

## Right to Information Act 2005: A Vital Tool for Controlling Corruption in India

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### Abstract

Across the globe from the womb to tomb there is countless instance of corruption. Many a scam has staggered and has been staggering the development and welfare of the Nation. Corruption confiscates the welfare programmes and policies and makes them contagious and constipates the progressive development of the nations. To preserve the progressive welfare of the State by preventing bribery and corruption the law makers have thought of enacting Anti-Corruption Laws in India and protect the system from the evil of corruption. The Government of India has enacted Prevention of Corruption Act, 1988 and Right to Information Act, 2005 besides relevant statutory provisions to prevent corruption in India. Mere enacting Anti-Corruption Laws cannot curb corruption. Perfectly framed strong machinery is essentially needed to enforce and implement those laws effectively. Hence, certain Anti-Corruption Agencies namely Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI), Anti Corruption Bureau (ACB), Comptroller and Auditor General (CAG), The Lokpal, Lokyukta and Upalokayukta are established to enforce the Anti-Corruption Laws in India. Despite Legislations and Commissions appointed by the Government, there is a rapid growth of corruption in India. This is evident from the reports of Transparency India International, a Berlin based NGO that India ranks 78 from 167 countries with a score of 3.8 in the recent corruption perception index report 2015. From the Prime Minister's office to village panchayat are engaged with full of bribery and corruption because our employees and politicians are citizens, and they are nothing extraordinary in excepting that like all other citizens, they conform to the normative order that is law. The present paper is discusses the role of Right to Information Act, 2005 to controlling the corruption in India.

**Keywords:** Corruption, anti-corruption laws, anti-corruption agencies and Right to Information Act.

### 1. Introduction

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish. This evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its influence are more destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development<sup>1</sup>. The menace of the corruption has been an important issue that bothers the policy makers, administrators and the general public since a long time. It is one of the crimes that has been a

problem in any country of the world. It is a global phenomenon capable of paralyzing a country's development and diverting its precious resources from the public needs of the entire Nation<sup>2</sup>. The corruption adversely affects not only the social, economical and political structure of the State, but also destroys the democratic values and ideals. Corruption impedes the development and investments.

In the absence of accountability and transparency corruption ultimately degrades and damages the moral, social and political values of the civil society. When economic structure is contaminated and adulterated by corruption, the progressive development of a Nation will be deteriorated to a large extent.

According to Nye "Corruption is type of behavior which deviates from the formal duties of a public servant to obtain private gain unethical (close family, personal, private clique), pecuniary or status gains or violates the rules against the exercise of certain types of private

<sup>1</sup>. Kofi A. Annan, General Secretary, UNO, "United Nations Convention Against Corruption" New York 2004.

<sup>2</sup>. Syed Umarhatbub, "Public Rating of Corruption", The Indian Police Journal, Vol. Liv.2, April-June, 2007.

regarding influences"<sup>3</sup>. Friedrich notes "The pattern of corruption can be said to exist whenever a power holder, who is charged with indulgence certain unlawful and immoral activities, i.e., who is responsible functionary or office holder, is by monetary or other rewards not legally provided for, indeed to take action which favour whoever provides that rewards, thereby does damage to the public and its interest"<sup>4</sup>.

According to Former World Bank President, James Wolfensohn, "Corruption is one of the greatest inhibiting forces to equitable development and to the combating of poverty. For many, it constitutes the difference between life and death"<sup>5</sup>. The cost of corruption to the Nation is very high. "Corruption flourishes as luxuriantly as the bush and weeds which it so much resembles, taking goodness of the soil and suffocating the growth of plants which has been carefully and expensively bread and tended"<sup>6</sup>.

Corruption lowers investment and hinders economic growth and human development by limiting access to basic social services as well as increasing the cost of their delivery. It also increases poverty, subverts the financial system, and undermines the legitimacy of the State. It is anti-poor, anti-development, anti-growth, anti-investment, and inequitable. In the opinion of the Chief Justice of India "The real costs of corruption are difficult to measure since they involve the loss of opportunities for business and investment as well as the diversion of man-power, when it may be usefully employed elsewhere. In some instances corruption poses a threat to national security as well as law and order"<sup>7</sup>.

Corruption in any form treated as an incurable disease is caused by may social and economic evils in the society. It damages the moral and ethical fibers of the civilization. Undisputedly, corruption breeds many evils in the society. Once the seed of corruption starts growing it takes roots slowly and gradually and cancerously. It passes through the whole Nation and becomes a perilous diseases<sup>8</sup>.

Corruption in India is a consequence of the nexus between bureaucracy, politics and criminals. India is now no longer considered a soft State. It has now become Consideration State where everything can be had for a consideration. Corruption has a corrosive impact on economy. It worsens our image in the international market and leads to loss of overseas opportunities.

More importantly, corruption in India flows from the political class. It manifests latently in party activities and election funds. Further, political patronage gives an aura of invincibility and respectability to corruption and deprives it of all moral and legal fears. David Bayley observes that "The presence of corruption is an important hindrance to economic growth and progressive social change"<sup>9</sup>.

