

CORRUPTION UNMASKED: THE CRUCIAL ROLE OF CONSTITUTIONAL MECHANISMS IN INDIA'S FIGHT AGAINST THE MENACE

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ABSTRACT

This paper explores the effectiveness of the constitutional mechanisms in India for combating corruption. This paper begins by providing an overview of the history of corruption in India and how it has impacted the country's political and economic landscape. This paper then dives into the different constitutional provisions that have been put in place to fight corruption, such as the Prevention of Corruption Act, and the Right to Information Act. Lastly, it also examines the role of the judiciary in fighting corruption and whether or not the constitutional mechanisms are effective. Finally, this paper provides recommendations for how India can strengthen its constitutional mechanisms for fighting corruption.

INTRODUCTION

John Acton says, "Power tends to corrupt, and absolute power corrupts absolutely".¹

In India corruption has become a problem that has serious implications for both protecting the rule of law and ensuring access to justice. Corruption is pervasive in the system of governance in India, undermining the effectiveness of all institutions of governance. Since independence, successive governments have attempted to take numerous measures to reduce the levels of corruption in the country, including legal and institutional measures. However, absence of the political will and sincerity in taking concrete steps to eliminate corruption has resulted in most of these measures not achieving the results that were intended.

Corruption in India is not only a police issue where one is in a position of the law invades the rights of others through unlawful means, and can be solved by strengthening the laws of the state. Thus, to sum up, corruption in India is far more serious which really pertains to the core of the Indian society, its political institutions and the bureaucracy. Hence it is needed for the

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¹ Brian Martin, Information Liberation London: Freedom Press, 1998

<<https://documents.uow.edu.au/~bmartin/pubs/98il/il01.pdf>> accessed 25 June 2024

law enforcement machinery to be empowered; but the root question about corruption in India denotes how corruption infringes human rights – and more specifically, the rights provided by the Constitution of India. Moreover, India's corruption treads on the very principles of Indian democracy as laid down in the constitution of India, under which a rule of law society in India was to be built. Nevertheless, the optimistic outlook portrayed by the writers of the Indians omits a deeper understanding of the country's reality. The Constitution has been breached in the years gone by a monster of corruption in almost all the institutions and as a result, a blot has appeared on the governance system right from the top to the bottom of the pyramid.

The existing system in India of addressing corruption lays a primarily undue reliance on the criminal justice system that is itself reeling under the pressure of corruption and other issues. Therefore, the eradication of corruption is also necessary in order to build back the faith of the people of India in the Criminal Justice system of the country. According to it, however, legal controls concerning corruption ought to stress the improvement of transparency and accountancy in Governance. This means that the enhancement of the legal position of the citizenry has to be the starting point of any concept of empowerment of the citizenry.

Reforms of the institutions as a measure to curb corruption. As a whole, the measures that have been taken up to now in this regard, have not proven to be effective. However, the evolution of recognizing Information Rights in India with the aims and objectives of which are to educate the citizens of India and to promote the element of transparency deserves to be mentioned here as it is a positive advance.

HISTORY OF CORRUPTION IN INDIA

Corruption in India remains endemic and deep-rooted. The roots of corruption in India date back to the old colonial British era. The problems associated with corruption have, hence, plagued the nation for quite a long time now. Corruption has since then been a long-standing issue, with no effective solution in hand. Mohammad Ali Jinnah too remarked, "One of the biggest curses that India is suffering from—I am not saying that other countries are free of it, but I believe our situation is much worse—is bribery and corruption."

The very beginning of corruption may be traced back to the enactment of the Official Secret Act, 1923. This act made it illegal for any state employee to disclose any secret to the general public. Hence the culture of transparency and unaccountability was promoted right from the

beginning. This induced govt officials and employees to keep away information from the general masses.

The era of the License permit Raj too ushered in corruption. Such a system required businesses to obtain permission for any activity relating to the business. The government was thoroughly involved in the affairs of the business and to a large extent, controlled its operations and made its decisions. This led to government officials and employees holding immense power which often led to its misuse.

The license Raj was soon replaced by the new economic policies introduced in 1991- the policy of liberalisation, privatisation and globalisation (LPG). Although one may expect such new reforms to bring an end to the corruption in the country, the case was quite the opposite. It was found that corruption increased with the introduction of such policies. Economic growth increased places for high growth corruption occurrences. In today's day and age, corruption is rampant. Corruption has been fast evolving and growing in the economy. As per Transparency International's corruption perception index, India ranks 85th out of 180 countries in corruption and scored 40 out of 100. The existing anti-corruption framework in India relies too much on the criminal justice system, which itself faces corruption and other issues, leading to a loss of trust in it.

