

RIGHT TO INFORMATION AS AN ANTI-CORRUPTION TOOL

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ABSTRACT**

There is not an iota of doubt that the cancerous growth of corruption is a serious threat to the institution of democracy. India, being the world's largest democracy, has an added responsibility to nip this disease in the bud. To some extent, Right to Information (RTI) Act has been used by the citizens of India to throw light on corruption in public services. However, the fact remains that even the provisions of the RTI Act have not been able to address the issue of institutional corruption properly. Adding to this, a general lack of awareness on the part of the citizenry as to how to effectively use the RTI Act to curb corruption, adds to the nation's woes. The objective of the paper is to let the reader know that various forms of corruption that are plaguing the Indian system may be curbed if RTI is used effectively. The paper tries to decipher the shortcomings of the RTI Act and puts forward certain recommendations that may help to reduce corruption and to enhance transparency and accountability among public authorities. The paper is based on a doctrinal study and employs descriptive and analytical methods to reach at summarised findings.

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“The World will not be destroyed by those who do evil, but by those who watch them without doing anything” – Albert Einstein

1. Corruption in India – A Reality Check

On February 14th, 2017, when a Division Bench of the Supreme Court held the late Chief Minister of Tamil Nadu, Ms. J. Jayalalitha, guilty under Sections 13 (1)(e) and 13(2) of the Prevention of Corruption Act, 1988,¹ there was both a sweet scent of victory as well as a deep sense of shame in the hearts of the public, especially the anti-corruption crusaders. When the head of the Government of a state, the *parens patriae* of the citizenry, is convicted for criminal misconduct, not only is the name and reputation of the world’s largest democracy tarnished, but the trust and faith of the people in their elected representatives is also broken. The fact that the offence committed by her goes back to the period of 1991-96, which was her first tenure as the Chief Minister of Tamil Nadu, and by the time the verdict was delivered, she was sworn in five times as the Chief Minister, sprinkles salt in the wounds of the common man.

The governing class in different spheres of public administration has kept alive the legacy of the British; we were looted by the colonial masters for over 200 years and now the public money is being mishandled and misappropriated by our own governing class. Monetary corruption is of course only one facet. All this has culminated in India being ranked 79th among 176 countries in the Corruption Perception Index 2016 released by the Transparency International. The organisation has used data from the World Bank, the World Economic Forum and other institutions to rank countries by perceived levels of corruption in the public sector.² India had the highest bribery rate among the 16 Asia-Pacific countries that have been surveyed. Nearly seven out of 10 Indians, who have accessed public services, had paid a bribe; all this, despite the fact that many states have the Right to Public Services Act. This is in contrast with the least corrupt country – Japan, where 0.2% of the respondents have been reported paying a bribe.³ In India, it was found that the highest bribery incidents were in

¹ *State of Karnataka v Selvi J. Jayalalitha & Ors.* Criminal Appeal Nos. 300 – 303 of 2017.

² Corruption Perception Index, Transparency International <https://www.transparency.org/news/feature/corruption_perceptions_index_2016>(25 January 2017) accessed 7 June 2017.

³ *ibid.*

procuring government healthcare services and even identification-related documents. About 59% of the respondents paid a bribe for such services. About 58% respondents were reported to have paid bribes for education.⁴

In India, political parties are bound to be the most corrupt institutions with corruption rate being 4.4 on a scale of 5. The highest amount of bribes are received by the police (62%), followed by the Registry and Permit Department (61%) and then educational institutions (48%).⁵ The people surveyed globally regard corruption as something which is not just limited to paying bribes – almost two out of three people believe that personal contacts and relationships help to get things done in the public sector of their country.