Fighting corruption has emerged as a key development issue in India in recent years. More and more policymakers, businessmen, and civil society organizations, have begun to confront the issue openly. At the same time the general level of understanding about corruption has risen markedly. Until recently, it was not uncommon to hear someone discuss anti-corruption strictly in law enforcement terms. By contrast, most people working in the field today acknowledge that public education and prevention are equally important. The field has also come to appreciate how critical the role of civil society is for effective and sustained reform<sup>10</sup>.

India the largest democratic country in the world<sup>11</sup> with a population of over a one billion people, is the second most populous country after China. Indian economy is one of the fastest growing economies and is attracting huge investments from the developed countries India has become the 6<sup>th</sup> largest economy in the world<sup>12</sup>. In spite of healthy growth indices, vast population in India still lives in poverty. Corruption has become a part in every walk of life in India<sup>13</sup>. The Nation's progress is seriously hampered by all pervasive corruption. Weeding out corruption today is a major challenge before Indian society. To eradicate the evil of corruption, the Central Government has enacted Anti-Corruption Laws<sup>14</sup> to deal with the prevention of corruption and constituted commissions such as Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI) and Anti Corruption Bureau (ACB) to enforce the Anti-Corruption Laws effectively.

## 2. Definition and meaning of corruption

Attempts to develop a comprehensive definition of corruption a definition invariably encounter legal, criminological and, in many countries, political problems<sup>15</sup>. When the negotiations of the United Nations

<sup>3</sup>. Nye, Joseph S., "Corruption and Political Development: A cost-benefits analysis" American political Science Review, Vol.61.No.2, June 1967, p.417.

<sup>4</sup>. Friedrich, C.J., "Political Pathology", The political quarterly, Vol.37.1996, p.74.

<sup>5</sup>. Wolfenson's "Challenging Corruption in Asia: Case Studies and a Framework for Action", World Bank Publication, 2003.

<sup>6</sup>. Wraith and Simpkins, "Corruption in Developing Countries", London, (1963) p.11-12.

<sup>7</sup>. Balakrishnan.K.G. Chief Justice of India, Paper presented National Seminar on "Fighting Crimes Related to Corruption" New Delhi, on 13/10/2009

<sup>8</sup>. Nye, Joseph S., "Corruption and political development: A cost-benefits analysis" American political Science Review, Vol.61.No.2, June 1967, p.417.

<sup>9</sup>. Bayley David. H "The Effects of Corruption in a Developing Nations", Western Political Quarterly.Vol.XIX.No.4. (1996) p. 719-732

<sup>10</sup> Sondhi. S, "Combating Corruption in India", New Delhi, University of Delhi, 2000.

<sup>11</sup>. 2 Encyclopaedia of the Developing World 1118 (Thomas M. Leonard ed., 2006).

<sup>12</sup>. Maire Chene, "Overview of Corruption and Anti-Corruption Efforts in India" U4 Helpdesk, Transparency International.http://www.U4.no.

<sup>13</sup>. Era Sezehiya, Former Member of Parliament, Paper Presented at National seminar on "All India Convention-Anti Corruption", Chennai, Aug 2008.

<sup>14</sup>. The Prevention of Corruption Act, 1947, Sections 161 to 165A of the Indian Penal Code, The Criminal Law Amendment Act, 1944, The Prevention of Corruption Act, 1988, Prevention of Money Laundering Act, 2002, and Right to Information Act, 2005.

<sup>17</sup>. The Global Programme Against Corruption: United Nations Anti Corruption Tool Kit, 2004, Vienna, 3<sup>rd</sup> edition.

Convention Against Corruption began in early 2002, one option under consideration was not to define corruption at all but to list specific types or acts of corruption. Moreover, proposals to require countries to criminalize corruption mainly covered specific offences or groups of offences that depended on what type of conduct was involved, whether those implicated were public officials, whether cross-border conduct or foreign officials were involved, and if the cases related to unlawful or improper enrichment<sup>16</sup>.

The Oxford Universal Dictionary defines corruption as “perversion or destruction of integrity in discharge of public duties by bribery or favour”.

The Merriam Webster’s Collegiate Dictionary defines it as “inducement to wrong by improper or unlawful means as bribery”.

The succinct definition utilized by the World Bank is “the abuse of public office for private gain”. This definition is similar to that employed by Transparency International (TI), the leading Non Government Organization (NGO) in the global anti-corruption effort. “Corruption involves behavior on the part of officials in the public sector, whether politicians or civil servants in whom they improperly and unlawfully enrich themselves or those close to them, by misuse of the public power entrusted to them<sup>17</sup>”.

Asian Development Bank (ADB) too defines corruption in a similar ways as “The abuse of public or private office for personal gain”. More comprehensively it can be defined as “Corruption involves behavior on the part of officials in the public and private sectors, in which they improperly or unlawfully enrich themselves and or those close to them, or induce others to do so, by misusing the position in which they are placed<sup>18</sup>”.

According to Joseph Nye<sup>19</sup> “Corruption is behavior which deviates from the formal duties of a public role because of private-regarding (close family, personal, private clique), pecuniary or status gains or violates rules against the exercise of certain types of private regarding influences”.

