficient in meeting their mandated objective of curbing corruption largely due to the lack of political will and an unfavorable policy context (Quah 2008).

We know that, corruption arises due to the inefficiencies in the institutional framework of the governance system. Thus, the best response to tackle the existing situation in India has to be reforms that would satisfy the 'goodness of law' principle so that the institutional design aligns the incentives of the agents to broader objective of public welfare (Pethe 2010a, 2010b, Pethe et al 2011). In our particular case one could easily point out the almost hypocritical and senseless laws related to election funds that can be officially used at every level. Unless these are reformed there will continue to

³⁴ It suffices to say that illegal gains are fairly large and form a part of the shadow economy.

³⁵ A discussion on legal and institutional anti corruption measures is provided in Tummala (2009).

prevail powerful incentives for the politicians to indulge in corrupt practices in various forms. At least since the seminal work of Assar Lindbeck several decades ago, we know that even the most well intentioned politico is (as he must be) influenced by vote getting function. To continue to assume in a Webberian mode that they would be concerned with 'social welfare' is to live in fool's world. Much work of relevance in the arena of institutional-political-economy has enriched the debate in modern economics. *The present practice of rent seeking and corrupt gains are almost dictated as rational response to the wrong headed policies especially with reference to electoral funding.* Thus, rather than only characterizing politicians as the villains of the piece, broad based reforms ought to be the order of the day, the strategic question relates to sequencing and whether these reforms should be micro and incremental in nature or should there be a 'big bang' type of a systemic overhaul as propounded by Rothstein (2011).³⁶

The first step is to reduce illegal corruption, which can be brought about by micro tweaks in the system such that implementation of anti corruption laws is strengthened. However, to curb legal corruption, especially the use of information by politicians to make personal gains, is a daunting task. For instance, one can deter such practices by restricting the relevant politician from transacting in the assets, which are likely to experience changes in values as a result of certain projects or policies - due to positive or negative externalities - before the news of such projects or policies is made public.³⁷ However, implementation of such measures is fraught with difficulties. For instance, if a politician is restricted from, say, making a purchase of property within a certain perimeter around a future project site for a certain period, say 2 months, before the news of the project is made public, then, using backward induction, the politician can exploit the loophole in the time restriction by making the purchase 1 day before the stipulated time period. If this time restriction were extended to, say, 1 year then it would be difficult to rule out the possibility of coincidence.³⁸ Another loophole that could be exploited is the sharing of information among politicians. In order to restrict sharing of information one

³⁶ According to Paldam (2002: 238), a large push is needed to push economies over the pivot so that the overall corruption level falls.

³⁷ Restrictions on politicians also be applicable to their immediate family members.

³⁸ This could be avoided by having a clause for exempting such purchase from scrutiny, however, such a clause is likely to be misused by the rest.

would have to restrict all politicians from using any information for a certain time. However given the number of politicians and their networks as well as the number of projects being ‘considered’ for implementation, it becomes difficult to separate intentional use of information advantage from pure coincidences. Given these difficulties, the next best alternative to be to make the system completely transparent by making all information regarding any transaction made by politicians available to the public.

Legal corruption is greatest when there is an information advantage, in quantum as well as temporal sense, with the politicians. Hence, dissemination of information to the public is one of the most effective manner in which legal corruption can be curbed. The RTI, has been a crucial first step in this direction, but leaves a lot to be desired.³⁹ Merely the availability of information is not enough; it needs to be recorded systematically in databases that are easy to access and interpret by the public. In a bid to make information on candidates more transparent, the disclosure norms as put by the Election Commission should require candidates to include detailed information regarding their assets such as quantity, market price at time of submission, source and date of asset purchased. The temporal aspect is also crucial here.

Besides bringing about greater transparency, monitoring needs to be made more effective by strengthening the *supervisors* viz., the judiciary, media and civil society.⁴⁰ Also, there is an urgent need to revise the rules for funding election campaigns, which place unrealistic ceiling on election campaign spending leading to several malpractices that not only flout the laws but also provide an impetus to the shadow economy. The ‘goodness of law’ principle should be held sacrosanct in the framing of such laws so as to facilitate implementation.