The Indian Judiciary has also not remained immune from this taint – it has contributed to 36% of the number of bribes.⁶ Retired Chief Justice of India V. N. Khare said in an interview that “corruption in lower courts is no secret”, and recommended a team of ‘dedicated judges’ (mostly retired) to monitor and arrest its further spread.⁷

2. Concept of Corruption

Though there have been attempts to define corruption, it is considered that defining it would mean narrowing its scope. In our attempt at simplification, the definitions often miss out on a great deal of complexity, multi-facetedness and configuration of corruption in the real world. Secondly, narrowing down the idea of corruption, so that it applies only to the public sector and to bribe-taking politicians and other public officials, seriously underplays the supply side of corruption, that is, the active and often determinative role national and international business corporations, the private sector, and the black economy play in the increase in corruption among the politicians, bureaucrats and intermediaries.⁸

⁴ *ibid.*

⁵ *ibid.*

⁶ *ibid.*

⁷ Upendra Baxi, ‘Many Meanings of Corruption’ *The Indian Express* (6 March 2016) <<http://indianexpress.com/article/opinion/columns/judiciary-corruption-law-of-contempt-4556016/>> accessed on 12 June 2017

⁸ N. Ram, *Why Scams are here to Stay* (1st edn, Aleph Book Company 2017).

This is probably why the United Nations Convention against Corruption, a legal instrument that was adopted by the United Nations General Assembly in October 2003, keeps the term ‘corruption’ undefined. It merely enumerates certain activities including bribery, embezzlement, misappropriation, influence trading, money laundering, laundering the proceeds of crime, concealment and obstruction of justice, as certain forms of corruption.⁹ The Prevention of Corruption Act, 1988, enacted by the Parliament, too, does not contain any definition for the word ‘corruption.’

3. **Kinds of Corruption:**¹⁰

Anti-corruption campaigners generally fit the multiplicity of types and forms of corruption into a couple of descriptive boxes – grand corruption, petty or everyday corruption, political corruption and bureaucratic corruption.

- Grand Corruption – This is described by Transparency International as ‘acts of corruption committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of public good.’
- Petty Corruption – Transparency International describes it as the ‘everyday abuse of entrusted power by low and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places such as hospitals, schools, police departments and other agencies.’
- Political Corruption – This is described as ‘a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers who abuse their position to sustain their power, status and wealth.’¹¹
- Bureaucratic Corruption – It is often treated as a distinct category in political studies. But while the differentiation can be significant in some cases, political and bureaucratic corruption are frequently interlocked.

All the above forms of corruption relate to the misuse of public office for private gain. These forms do not refer to an important dimension of corruption, ‘the abuse of private office

⁹ United Nations, *United Nations Convention Against Corruption* (2004) <https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf> accessed 4 July 2017

¹⁰ *ibid.*

¹¹ *ibid.*

for private gain’ and here too the public sector is implicated in the sense that it has been ‘lax in the regulations that were supposed to restrain the activities of private actors.’¹²

4. RTI Act and Anti-Corruption

The Preamble to the RTI Act clearly states that the aim and objective of the Act is to contain corruption and to hold the government and its instrumentalities accountable to the governed. Some of the notable cases where RTI has been successful in exposing dubious deals are as follows:¹³

- The Adarsh Society Scam:
In 2008, RTI applications were filed by activists like Yogacharya Anandji to highlight the fact that a 31-storey building, which had permission for six floors only and originally meant to house war widows and veterans, were allotted to several politicians, bureaucrats and their relatives.
- Public Distribution Scam :
In 2007, members of Krishak Mukti Sangram Samiti, an NGO dedicated to the cause of anti-corruption, filed an RTI application that highlighted irregularities in the distribution of food meant for people below the poverty line. Several government officers were arrested after a probe.
- Misappropriation of Relief Funds:
A 2008 RTI Application filed by a Punjab based NGO helped in exposing the illegal allocation of money, meant for victims of the Kargil War and other natural disasters by bureaucrats heading certain branches of Red Cross Society, to buy cars , air conditioners, etc.

¹² Pranab Bardhan, ‘The Economist’s Approach to the Problem of Corruption’ (2006) 34 (2) World Development 341 < https://projects.iq.harvard.edu/files/gov2126/files/bardhan_economistapproach.pdf > accessed 5 February 2018.

¹³ Vibhuti Agarwal, ‘A look at some RTI Success Stories’ (2011) Wall Street Journal <<https://blogs.wsj.com/diarealtime/2011/10/14/a-look-at-some-rti-success-stories/>> accessed 5 June 2017.