Klittgard<sup>20</sup>, suggested that the level of corruption (C) could be expressed as  $C = M + D - A$  (i.e., Corruption = monopoly power + Discretionary power –

Accountability), the more concentrated the supply of a good service, the higher the discretionary power of those that control the supply; lower their accountability to the authorities, the higher the corruption level will be. Moreover corruption will also be directly proportional to the degree of discretion accorded to those in charge of making decision.

### 3. Consequences of Corruption

Corruption is as much a moral as the issue of development. It can distort entire decision-making processes on investment projects and other commercial transaction and the very social and political fabric of societies. There are many reasons for these sobering facts. One is the significant distributional implications that wide spread corruption has on growth, equality and poverty. Consequently social disintegration prevails and distorts economic systems. It implies discrimination, injustice and disrespect for human dignity; it endangers the stability of democratic constitutions, discriminates in the delivery of governmental services and thus violates the rights of the people, and poor in particular where corruption reigns, basic human rights and liberties come under threat and social and economic contracts become unpredictable. The Supreme Court of India in its recent judgment stated that “Corruption in a civilized society is like cancer, which is not detected in time is sure to maligns the polity of the country leading to disastrous consequences. Corruption is opposed to democracy and social order, being not only anti-people but also aimed and targeted at them. It destroys the cultural heritage. Unless nipped in the bud at the earliest it is likely to cause turbulence shaking of the socio-economic political system an otherwise healthy, wealthy, effective and vibrating society<sup>21</sup>. The consequences of corruption are very obvious. It is anti-national, anti-economic development and anti-poor.

#### 3.1 Impact on Democracy

Democracy requires political parties. Our political parties collect funds and these are collected in the form of cash or black money. Black money is generated through corruption. In a way corruption is the oxygen for black money; black money is oxygen for corruption. Most flak is faced due to the fact that political parties are dependent on black money and corruption for their very survival and yet they are the ones to initiate policies to fight corruption. At the same time, there are other democracies in the world like United States or Britain where the corruption levels are much less than India. The corruption perception index of USA is 19 and UK is 17 while that of India is 85 in the list.

United States of America has come up as a strong and a stable democracy, in the entire world. In their system ‘truth’ has been given the first and foremost place.

18. Initial proposals for the UN Convention against Corruption were gathered at an informal preparatory meeting held in Buenos Aires from 4-7 December 2001 and compiled in documents A/AC/261/3, Parts IIV. Proposals to define "corruption" are in Part I, and proposals to criminalize acts of corruption are found in Part II

21. World Bank 1997, p .8. Transparency International. 1996. The TI Sourcebook, edited by Jeremy Pope. Berlin: TI, P.1 World Bank definition includes the activities of private agents who subvert public policies and processes for competitive advantage.

22. In the movement to harmonize ADB procurement standards with those of the World Bank on the topic of corruption, these definitions may also be adopted by ADB.

23 Nye, Joseph. “Corruption and Political Development; A Cost-benefit Analysis,” American Political Science Review, Vol.61, No2, June 1967, p.417.

20. Robert Klitgaard, “Controlling Corruption,” Berkeley, University of California Press, 1987.

32. AIR, 2000, SC 870

There is the example of United States and Britain where there is more transparent fund collection; the systems are much more transparent than in India. The Indian scenario though purports to be transparent are at most times unappeasable able to the common mind. It is only in recent times that the judiciary has decided that judges too owe a duty to disclose their assets and do not gain precedence due to the position they hold. However it took India a long time to come up with this one. It only goes to show that corruption subsists at every level and one needs to be on guard at all times.

Democratic institutions surely provide a broad basis for popular government and give people the noble notion and pride that the country belongs to them. Whenever they grow weary of their government, they can exercise their right to change it. Yet democratization is not a necessary condition for economic development. The most startling economic progress, over the past two decades, has been in China which labors under an authoritarian regime. And many new democracies, from Azerbaijan to Kazakhstan, show little ability to progress economically.<sup>22</sup> Even established democracies stagnate economically, with millions of workers condemned to unemployment and declining standards of living when guided by economic ideologies hostile to economic productivity. Government by the people may be as injurious to economic well-being as any other form of government.

Similarly, national independence and self-government are no guarantee of economic progress. The world's poorest countries, such as the Democratic Republic of the Congo, Burundi, and Ethiopia, are as independent as the wealthiest countries, but are poorly governed. In fact, the world's poorest countries may even be poorer today than they were in ages past when they labored under foreign rule. In contrast, many countries that until the twentieth century lacked complete independence and self-government, such as Australia (1901) and New Zealand (1947), expanded rapidly as colonies of the British Empire. They enjoyed the ideological and legal preconditions of economic development that is, safety of private property, entrepreneurial freedom, and the spirit of enterprise.<sup>23</sup> The poverty of many countries, which moves wealthy countries to pity and foreign aid without end, obviously lacks these preconditions; the suffering of the people is likely to continue as long as the sovereignty of their disfunctioning governments remain unchallenged.

