LEGISLATIVE EFFORTS TO ERADICATE CORRUPTION IN INDIA: AN ANALYSIS

Dr. Arshi Pal Kaur
ASSISTANT PROFESSOR,
DEPARTMENT OF LAWS,
GURU NANAK DEV UNIVERSITY,
REGIONAL CAMPUS
GURDASPUR

Abstract: Corruption is found to be one of the most damaging consequences of poor governance and poverty. It is classified by lack of efficiency, transparency, and accountability. Corruption diminishes investment, suppresses economic growth and development and also reduces effectiveness of public administration. It diverts public resources towards corrupt politicians and officials and away from needy and poor people. Though there are adequate laws in India to fight corruption, they have been made ineffective. Many people think that only government has responsibility for eliminating corruption and we often blame the government. India being a welfare State, it is the duty of the government to protect and enhance the welfare of the people. Today, we can see that without good governance no amount of developmental schemes can bring improvements in the quality of life of the citizens. This present research paper analyses various legislative efforts to eradicate corruption in India.

INTRODUCTION

India is a welfare state. A state where government is expected to take care of the welfare of the citizen’s right from the cradle to the grave. There is no sphere of the life of the citizens which cannot be regulated by the state. It is almost half a century since the Constitution of India came into existence. It is more than half a century since Indian citizens got independence. Still, the nation is plagued by many ills. Prominent among them are colossal illiteracy, poverty and corruption. India continues to be a developing country mainly due to these factors. Corruption in India is omnipresent and all pervasive. Probably it shall be no exaggeration to say that right from the level of attended, a class IV employee up to level of the head of a public institution, the corruption has its obvious presence. It is more so in the governmental activities, be it execution of government welfare schemes or its routine functions. The cancer of corruption is eating into every institution of our nation. This is in spite of the determination of the government to ensure probity in public life. Late Indira Gandhi described corruption as a global phenomenon and Late Rajiv Gandhi was candid enough to admit that only 15% of the funds meant for the welfare schemes actually reach the intended beneficiaries. Thus corruption is a persistent and practically ubiquitous aspect of political society. This is the age where individuals are found in very organization, who finds the rewards of corruption greater than the satisfaction of legitimate power.
The various committees and commissions have submitted their reports regarding the methods of eradicating corruption in India. The earlier efforts in this regards can be traced are as follows:

Santhanam Committee: Report on the Methods of Eradicating Corruption, 1964

The Santhanam Committee 1964 defines corruption as a complex problem having its roots in the society as a whole. A serious problem afflicting the Indian polity is that corruption filters from the top. Corruption in administration distorts the decision making process and gives rise to all kinds of vices. People require incorruptibility in the administration of Government departments due to this an establishment of the Central Vigilance Commission, (here in after to be referred as ‘CVC’) was recommended by the Santhanam Committee. ii This Committee defines the corruption as any improper or selfish exercise of power and influences attached to a public office or to the special position one occupies in a public life. The government in 1962 set up a high level committee under K. Santhanam to look into the problems of corruption and administrative reform” (Santhanam Committee 1962-63). “It recommended for the establishment of a Central Vigilance Commission as the highest authority. The government accepted the recommendations made by the Santhanam Committee and thus the Government of India by a Resolution set up the Central Vigilance Commission on February 11, 1964.”The Santhanam committee had recommended that the Commission should be concerned with two major problems facing the administration iii:

(i) Prevention of corruption and maintenance of integrity amongst the government servants ; and
(ii) Ensuring just and fair exercise of administrative powers.

To eradicate the evil of corruption, the Central Government has enacted Anti-Corruption Lawsiv 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. The Prevention of Corruption Act, 1947 was amended to extend the definition of corruption (criminal misconduct) in order to include possession of assets (movable or immovable) disproportionate to the known sources of legitimate income of a public servant. The Prevention of Corruption Act, 1988, replaced this act. The Central Vigilance Commission (CVC), The Central Bureau of Investigation (CBI), The Office of the Comptroller and Auditor General (C&AG), and the State Level Anti- Corruption Bureaus (ACB) of each State are created to combating the corruption in India. v