5. Cancerous Growth of Corruption versus RTI

Though the RTI Act has played a pivotal role in exposing corruption in various arenas, yet, the statistics presented above are indicative that the cancerous growth of corruption has not been brought to a standstill; scams cripple the economy and development of the country continue to plague the three branches of the state. The following are, seemingly, some of the shortcomings of the RTI Act:

- Overlooking the concept of Grand Corruption:

The understanding of the concept of corruption that most of the common people have is limited in the sense that they tend to narrow it down to misappropriation of finances and public funds. They tend to overlook the concept of ‘grand corruption’ that sets in when the political class frames legislation or policies with the sole objective of benefitting a certain class of people alone. For example, a questionable policy which cripples the economic condition of the country might be formulated by the government with the sole aim of helping certain private businessmen, with *quid pro quo*. This is contrary to the concept of ‘Good Governance.’ In *Abdul Farook v Municipal Council, Perambalur and Ors*,¹⁴ the Apex Court observed that the Doctrine of Good Governance requires the government to rise above its political interests and act only in public interest and for the welfare of its people. In the *State of Maharashtra and others v Jalgaon Municipal Corporation and others*,¹⁵ it was held that one of the principles of good governance in a democratic society is that private and smaller interests must always give way to larger public interests in case of a conflict. In *Manoj Narula v UOI*,¹⁶ the Supreme Court held:

“In a democracy, the citizens legitimately expect that the Government of the day would treat the public interest as primary one and any other interest secondary. The maxim Salus Populi est Suprema Lex, has not only to be kept in view but also has to be revered. The faith of the people is embedded in the root of the idea of good governance which means reverence for citizenry rights, respect for Fundamental Rights and statutory rights in any governmental action, deference for unwritten constitutional values, veneration for institutional integrity, and inculcation of accountability to the collective at large. It also conveys that the decisions are taken by

¹⁴ 2009 (15) SCC 351.

¹⁵ 2003 (9) SCC 731.

¹⁶ 2014 (9) SCC 1.

the decision making authority with solemn sincerity and policies are framed keeping in view the welfare of the people, and including all in a homogeneous compartment. The concept of good governance is not a Utopian conception or an abstraction. It has been the demand of the polity wherever democracy is nourished. The growth of democracy is dependent upon good governance in reality and the aspiration of the people basically is that the administration is carried out by people with responsibility with service orientation.”

Policy decisions are subject to judicial review if they violate fundamental rights;¹⁷ however, the trend has always been to not interfere. Thus, it becomes all the more imperative for the citizens to remain vigilant and expose anomalies in the decisions. The only way to discover and analyse the truth behind policies is to ask for file notings of the policies and decisions, which are permissible by virtue of the proviso to Section 8(i) of the RTI Act. However, on account of the narrow-minded concept of corruption that people have, decisions that impact the country as a whole, taken with mala fide motives and against the public interest are not brought to light.

- Lack of trained Public Information Officers

Section 5 of the RTI Act provides for the designation of Public Information Officers (PIOs). A PIO is also a staff of the concerned government department. A lot of times, the clerks are appointed as PIOs. When a particular piece of information is asked, they need to have the ability to properly apply their mind as to whether the particular piece of information can be given or not and to what extent. Instead, in the practical scenario, the PIOs simply ask permission from their senior officials as to whether the information can be given. Now if the information sought, seeks to expose corruption in the concerned department and if the senior official himself is at fault, then the PIO will naturally be asked to withhold the information. Ultimately, the sufferer is either the applicant or the PIO himself as under Section 20, the penalty for denying request for information or knowingly giving incorrect information is imposed solely on the PIO and not his superiors.

¹⁷ *Bharat Aluminium Company Ltd. v Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 649.

- One-sided usage of the enactment by the common man

The common man tends to use RTI for private purposes than to expose corruption. It is primarily the journalists, NGO members and some well-known anti-corruption crusaders who constantly file RTI applications when they feel that there is some sort of foul play in the system. However, government departments are wary of the above-mentioned people, especially journalists, and so they tend to refuse information or sometimes give incomplete information.