Getting down to the basics it is clear that in spite of the valiant effort made by the formidable Mr. Seshan, former Chief Election Commissioner, it is still a piece of common knowledge that a lot more money is spent in elections than that which is officially declared as per the provisions of the Representation of the People's Act and Rules. The basic cause for corruption in the society at the level of political parties is because the parties are

dependent on black money as a source for funds. If one wants to eradicate corruption, one will have to start at the level of the political parties and the funding of such political parties. In fact, no political party can function without funds even for conducting normal meetings or publicizing through notices and other media about meetings being held. Hence, any attempt at linking cleanliness in the political parties by focusing on electoral funding is a step in the wrong direction.

One of the popular ideas floated about is public funding of elections. But a country like India requires concentrating funding towards the basic amenities for human living and politics falls to the bottom of the list. After all, even in Germany when political funding was provided, one had cases like that of Mr. Kohl who United Germany besides having also collected funds for political purposes. Hence state funding of elections in Indian situation should be firstly opposed because it does not have resources and secondly there is no guarantee that it will bring transparency and cleanliness in the political system.

To fulfill its rightful destiny in the new millennium, the country will have to find ways to move towards an honest and ethics-based polity, an efficient, and compassionate and corruption free administration and bureaucracy and a responsible and value based society. Other democratic countries have come out of a virtually intractable state of corruption by adopting and implementing, with courage and determination, a carefully conceived programme involving fundamental changes in the electoral system as well as in governmental administration, especially in the public services. For example the United Kingdom whose public notoriously corrupt in the 18th century made a transition across barely 50 years to a regime of extraordinary public property.

### 3.2 Corruption impedes economic growth

The relationship between corruption and economic growth is complex. Economic theory supports the notion that corruption hinders economic growth in the following ways<sup>24</sup>:

- i. Corruption discourages foreign and domestic investment: rent taking increases costs and creates uncertainty, reducing incentives to both foreign and domestic investors.
- ii. Corruption taxes entrepreneurship: entrepreneurs and innovators require licenses and permits and paying bribes for these goods cuts into profit margins.
- iii. Corruption lowers the quality of public infrastructure: public resources are diverted to private uses, standards are waived; funds for operations and maintenance are diverted in favor of more rent seeking activity.

<sup>22</sup>. <http://www.sennholz.com/demnopros.html>, visited on 5<sup>th</sup> April, 2007.

<sup>23</sup>. Ibid.

<sup>24</sup>. Mauro 1999. For further discussion of the theoretical reasoning, Heidenheimer and Johnston (2002), specifically Chapter .

- iv. Corruption decreases tax revenue: firms and activities are driven into the informal or gray sector by excessive rent taking and taxes are reduced in exchange for payoffs to tax officials. Capacity to increased corruption, reduced economic governance, increased poverty growth and increased income inequality.
- v. Corruption diverts talent into rent seeking officials who otherwise would be engaged in productive activity become pre-occupied with rent taking, in which increasing returns encourage more rent taking.

A seminal study by Mauro<sup>25</sup> has carried a study on corruption in 106 countries and has found that high levels of corruption are associated with lower levels of investment as a share of Gross Domestic Product (GDP) and with lower GDP growth per capita. Extrapolation of these results by the researcher suggested that if a country were to improve its corruption index from a score of six to eight on a ten-point scale, it would increase the investment rate more than 4 per cent and annual per capita GDP growth would increase by nearly one-half percent.

### 3.3 Corruption and development

Corruption delays, disturbs and diverts growth and development. Its impact is difficult to measure directly because corruption normally occurs within institutions, which have other inadequacies and weaknesses. It is therefore difficult to separate out corruption as an independent variable especially because corruption appears to be both a cause and effect of inefficient and unaccountable institutions.

Corruption is believed to have a significant impact on lowering investment, both foreign and domestic. It does so because potential investors perceive it as an unwarranted and pernicious tax. It raises the cost of investing without providing any guarantee of producing the required results. Corruption therefore increases as the uncertainty and risk attached to investment as well as reducing the incentive for entrepreneurs. According to IMF research, lowering investment accounts for a least one third of corruption's overall negative effects<sup>26</sup>.

To implement sustained development programmes, Governments need secure, reliable and expanding revenue sources, but where corruption occurs in the form of tax evasion, there is a corresponding shortage of funds for productive investment.

The negative impact of corruption on development is no longer questioned. Corruption hinders economic development, reduces social services, and diverts investments in infrastructure, institutions and social services<sup>27</sup>. The World Bank distinguishes between two main forms of corruption: State capture and administrative corruption. State capture refers to the actions of individuals, groups or firms, both in the public and private sectors, who influence the formation of laws, regulations, decrees and other government policies to their advantage as a result of the illicit and nontransparent provisions of private benefits to public officials. Administrative corruption refers to the intentional imposition of distortions in the prescribed implementation of existing laws, rules and regulations to provide advantages to either government or non government actors as a result of the illicit and non-transparent provision of private gains to public officials. Investors will be reluctant to invest in development efforts in a country where there is state capture and administrative corruption. In addition, international donors would not lend to a country with high corruption affecting the human rights and right to development of poor people in that country<sup>28</sup>.