To sum up, legal corruption cannot be tackled in isolation, but needs to be a part of a larger reform movement that aims to counter all aspects of corruption that exist within all public spheres. Also a hardy sense of what can and cannot be done (which is dependent on the state of the economic development) is of essence.

³⁹ The efficacy of the Right to Information Act and the shortfalls in its implementation have been discussed in Peisakhin and Pinto (2010).

⁴⁰ There is a need to strengthen civil society not for hijacking the law making processes, but in order to create awareness by aiding the process of information dissemination among the masses.

6. Limitations and Scope for Future Research

The paper, whilst contributing – albeit marginally – to the typology of corruption, suffers a few shortcomings. The sample chosen for the purpose of an empirical inquiry is limited in number and confined to a small geographical area (Mumbai Metropolitan Region). Also, the paper does not make use of refined statistical tools. The aim was to make an illustrative point, which is made very emphatically through the snapshot, and thus there should be no doubt that legal corruption exists, and is pervasive. A much larger cross-country dataset can be used in order to test whether our hypotheses can be accepted with statistical significance. One could also conduct such a study by including the role of political allegiances of the candidates on the growth of the values of the candidates' assets.

The paper only considers candidates contesting in the General and State elections. For want of consolidated data on candidates contesting in the Municipal elections, the growth of assets of candidates in third tier of government has been excluded from our analysis. In the future when this data is available, a complete analysis of all the three tiers of government would throw up interesting insights on the nature of our polity.

7. Conclusion

The current discourse on the typology of corruption is still evolving. The paper recognizes that there exist four categories of players in corruption of public offices – politicians, bureaucrats and other public servants, private elite, and the general public. The paper focuses on particular kind of 'corrupt' practice by politicians. Further, the existing typology of corruption postulates that politicians can indulge in corrupt practices in an illegal or legal manner. This paper recognizes the use of discretionary power and tactical law and policy making as a part of legal means by which corruption takes place in India and adds - as recognized by Glaeser and Goldin (2006) - the misuse of information advantage by public officials as part of legal corruption in India. The paper proposes two hypotheses – politicians who are in power 'beat the market' and all politicians, regardless of being in power or not, also 'beat the market'. An illustrative exercise undertaken to test these hypotheses demonstrates that while the elected politicians experience a

significantly higher growth in their assets as compared to the market growth rate, the result is not as sharp for politicians who are not elected.

This paper recommends that the use of information advantage for personal gains needs to be curbed through greater transparency and dissemination of information regarding the politicians' transactions among the public. The effort to reduce such legal corrupt practices needs to be bolstered with a whole host of reforms that aim at lowering the level of corruption in general. *In a strategic sense we need to have a hardy and realistic sense of the constraints on the reforms agenda that could be 'borne' by the current state of economy.* It must be recognized that corruption is a product of the failure of the governance system and hence the best response to tackling corruption would be having 'big ticket' reforms within the parametric framework given by what we have hinted above, that aim at bringing about system-wide changes in India's extant governance system. It has to be recognized that apart from purely economic losses that corruption entails, one of the most important externalities has to do with the loss of credibility in the government as a whole, which in its turn makes policy making a much more difficult exercise (dynamic inconsistency issues emerge) even for a well intentioned government. This paper represents but a modest attempt at extending the work in the arena of corruption merely by way of announcing a prologue, clearly a huge agenda of exciting and useful work awaits us!

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Appendix 1

Number of Candidates and Asset Portfolio for General Elections (In Per cent)									
Type of Candidate	Number of Candidates (Nos.)	Cash+bank deposits	Debentures + bonds+ other financial assets	Property	Jewelry	Vehicles	Other Movable Assets	Other Immovable Assets	Total assets
Winners 2004	4	6.25	7.56	21.76	0.91	0.63	47.55	15.34	100
Losers 2004	5	24.19	24.6	41.82	3.28	3.67	2.44	0	100
Number of Candidates and Asset Portfolio for state elections (In Per Cent)									
Type of Candidate	Number of Candidates (Nos.)	Cash+bank deposits	Debentures + bonds+ other financial assets	Property	Jewelry	Vehicles	Other Movable Assets	Other Immovable Assets	Total assets
Winners 2004	23	9.21	25.91	44.93	3.22	2.9	13.52	0.32	100
Losers 2004	22	10.42	12.21	54.18	5.11	14.89	0.22	2.99	100

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