- Lack of cooperation from the public authorities and the political class

Many of the public authorities and the political class have been and are doing their best to keep the veil of secrecy on their affairs. There is a tendency to give too much of information, in addition to what is asked, which often confuses and misguides the RTI applicant. Specific information pertaining to what is asked is not given. Sometimes, applications are returned with flimsy reasons like citing that there is no proper signature. Each state government makes its own set of amendments to exempt its bodies from RTI purview. For example, in Tamil Nadu, the cyber crime cell and the Home (Police VII) Department is exempted. The Government in Kerala is wary of making all cabinet decisions within the purview of RTI.¹⁸ A wilful delay is seen sometimes while responding to RTI applications that question any dubious practice in a department. Then even if the applicant gets a favourable order from the Chief Information Officer, the public authorities prefer an appeal to the High Court. The backlog of cases and the years it takes for the adjudication process to be completed is a boon for them as it helps to cover up their sham.

- Lack of enforcement of the Right to Inspect

Section 2(j)(i) of the RTI Act, 2005 brings the right to inspect work, documents and records within the ambit of Right to Information. Many are not aware of this powerful right which brings the common man in direct contact with the system.

¹⁸ 'Kerala: Pinarayi Vijayan says all Cabinet Decisions won't fall under RTI' *The Indian Express* (Thiruvananthapuram, 20 January 2017) <<http://indianexpress.com/article/cities/thiruvananthapuram/kerala-pinarayi-vijayan-says-all-cabinet-decision-wont-fall-under-rti-4483753/>> accessed at 10 July 2017.

- Difficulty in identifying corrupt practices

There is a considerable amount of difficulty in detecting underhand, corrupt deals even if the necessary information is furnished. It is also a general tendency of each department to furnish information with technical jargons which are difficult to understand.

- Lack of Personnel

The government departments recruit fewer employees as compared to their sanctioned strength. So the PIOs and other staff are already overburdened and on top of it, when they are asked to do an arduous task with no sort of incentive, they do not work as effectively to provide information.

- Political Parties not yet within the purview of RTI

Six national parties in India including the Bharatiya Janata Party and the Indian National Congress have refused to comply with the Central Information Commission Order of 2013 declaring them as public authorities.¹⁹ The Commission held that that even though political parties are non-governmental organisations yet they wield and influence the exercise of governmental power and, thus, it is imperative for political parties to be transparent. The relevant part of the order reads:

“Political parties are a unique institution of the modern Constitutional State. These are essentially civil society institutions and are, therefore, non-governmental. Their uniqueness lies in the fact that in spite of being nongovernmental, political parties come to wield or directly or indirectly influence, exercise of governmental power. It is this link between State power and political parties that has assumed critical significance in the context of the Right of Information.”

A writ petition was filed later by the Association of Democratic Reforms to bring all recognised national parties within the ambit of RTI. That has not yet been disposed off till now by the Apex Court.

¹⁹ CIC/AT/A/2007/01029&01263-01270, dated 29 April 2008.

- Opaqueness of the judiciary

Like other institutions, judiciary has also been involved in corruption. But since corruption is generally associated with the political class, the general public have not focussed too much on the working of the justice delivery organ. There have been a few notable attempts to breach the wall; the reluctance shown by the members of the judiciary to be more transparent is apparent.

Certain instances that illustrate the reluctance of the judiciary to furnish information:

- (i) In 2007, Mr. Subhash Chandra Agrawal filed an RTI application to the Supreme Court seeking information pertaining to declaration of assets by Supreme Court Judges, among other things. The request was denied citing lack of information. When the Central Information Commission, in 2009 asked the PIO to furnish the information, the Supreme Court challenged this order twice before the Delhi High Court even as it made some amount of information about judges' assets public, on its website.
- (ii) In 2007, Mr. N. Anbarasan filed an RTI request before the Karnataka High Court for information regarding the scrutiny and classification of writ petitions, The information was denied. After this, Mr. AKM Nayak, the State Chief Information Commissioner, and a former Additional Chief Secretary, appealed against the High Court ruling. The Supreme Court not only dismissed the appeal but imposed a fine of Rs 1lakh on Mr. Nayak for 'wasting public money for satisfying his ego'.²⁰

In a landmark decision, the Delhi High Court, in 2009 had asked the public authority under the Act, pertaining to the Apex Court to make the assets of its judges public. The verdict was challenged by the Supreme Court through its public authorities and in the ironical way that our system is set, is pending before the judges of the Supreme Court.