### 4. Legal framework to combat corruption

An effective legal system is crucial to fight against corruption, as an ineffective or politicized judiciary is the best friend of corruption. The first step in a judicial reform process is a review of the country's legal framework, to uncover weaknesses and inconsistencies in the laws, as well as out-dated legislation that should be removed from the civil and criminal codes<sup>29</sup>. Where the judicial system is honest and respected, it can counter the activities of a corrupt government, as in the case of Brazil, where former President Collor de Mello was impeached by Congress and the process upheld and monitored by the Supreme Court<sup>30</sup>.

Accountability of the judicial system to the public and to the government is essential in tackling corruption within the courts. Those responsible for the investigation, prosecution and management of corruption cases must have the highest moral standards and be subjected to periodical review of their work, as well as having clear accountability mechanisms to superiors and an adequate system to address complaints. India's history is replete with countless anti-corruption measures and subsequent punishments. The Rig Veds, a sacred Hindu text described as "the oldest literary monument of the Indo-European races"<sup>31</sup>.

<sup>25</sup> Mauro (2002) used a composite of two corruption indices and multiple regression analyses with a sample of 106 countries to show that high levels of corruption are associated with lower levels of investment as a share of Gross Domestic Product (GDP) and with lower GDP growth per capita. Extrapolation of these results by the researcher suggested that if a country were to improve its corruption index from a score of six to eight on a ten-point scale, it would increase the investment rate more than 4% and annual per capita GDP growth would increase by nearly one-half percent

<sup>26</sup> Reddi's, "Anti-Corruption Laws and Departmental Enquiries", New Delhi, Orient Publishing Company, 2008, pp.18-19.

<sup>27</sup> United National Development Project, Anti-corruption practice note, February, 2004.

<sup>28</sup> The World Bank, Anticorruption in Transition: A contribution to the policy debate, 2000.

<sup>29</sup> Maria del Mar Landette M: "Combating Corruption: What the Ecuadorian Anti-Corruption Agency Can learn from International Good Practice", University of Birmingham, 2002.

<sup>30</sup> Geddes B. and Ribeiro Neto A, "Institutional Sources of Corruption in Brazil": North South Center Press, 1999.

<sup>31</sup> 23 Encyclopedia Americana: A library of Universal Knowledge 517(1919). The Rig Veda dates back as early as 1200B.C..

To combat this devastating corruption Indian penal code (IPC) was the main tool during the pre-independence period. The code had a chapter on "offences by public servants". Section 161 to 165 provides the legal framework to prosecute corrupt public servants. At that time the need for a special law to deal with corruption was not felt. But the Second World War created menaces (shortages). Taking advantage of that situation the unscrupulous elements exploited the situation which led to large scale corruption in public life. Then the law makers sincerely felt that drastic legislative measures needed to be taken immediately. Hence the Prevention of Corruption Act, 1947 was enacted to fight the evils of bribery and corruption.

This Act did not redefine nor expand the definition of offences resulted to corruption, already existing in the IPC. Similarly, it has adopted the same definition of "Public Servant" as in the IPC<sup>32</sup>. However, the law defined a new offence 'criminal misconduct in discharge of official duty' for which enhanced punishments was stipulated. In order to shift the burden of proof in certain cases to had accepted any gratification, it has all be presumed that that public servant accepted such gratification as motive or reward under section 161,164 and 165 without the permission of the authority competent to remove the charged public servant. The Act also provided that the statement by bribe-giver would not subject him to prosecution<sup>33</sup>.

Later in 1988, the Prevention of Corruption Act, 1988<sup>34</sup> was enacted. It consolidates the provisions of the Prevention of Corruption Act 1947, the Criminal Law Amendment Act, 1952 and some provisions of IPC. It has also certain provisions intended to combat corruption effectively among public servants. In this Act the term 'Public Servants' is broadly defined and a new concept 'Public Duty' is introduced. Besides, trail on cases by Special Judges.

In spite of healthy growth indices, a vast population still lives in poverty. The countries progress is seriously hampered by all pervasive corruption. Weeding out corruption today is a major challenge before Indian society. To eradicate the evil of corruption the Central Government has enacted Laws<sup>35</sup>, dealing with prevention of corruption in India.

Recently, in the way of combating corruption, the prevention of Money Laundering Act 2002<sup>36</sup> was enacted empowering the Directorate of Enforcement, India, and Financial Intelligence Unit, India to investigate and prosecute such public servants who hold ill-gotten wealth

in foreign countries and transfer to their homeland through money laundering. Further, since secrecy in public administration breeds corruption. The Right Information Act, 2005<sup>37</sup> has been enacted aiming at ensuring efficiency, transparency and accountability in public life. This is a revolutionary step towards the eradication of corruption from public life. On the one hand it empowers citizens and breaks the information monopoly of the Public Officials. Therefore, it prevents corrupt public officials from mis-using this information to advance their own interest. On the other it provides the Government with more power and public support for conducting top down audit of corrupt departments. There is evidence that the letter works effectively in a developing economy eminent<sup>38</sup>.

## 5. Institutional framework and corruption

Mere enacting anti-corruption laws are not enough. There must be a strong machinery to implement and enforce those acts effectively and prevent the corruption in public life.