Establishment of the Central Vigilance Commission

The Central Vigilance Commission is an apex Indian Governmental body created in 1964 in order to address governmental corruption. It has the status of an autonomous body, free of control from any executive authority, charged with monitoring all vigilance activity under the Central Government Organisation, and advising various authorities in Central Government Organizations in planning, executing, reviewing, and reforming their vigilance work. vi
Central Vigilance Commission holds its statutory status upon the judgment of the Hon’ble Supreme Court in *Vineet Narain v. Union of India* vii popularly known as “Jain Dairies case”. viii This writ petition was filed under Article 32 of the Constitution of India brought in public interest, to begin with, did not appear to have the potential of escalating to the dimensions they reached or to give rise to several issues of considerable significance to the implementation of rule of law, which they have, during their progress. In this case, the Supreme Court issued directions about the constitution of the Central Vigilance Commission and its functioning, effective, and efficient functioning of the Central Bureau of Investigation, appointment to the post of Director, enforcement Directorate, for the constitution of an able and impartial agency to perform functions similar to those of the Director of Prosecution in United Kingdom. The Supreme Court gave directions with respect to the establishment Central Bureau of Investigation, Central Vigilance Commission, and Enforcement Directorate.

Based on the above mentioned directions given by the Supreme Court, the Central Government issued on August 25, 1998, an ordinance, which conferred legal status on Central Vigilance Commission. As per direction given by Supreme Court in *Vineet Narain’s case* the chairman was to be appointed but it was kept pending till the Act was passed. Thereafter, the Law Commission headed by Justice Jeevan Reddy had prepared the draft of Central Vigilance Act. Based on this draft the President issued the Ordinance. According to the provisions of the Ordinance in addition to the Chief Commissioner, the Central Vigilance Commission shall be appointed by a selection Committee headed by the Prime Minister of India. The term of service of each Commissioner shall be four years. However, the maximum age for continuing in the office of commissioner shall be 65 years. ix “The Commission in addition to keeping watch on the working of investigating agencies shall give advice to public undertakings, Banks, Central State Governments. For appointing heads of investigating agencies, a committee shall be constituted in charge of Central Vigilance Commission.”

Thereafter, the Central Vigilance Act, 2003 was passed with a view to eradicate corruption. It contains the provisions regarding the constitution, jurisdiction, power, and function of the commission. The main purpose of the Act was-

To establish the Central Vigilance Commission in order to investigate the offences, which are punishable under the Prevention of Corruption Act, 1988 by the public servants, working under the Central Government, Corporations constituted under the Act of Parliament, Government companies, and local bodies owned and managed by the Centre. xi

**Administrative Reforms Commission, 1966**

The Government of India set up a high level Administrative Reforms Commission on January 5, 1966 under the chairmanship of Morarji Desai. They made recommendations for the creation of Ombudsman type institutions in India. xii The institution of Ombudsman first came into operation in Scandinavia. This institution was established in Sweden 1809. The Ombudsman in India is called as Lokpal or Lokayukta. The establishment of the institution of Ombudsman is the demand of time. It will be much useful in redressing the grievances of the citizens against the administration. xiii Administrative Reforms Commission (1966-1970) recommended two-tier
machinery such as Lokpal at the Centre and Lokayukta at the State levels. A good administration is responsible and responsive to the people. With this object in view, the institution of Ombudsman came to be established in several Democratic Countries for redressing the grievances of the public against Administrative faults. India is also a Democratic country. As in, other democratic countries so in India also the number of grievances against administration and mechanism for redressal of grievances became essential and necessary.

Interim report of the Administrative Reforms Commission, 1966

Administrative reforms Commission in its report also record the reasons for the need of establishment of the institution of Lokpal. The Administrative Reforms Commission recommended the establishment of institutions of Lokpal and Lokayukta.

The Draft Bill was affixed to the interim Report of the Administrative Reforms Commission. The Government of India accepted the recommendations of Administrative Reforms Commission regarding the establishment of Lokpal and Lokayukta institution. Eight official attempts have been made to bring about legislation on the subject of Ombudsman. The Lokpal and Lokayukta bill was first brought before the fourth Lok Sabha in 1968 but before it could be passed, the Lok Sabha was dissolved and therefore the Bill lapsed. The legislation was revived in 1971. Another Bill was introduced in the Lok Sabha in 1971, but again Bill lapsed due to the dissolution of the Lok Sabha. In 1977, a new Bill called Lokpal Bill, 1977 was introduced in the Lok Sabha. This Bill was referred to the Joint Select Committee of the House of Parliament but the Bill again lapsed because of the dissolution of the Lok Sabha. Again, The Lokpal Bill was introduced in the Lok Sabha in 1985 however; the Bill again lapsed because of the dissolution of the Lok Sabha.