In 2010, a three-judge bench of the Delhi High Court consisting of Justice A.P. Shah, Justice Vikramjit Sen, and Justice S. Muralidhar, in a path breaking judgement held that the

²⁰ Aniket Aga, 'The Supreme Court still adamantly refuses to yield to RTI' (*The Wire*, 3 September 2015) <<https://thewire.in/law/the-supreme-court-still-adamantly-refuses-to-yield-to-rti> > accessed 11 July 2017.

RTI Act would extend to the office of the Chief Justice of India as well. The verdict demonstrated a unique feature of judicial federalism in the country where a High Court can render a judgment “against the Supreme Court.” The Delhi High Court enunciated that “judicial independence is not the personal privilege or prerogative of the individual judge; it is the responsibility.... a judge must keep himself absolutely above suspicion; to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.”²¹

Justice A.P Shah enunciated that the declarations are not furnished to the CJI in a private relationship or as a trust but in discharge of the constitutional obligation to maintain higher standards and probity of judicial life and are in the larger public interest. Therefore, the asset information that is communicated by the Supreme Court Judges with the CJI are not held in the capacity of a fiduciary and therefore, can be revealed , if directed to do so. This judgment too was taken to the Supreme Court on appeal and is pending.

The Apex Court, in 2015, declared that medical expenses of judges are not qualified to come within the ambit of RTI. They reasoned that it is personal information despite the petitioners arguing that the money comes out of public funds and that the same immunity was not extended to the medical expenses of legislators.²²

- Fear

There is a sense of fear while dealing with the powerful political class who run the system; both from the lowest to the highest rung. There have been many cases wherein whistleblowers have been attacked. Worse, their own reputation have been tarnished by the vengeful authorities who file false cases against them.

²¹ Kaleeshwaram Raj, 'Courting Transparency in the Modern State' (*The Week*, 10 July 2017)

<<http://www.theweek.in/news/india/courting-transparency-in-the-modern-state.html>> accessed 12 July 2017.

²² Gaurav Pathak, 'Medical Expenses of Judges cannot be revealed under RTI Act' (*Livelaw*, 2 July 2015) <<http://www.livelaw.in/medical-expenses-of-judges-cannot-be-revealed-under-rti-supreme-court/>>accessed 30 June 2017.

- Lack of proper maintenance of records/flimsy excuses

There have been many instances wherein information could not be given by the public authorities because the relevant documents were missing. Genuine cases apart, many such reasons including ones such as “files being eaten up by mice’ are just concocted tales to deny information.”²³

6. Using RTI Effectively to Combat Corruption – Suggestions

- Enforcing S.4(2) of the RTI Act

Section 4(2) of the Right to Information Act states that “it shall be a constant endeavour for public authorities to provide as much information *suo motu* so that there should only be a minimum resort to the RTI Act.” However, neither the State Information Commissioners nor the Chief Information Commissioners have authority under this Act to pass blanket directions for the enforcement of this provision. This authority needs to be given so that the very essence of this legislation is achieved.

- Exercising the Right to Inspect under S.2(j)(i) of the RTI Act

The right to inspect the work, documents and records is an invaluable right in the hands of the public which serves a dual purpose – detection of dubious practices and keeping the public authorities on their toes, that ultimately leads them to avoid corrupt practices.

- Demanding file notings

File notings should be demanded, under RTI on all major decisions and policies that impact the country.

- Imparting proper on-the-job training to PIOs

PIOs should be given proper training both before and during their tenure so that they can apply their minds independently and decide whether the information can be given and to what extent. They must be made to understand the purpose of the legislation and their own significance in exposing corruption and accelerating the country’s development.

²³ Rumu Bannerjee ‘Files Go Missing, CIC smells a Rat’ *Times of India* (1 July 2017) <<http://timesofindia.indiatimes.com/india/files-go-missing-cic-smells-a-rat/articleshow/59393365.cms>> accessed 5 July 2017.