There are various bodies in India for implementing anti-corruption policies and raising awareness on corruption issues. At the federal level, key institutions include, the Central Vigilance Commission (CVC), the Central Bureau of Investigation (CBI) and the Office of the Controller and Auditor General (CAG). At the State level, local anti-corruption bureaus have been set up, such as the Anti-Corruption Bureau of Andhra Pradesh.

The Central Vigilance Commission (CVC) is an independent-watchdog agency established in 1964. The CVC has the power to undertake inquiries or investigations of transactions involving certain categories of public servants. It also has supervisory powers over the Central Bureau of Investigations. The CVC can investigate complaints against high level public officials at the central level, in cases where they are suspected of having committed an offence under the Prevention of Corruption Act. The CVC became answerable to the Nation as the force that would halt official corruption<sup>39</sup>.

The CVC is mandated to investigate public sector corruption at the federal level and not at the State level. The CVC has an online whistleblower complaint mechanism on its website.

More recently, the CVC is working in collaboration with Transparency International India or introducing Integrity pacts in all state-owned public sector companies, industries and banks. In December 2007, the commissioner issued a directive to this effect which has resulted in 32 public sector undertakings having adopted an integrity pact. The Central Vigilance Commission Act,

<sup>32</sup> Section 2: The Prevention of Corruption Act, 1947.

<sup>33</sup> Section 8: The Prevention of Corruption Act, 1947.

<sup>34</sup> Received the assent of the President on 9-9-1988. Published in the Gazette of India (extra ordinary) Part-II, Sec.1 Dt. 12-09-1988, PP.1-13.

<sup>35</sup> Delhi Special Police Establishment act, 1946, Prevention of Corruption Act, 1947, Sections 161-165A of the Indian Penal Code, The criminal Law Amendment Ordinance, 1944, and the Prevention of Corruption Act, 1988.

<sup>36</sup> Dharam Chand Jain "Effective Legal and Practical Measures for Combating Corruption: A criminal Justice Response", 138<sup>th</sup> International senior Seminar Participant Paper.

<sup>37</sup> The Right to Information Act, 2005 got assent of the President of India on 15<sup>th</sup> June 2005, published in Gazette of India, Extra Ordinary Part II, Section 1, No. 25 Dated 21<sup>st</sup> June 2005.

<sup>38</sup> Olken, B. "Monitoring Corruption: evidence from filed experiment in Indonesia" Journal of Political Economy, 115 (2), 200-249.

<sup>39</sup> Government of India res. No. 24/07/1964-avd, Feb, 11, 1964 (establishing the Central Vigilance Commission): Anjali Nirnmal, "Role and Functioning of Central Police Organizations" 43 (1992).

2003 provides limited vigilance powers of commission and raises speculation about its ability to fight subversive influence. In addition to limiting the authority of the CVC, the CVC Act also curbs the powers of the investigatory arms of the CVC, the CBI by reinstating a requirement of prior sanctions for investigating high rank officials<sup>40</sup>.

The Central Bureau of Investigation (CBI)<sup>41</sup> is the prime investigating agency of the Central Government and is generally referred to as a credible and respected institution in the country. It is placed under the Ministry of Personnel, pensions & Grievances and consists of three divisions: the Anti-Corruption Division, the Special Crimes Division and the Economic Offences Division. These units have the power to investigate cases of alleged corruption in all branches of the Central Government, but need the permission of the state governments to investigate cases at the state level. The Supreme and High Courts can instruct the CBI to conduct investigations. Like the CVC, the CBI has a complaint mechanism on its website.

The office of the comptroller and Auditor General (C&AG) are praised by the 2007 Global Integrity Report for being independent and well-staffed, with offices of Accountant General (AG) in all states. The CAG has produced several reports.

On State departments such as Railways, Telecommunications, public sector enterprise and tax administration. These reports have revealed many financial irregularities, suggesting a lack of monitoring of public expenses, poor targeting and corrupt practices in many branches of government. However, since the CAG has no authority to ensure compliance with its recommendations, the Government often fails to implement the reports proposals.

The Anti-Corruption Bureau of Andhra Pradesh has been established on 2, January 1961 and functions directly under the administrative control of the General Administration Department of Andhra Pradesh Government. The Director General, who is a senior IPS Officer of the rank of DGP/ Addl. DGB, heads the Bureau. A Director, who is also a senior IPS officer of the rank of IGP, assists him. They are assisted by Additional Directors (IPS officers of the rank of DIG) and Joint Directors (IPS Officers of the rank of SP).

The Bureau is divided into 15 Ranges. Every Range is headed by a Deputy Superintendent of Police and assisted by 3 to 5 Inspectors. Every Range Encompasses on to three districts. The Bureau consists of Technical Officers like engineers, chartered Accountant etc. it also has legal officers to tender some advice on legal matters to conduct prosecution in courts and Tribunal for disciplinary proceedings. ACB is responsible for the preventing, direction and investigation of corruption crime only and is not engaged in conducting other police duties such as handling conventional crimes and law and order.