CONSTITUTIONAL MECHANISMS FOR FIGHTING CORRUPTION IN INDIA

A significant discrepancy exists between anti-corruption policies and practice, according to India's performance on the 2007 Global Integrity Index. The institutional and legal well-developed structure to tackle corruption, and the Country obtains a favourable rating for its anti-corruption efforts in Institutes of law. A study was carried out by Transparency India's 2007 effort to find potential loopholes. The UN Convention against Corruption (UNCAC) and the institutional and legal environment in a location in the nation. The report verified the positive quality of the anti-corruption legal system in India's current legal framework is consistent with the majority of the criteria set forth by the UNCAC. However, law enforcement is still ineffective, indicating a lack of political will to effectively confront issues related to corruption in the country.

THE LEGAL FRAMEWORK FOR COMBATING CORRUPTION IN INDIA

Prevention of Corruption Act (1988):² The Prevention of Corruption Act (PCA), was first enacted in 1988 and was amended in 2018. The Act aims to consolidate all the laws relating to Corruption by the Civil Servants in the country, which punishes the offence of bribery and procurement of illegal assets by the public servants. However, the primary legislation suffered several inadequacies and shortcomings the bribe-giving was not considered an offence, there was no provision for attachment of property and the act extended only to the public sector and not private dealings even in banking and insurance companies, which had a very adverse impact on the economy of the country, in the absence of any effective mechanism to curb such corrupt practices.

However, after the Amendment of 2013 the Act was upgraded and introduced with certain new changes to enable the agencies to curtail the hands of the corrupt civil servants of the country like the private sector units and commercial organizations are brought under the ambit of the act and promising or giving bribe is made a punishable offence, bribe giving and taking both were made a punishable offence with seven years of imprisonment under Section 8 of Act³, the time limit for the trial is fixed up to two years which can be extended maximum to four years with the special reasons to be recorded in writing, further the act has provided for attachment of tainted property of the civil servants which is obtained through illegal means which was not there in the previous act.

Right to Information Act (2005):⁴ The Right to Information Act derives from the right of freedom of expression to “seek and receive information,” and is recognized worldwide as a human right.⁵ The Act represents one of the country’s most critical achievements in the fight against corruption in recent years. Under the provisions of the Act, any citizen may request information from a "public authority" which is required to reply expeditiously or within 30 days. The Act also requires every public authority to computerise their records for wide dissemination and to proactively publish certain categories of information for easy citizen access. This act provides citizens with a mechanism to control public spending.

² Prevention of corruption act 1988

³ Prevention of corruption act 1988, sec 8

⁴ Right to Information Act 2005

⁵ Rajak, J.S., 2014. Right to Information Act: A vital tool to fight against corruption in India. International Journal of Political Science and Development, 2(5), pp.68-77.

The objective of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in a real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.⁶

THE INSTITUTIONAL FRAMEWORK TO CURB CORRUPTION

The Central Vigilance Commission (CVC) is an independent watchdog agency established in 1964, investigating transactions involving public servants and supervisory powers over the Central Bureau of Investigations. It investigates complaints against high-level officials under the Prevention of Corruption Act and has an online whistleblower complaint mechanism. The CVC collaborates with Transparency International India to introduce integrity pacts in state-owned public sector companies, industries, and banks.

The Central Bureau of Investigation (CBI), under the Ministry of Personnel, Pensions & Grievances, is the central government's primary investigating agency. It consists of three divisions: Anti-Corruption, Special Crimes, and Economic Offences. It investigates corruption cases in all branches of the central government and requires state government permission. The CBI has a complaint mechanism on its website.

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The office of Comptroller and Auditor General C&AG is praised by the 2007 Global Integrity Report for its independence and well-staffed offices. Previously, parliamentary or state governor assent was required to charge an MP or legislator. AG offices are present in all states. The C & AG has reported financial irregularities and corruption in various state departments. However, the C & AG lacks authority to enforce compliance, resulting in government failure to implement report proposals.

The Chief Information Commission (CIC) was established in 2005 and has instructed the government, courts, universities, police, and ministries on sharing public information. State information commissions have been opened, implementing the Right to Information Act.

⁶ Srivastava, S., 2010. The right to information in India: Implementation and impact. Afro Asian Journal of Social Sciences, 1(1), pp.1-18.

However, 26 of India's 28 states have constituted information commissions, with nine pioneering access to information laws before the Act.

E-Governance has considerably increased the speed of government services in a number of areas and reduced opportunities for bribery. A wide range of public services have been digitised such as obtaining licences, paying taxes and clearing goods. The National Portal of India was subsequently created and lists all the services that have been digitised.