- Changing the composition of the committee for the appointment of PIOs

Under Sections 12 and 15 of the RTI Act, the Chief Information Commissioners and Information Commissioners at both Central and State Government are appointed by a Committee headed by the Prime Minister and the Chief Minister, respectively, and comprising the opposition leader and a Cabinet Minister to be nominated by the Prime Minister/Chief Minister. This structure is slightly misbalanced because out of the three people appointing, two are a part of the ruling government. Therefore, this may give rise to circumstances wherein the government appoints its own loyalist to the post to ensure that the whistleblower is kept at bay. In the present scenario, where PIOs are already reluctant to give information, this could be dangerous. Thus, it is suggested that the Chief Justice of the Supreme Court or his/her nominee should also be a part of the Committee that appoints Information Commissioners. There should not be any veto power and the decision by the majority should be final. This will ensure a proper check-and-balance system.

- Prohibiting disclosure of applicants' details

There have been instances of government leaking information about the details of the RTI applicants, which has subjected the latter to blackmailing, threats and even death. Not only should the Whistleblowers Protection Act be strictly enforced, but also a specific provision should be imposed in the RTI Act that prohibits disclosure of details of the RTI applicant and imposing a punishment to those, who act on the contrary.

- Constituting separate Benches

To reduce the backlog of appeals pertaining to the RTI Act in the High Courts and the Supreme Court, separate benches may be constituted both in the High Courts and the Supreme Court to dispose of the matters quickly.

- Doing background research

It is important to do some background research on the concerned Department before filing an RTI, which seeks to expose corruption. This is necessary because to get the rights answers, the right questions need to be asked and it also helps the applicant in understanding the information furnished by the concerned Department which is likely to contain technical jargons. Activists can also take the help of resource persons skilled in the particular field to understand the information.

- Digitising all records

Compulsory digitisation of records must be done. The government can make use of the skilled but unemployed youth in the country to do the same.

- Adequate staffing

The recruitment in government departments must match the vacancies. Overburdening of work on the shoulders of a few is also one of the reasons for an incessant denial of information.

- Exempting organisations – An unnecessary practice

The habit of both the state and the central government to exempt more and more organisations from the RTI Act should be prevented. It is clear from Section 8 that certain categories of information should not be disclosed. Information that impedes the process of investigation, that would prejudice the sovereignty, economic interests of the country, etc., should not be given; but that does not mean all organisations that deal with such matters should absolutely be exempt from the purview of RTI. The public have a right to get information on the general working of the organisation, its questionable impact on the financial exchequer, etc. Exempting an agency in totality, removes the feeling of accountability they feel towards the people, which is dangerous in a democracy.

- Broadening the scope of Public Authorities

The definition of ‘public authorities’ under Section 2(h) of the RTI Act is a bit narrow and should be broadened to include all bodies and institutions that discharge public functions, though they may not come within the ambit of State as per Article 12 of the Indian Constitution.

- Including political parties under the ambit of RTI

All national and regional political parties must be subject to RTI.

- Ensuring a transparent judiciary

The judiciary must be willing to open its doors to the RTI Act, in terms of both the assets and other expenses of the judges that are paid from public funds. This is for the simple and fundamental reason that these constitutional authorities are signing their own bills, when

they make a claim. The concept of independence of judiciary has no correlation to this, and so, cannot be a reason for not divulging the details. The Doctrine of Constitutional Trust, which the judiciary has reiterated time and again, should be applied to itself as well; this automatically creates a duty to be transparent and accountable to the public.

7. Conclusion

The significance of the RTI Act (2005) in the journey to curb the cancerous growth of corruption cannot be undermined. Without it, legislation such as the Prevention of Corruption Act, 1988 and even the Lokpal and Lokayukta Acts, 2013 are nothing but toothless tigers. However, there is a need for changes in both the legislation and the mindsets of the governing class, who need to realise that transparency and accountability are inseparable parts of a democracy; the fact that they are not doing a favour to the citizenry by providing information. All the three wings of the state, including the judiciary has to embrace this ideal. At the same time, the people ought to realise that this particular piece of legislation is meant for each one of us to be active participants in ridding the system of this taint and contributing to the country's development; it is not a task to be just left to NGOs or certain whistleblowers or journalists. Effective and full use of the Act by vigilant citizens alone can root out the menace of corruption from the system. For as Justice Louis Brandeis of the United States Supreme Court said in 1913, "Sunlight is the best disinfectant."