The Lok Pal is supposed to be a watchdog over the integrity of ministers and the Members of Parliament. The Indian Lok Pal was intended be similar to the institution of Ombudsman existing in the Scandinavian countries. The Lok Pal Bill provides for constitution of the Lok Pal as an independent body to enquiry into cases of corruption against-public functionaries, with a mechanism for fillings complaints and conducting inquiries etc.

The role of Lok Pal in ethical conduct in high places cannot be over-emphasized. The commission would like to recommend, that the Lok Pal be given a constitutional status. This would provide the eminence and status and constitutional safeguards appropriate for such and important institution, which is expected to be a watch dog against wrong doing by high public authorities.

In the walk of the recommendations of the first administration reforms commission, many State Governments enacted legislation to constitute the Lokayukta to investigate allegations or grievances arising out of the conduct-of public servants including political executives, legislators, officers of the State Government, local bodies, pubic enterprises and other instrumentalities of Government including cooperative societies and universities. By virtue of such legislation, a member of the public can file specific allegations with the Lokayukta against any public servant for enquiry. It is also open to the Lokayukta to initiative suo-moto inquiry into the conduct of public servants.

## 6. Other Laws and Provisions to tackle Corruption in India

India is a large country with a population of over a one million people. It is also the second most populous country after China in the world. It is one of the fastest growing economic in the world and is attracting huge investments from the developed countries<sup>42</sup>. In spite of healthy growth indices, a vast population still lives in poverty. The countries progress is seriously hampered by all pervasive corruption. Weeding out corruption today is a major challenge before Indian society. To eradicate the evil of corruption the Central Government has enacted Laws dealing with the prevention of corruption in India. By the end of the twentieth century, India, like many other large countries, had created a number of offices promulgating anti corruption measures, such as the Administrative Vigilance Division in the Department of Personnel and Training, CBI, Vigilance Units in the Ministries and departments of the Government of India, disciplinary authorities, and the CVC. The CVC, CBI and ACB work to eradicate the offenses laid out in the PCA.

Apart from the Prevention of Corruption Act, 1988, the Law makers have enacted the following Laws and Provisions to eradicate the corruption in India.

<sup>42</sup>Dharam Chand Jain "Effective Legal and Practical Measures for combating Corruption: A criminal justice Response". 138thInternational Senior Seminar Participant Paper.

<sup>40</sup> Central vigilance Commission Act, 45 of 2003 @26(6A)(1).

<sup>41</sup> The Establishment of CBI on 1<sup>st</sup> April, 1963, .

- (a) Article 311 of the Constitution of India
- (b) Prevention of Money Laundering Act, 2002
- (c) Right to Information Act, 2005

### 7. Article 311 of the Indian Constitution

The Constitution of India reiterated the former Prevention of Corruption Act, 1947 provision that no civil servant can be prosecuted and punished by an authority subordinate to the one which made the original appointment. Further guarantees are provided for civil servants such as the right to be heard when charged of corruption during the investigation (but not when penalties are being imposed). Noteworthy is the provision which makes the appointing authority to make the final determination whether an inquiry is warranted at all (by giving its reasons in writing). Further, the President of India or the

Governor of a State may prevent an inquiry in the name of national security. While this provision was originally intended to protect the civil servants from harassment, it in fact turned out to be a hindrance in that sometimes no consent was given by the appointing authority, or if given, it came too late and/or only grudgingly. Veerappa Moily, Chair, ARC-2, quoting the 2004 report of the Central Vigilance Commission showed that "out of the 153 cases for sanction, 21 cases were pending for more than 3 years, 26 cases between 2-3 years, 25 between 1-2 years. The departmental enquiries are soft-pedalled (sic) either out of patronage or misplaced compassion"<sup>43</sup>.

### 8. Prevention of Money Laundering Act, 2002

Prevention of Money Laundering Bill in which deliberately customs, excise, income tax and sales tax seems to have been omitted in the schedule to the Bill. The Prevention of Money Laundering Act, 2002 (PMLA) forms the core of the legal framework put in place by India to combat money laundering. PMLA and the Rules notified there under came into force with effect from July 1, 2005. Director, Financial Intelligence Unit -IND and Director (Enforcement) have been conferred with exclusive and concurrent powers under relevant Sections of the Act to implement the provisions of the Act. The scheduled crime means a crime under the Act mentioned in the schedule to the Bill. By keeping the main source of generation of black money in the country, the Bill provides an incentive for the money launderers. In fact, the Foreign Exchange Regulation Act (FERA) has also been given up and the Foreign Exchange Management Act (FEMA) is toothless at this stage. Therefore, at every level of policy there is adequate protection given for those who indulge in corruption especially in a big way. Many public servants are able to hold their ill-gotten wealth in foreign

countries, which they subsequently transfer to their homeland through money laundering, disguising them as funds, apparently from a legal source. This Act empowers the Directorate of Enforcement, India and Financial Intelligence Unit, India, both agencies of the Government of India, to investigate and prosecute such persons under this Act.