EFFECTIVE MECHANISMS FOR FIGHTING CORRUPTION IN INDIA

Fighting corruption in India has been an ongoing and complex challenge, marked by a multitude of mechanisms and initiatives aimed at curbing this pervasive issue. While progress has been made on various fronts, the effectiveness of these mechanisms remains a subject of debate and scrutiny.

One of the key strategies employed to tackle corruption in India is the establishment of anti-corruption agencies and bodies. The Central Vigilance Commission (CVC) and the Central Bureau of Investigation (CBI) are two prominent institutions entrusted with investigating and preventing corruption at the central government level. These agencies have had some successes in identifying and prosecuting corrupt officials, but they have also faced criticisms of political interference, lack of autonomy, and slow judicial processes. Similarly, at the state level, agencies like the Lokayukta have been set up to address corruption, but their impact has varied widely due to resource constraints and varying levels of commitment.

Another crucial mechanism has been the enactment of anti-corruption legislation. The Prevention of Corruption Act (PCA), was first enacted in 1988 and amended in 2018. However, the effectiveness depends not only on its content but also on its enforcement and the capacity of the judicial system.

Promoting transparency and accountability has been another key approach. The Right to Information (RTI) Act, empowers citizens to seek information from public authorities, thereby increasing transparency and enabling greater scrutiny of government actions. The RTI has been instrumental in uncovering instances of corruption and holding public officials accountable. However, challenges such as bureaucratic resistance, lack of awareness among citizens, and potential amendments that could dilute its effectiveness have raised concerns.

E-governance and digital platforms have been leveraged to minimise direct interaction with officials and reduce opportunities for bribery. Nevertheless, the digital divide, cybersecurity risks, and data privacy concerns have posed challenges to the widespread and equitable adoption of these mechanisms.

Investigative journalism and social activism have led to the uncovering of major corruption cases, bringing public attention to the issue and pressuring authorities to take action. However, media independence can be compromised by vested interests, and activists often face threats and intimidation, limiting their ability to act as effective watchdogs.

In recent years, the digital revolution has given rise to innovative approaches like blockchain technology to enhance transparency in sectors prone to corruption. Blockchain's decentralised and tamper-proof nature can potentially revolutionise areas like land records and supply chain management. Pilot projects have shown promise, but challenges related to scalability, technical expertise, and regulatory frameworks need to be addressed for widespread implementation.

STRENGTHENING INDIA'S CONSTITUTIONAL MECHANISMS TO COMBAT CORRUPTION

To combat corruption effectively, the focus should be on promoting transparency and accountability in governance, empowering the citizenry, and implementing legal and institutional reforms. Initiatives like the right to information have shown positive outcomes in empowering citizens and ensuring transparency.

The government must rid India of corruption; otherwise, our country will be unable to prosper. Corruption must be eradicated at its source. For example, India's expanding population is linked to a shortage of adequate work options, which leads to corruption. To keep the country's population under control, the government must adopt severe measures. Similarly, the government must work on all fronts to create a corruption-free India. If the people of India stand unified, they can defeat corruption and will be able to rid the world of this evil. Another factor contributing to the rise of corruption is a lack of knowledge. To a considerable extent, spreading education can assist in alleviating this problem. People who engage in corrupt practices such as receiving and offering bribes, using unlawful means to build their enterprises, acquiring black money, and other advantages that they do not have legal access to must face harsh penalties. These people must be severely punished. The media and the government should work together to organise sting operations to expose corrupt individuals in various

industries. Such sting operations will not only expose corrupt individuals but will also deter others from engaging in such behaviour. It is every person's obligation to follow the proper procedure for getting things done rather than paying bribes to get things done or avoid fines.

SUGGESTIONS AND CONCLUSION

To strengthen the anti-corruption framework in India, the following measures are recommended:

- The government should provide adequate resources and capacity building to law enforcement agencies to investigate and prosecute corruption cases effectively.
- The government should ensure that corrupt officials are held accountable for their actions, regardless of their political connections. This can be achieved by strengthening the independence of the judiciary and law enforcement agencies.
- The government should encourage public participation in the fight against corruption by creating awareness campaigns and providing protection to whistleblowers.
- Designating a fast-track process specifically for corruption cases, similar to the fast-track courts for sexual offences, could expedite the trial and resolution of corruption-related matters. This would send a strong signal that the legal system takes corruption seriously and is committed to delivering timely justice.

Corruption remains a pervasive issue in India, with significant variations in its prevalence and the government's efforts to curb it across different states. The country's criminal justice system is ill-equipped to prosecute corrupt officials effectively, while vital anti-corruption institutions like the Central Vigilance Commission and Lokpal lack genuine autonomy and a strong sense of purpose. To address these challenges, India requires a sustained political will to punish corrupt individuals, implement robust anti-corruption measures, and promote transparency and accountability in governance.

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