### 9. Right to Information Act, 2005

October 12<sup>th</sup>, 2005 was Vijaya Dashmi or Dussehra. It was a public holiday. And like every other year, Indians across the globe celebrated the (mythological) triumph of good over evil with much fervour. But a section of Indian populace rejoiced for a different victory. Unknown to most other, that date was significant for another reasons, it marked the beginning of an era of empowerment of a special kind. It was the day on which the Right to Information Act 2005 came into force in India. For citizenry accustomed to the opaque veil of secrecy which shrouded most government institutions and actions, the promise of the sunlight of transparency meant a return of power to the people.

It was the result of years of campaigning at the national and regional level that the right to information gradually started taking a real form first through legislation passed by certain states and then by the Centre through the Right to Information Act 2005 (RTI Act). Right to Information is a potent weapon to fight against corruption, arbitrariness and misuse of power.

It is a fact that too much secrecy in public administration breeds corruption. The Right to Information Act, 2005 has been enacted and received assent of the President of India on 15.6.2005. The main objectives of the Right to Information Act, 2005 are as follows:

- (1) To provide for setting out the practical regime of right to information for citizens,
- (2) To secure access of information under the control of public authorities,
- (3) To promote transparency and accountability in the working of every public authority,
- (4) The constitution of Central Information Commission and State Information Commission and
- (5) For matters connected or incidental thereto.

As per the Section 2(f) of the Act, "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic forms and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

As per Section 3 of the act, all the citizens have the right to information. Right to information as per Section 2 (j) means "the right to information accessible under this

<sup>43</sup>Veerappa Moily, ARC-2, Op. Cit., in his "Preface" (no para number).



Act which is held by or under the control of any public authority and includes the right to

- i) Inspection of work, documents, records
- ii) Taking notes, extracts or certified copies of documents or records
- iii) Taking certified samples of materials
- iv) Obtaining information in the form of diskettes, floppies, tapes, Video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

As per the Section 4 of the Act, every public authority shall maintain all its records, detail catalogue, index in a manner and ensure that all the records Legal Framework For Fighting Corruption - that are appropriate to be computerized within reasonable time. Further the same has to be published within 120 days from the enactment of the Act. In this connection, there shall be no obligation to give any citizen information which would impair process of investigation or apprehension or prosecution of offenders and those matters are specifically exempted from disclosure.

Moreover notwithstanding anything in the Official and Secret Act, 1923, the public authority may allow access to information if public interest in disclosure outweighs the harm to be protected the interest. It is pertinent to note that this Act is not applicable to certain organizations as per the provisions U/Section 24 like Intelligence and Security organizations specified in the 2nd Schedule. However the information pertaining to allegation of corruption and human rights violation shall not be excluded. The Right to Information Act 2005 is a legal tool that will help check corruption and hold the various departments, agencies and officials of the Government accountable. The Act prevents arbitrary action by any Government servant.

The RTI Act, 2005 proposes a mission statement of sorts by stating that it is essentially a practical roadmap detailing the ways by which citizens of India can gain access to information that can promote good governance. The Right to Information Act aims at ensuring efficiency, transparency and accountability in public life. This Act requires all public authorities, except the ones that handle work relating to national security, to publish all information about their functioning at regular intervals through various means of communication, including the internet.

Now any person can seek information from the convened public authority just by filing an application at almost at no cost. The public authority has to reply to the application compulsory within 30 days. This Act can indeed be described as a revolutionary step towards the eradication of corruption from public life. Legislations such as the RTI Act, in India are also important in curbing corruption. On the one hand it empowers citizens and breaks the information monopoly of the Public Officials. Therefore, it prevents corrupt public officials from misusing this information to advance their own interest. On the other hand it provides the Government with more power and public support for conducting top down audit of corrupt departments. There is evidence that the letter works effectively in a developing economy eminent<sup>44</sup>.

### Conclusion

The Right to Information Act 2005 was promulgated by the Government of India to bring transparency and accountability in public servants. Indian citizens have used this law very effectively to bring about changes that are both big and small. Thanks to RTI Act, in India, real master the well-known common man is finally being recognised by the public servants. No other law on India's statute book gives citizens so much power, so simply to question any public officer in the country. The study clearly showed that the Right to Information Act, 2005 has given a historic opportunity to root out corruption and the culture of secrecy from the Indian government affairs and paved the way for governance reform, greater accountability and transparency in government affairs. Thought of India, number of people is using RTI applications as weapon to fight against the corruption.

With corruption being viewed as one of the biggest obstacles in the efficient delivery of development reduces to the poor in developing countries, and empirical study concluded that the RTI negatively impacted corruption and its statistical impact on curbing corruption was quite significant. The Right to Information Act makes significant contribution in controlling corruption, enhancing the quality of public good and service, empowering citizens and by breaking the informational monopoly of public officials. It prevents corrupt public officials from misusing this information to advance their own interest. On the other hand it provides the government with more power and public support for conducting top down audit of corrupt department<sup>45</sup>.

<sup>44</sup>Olken, B. "Monitoring Corruption: evidence from a field experiment in Indonesia", *Journal of Political Economy*, 115 (2), 200-249

<sup>45</sup>S. Bhattacharyya and R Jha, "Economic Growth, Law and Corruption: Evidence from India," (Canberra: Australian National University, 2009).