Thereafter, the Lokpal Bill 1989 was introduced in the Lok Sabha the Bill again lapsed because of the dissolution of the Lok Sabha. The Lokpal Bill 1996 was introduced in the Lok Sabha. Thereafter, it was referred to the department related Parliamentary Standing Committee on Home Affairs for examination and report. The Standing Committee presented its report to the Parliament on May 9, 1997. Before the Government could finalize its stand on the various recommendations of the committee, unfortunately Lok Sabha was dissolved on December 4, 1997 and Bill lapsed. The Prime Minister Atal Bihari Vajpayee on August 3, 1998 in the Lok Sabha again introduced the Lokpal Bill, 1998. The Prime Minister has also been brought within the jurisdiction of power of Lokpal. This Bill also has not been enacted into an Act. In August 2001, the Lokpal Bill had again been introduced in the Lok Sabha. In 2003, the Lokpal Bill has once again introduced in Parliament. Different versions of the Bill have varied on coverage of public servants as well as scope of offences.

The Prevention of Corruption Act, 1988

The Prevention of Corruption Act, 1988 was enacted with a view to consolidating and amending the law regarding the prevention of corruption. The Prevention of Corruption bill was passed by both the houses of Parliament. It received assent of the President on September 9, 1988. The Prevention of Corruption Act, 1988 does not expressly repeal any of the provisions of The Indian Penal Code, 1860. There is no repugnancy or
inconsistency between the two enactments. The one is enacted as a supplementary measure to the other with a
different and special object. The fact that The Prevention of Corruption Act, 1988 provides for a different mode
of procedure for trial or make the offence differently punishable does not involve any inconsistency with the
earlier enactment. The two provisions can co exists side by side even though the one may to some extent overlap
the other. It cannot be held that The Prevention of Corruption Act, 1988 repeals the provisions of Section 409 of
The Indian Penal code, 1860 so far as public servants are concerned in view of the amendment of Section 5(4).
The provisions of The Prevention of Corruption Act, 1988 do not repeal the provisions of Indian Penal Code,
1860. Every one of the offences specified in clauses (a) to (d) of Section 5 (1) is an offence made punishable
under Section 161 of the Indian Penal Code, 1860 also. But separate sentence for the conviction under Section
161 of The Indian Penal Code, 1860 and Section 5(2) of The Prevention of Corruption Act, 1988 would be illegal,
because there is only one Act which constitutes an offence under the two enactments. Section 31 of The
Prevention of Corruption Act, 1988 omits Sections 161 to 165A of The Indian Penal Code, 1860 and it makes
Section 6 of the General Clauses Act, 1897 to be applicable to such omission as if the said sections had been
repealed by a Central Act. The provisions of Prevention of Corruption Act, 1988 are in addition to and not in
derogation of, any other law for time being in force and nothing contained in this Act exempt any public servant
from any proceeding which might or may apart from this Act, be instituted against him.

The new Prevention of Corruption Act, 1988 has enlarged the definition of Public Servant. With the
interpretation of Section 21 of Indian Penal Code, 1860 large number of employees would come under the
purview of public servant. With the new interpretation, employees of Nationalised Bank, Member of Parliament
and Member of Legislative Assembly would come under the purview of public servant. Offences under Indian
Penal Code, 1860 have been incorporated and penalties for committing offence have been enhanced and order of
trial court upholding prosecution shall be final. Provisions have been made for day to day trial of cases so that
proceeding could be expedited. Minimum punishment or imprisonment has been introduced suitably
by amending
the Act. Alternative punishment in Indian Penal Code, 1860 has been dispensed with. During December, 2008
the job of prosecuting agencies more difficult. Burden of proving the acquisition of such property has been deleted
and after amendment, the onus is on prosecuting agencies to prove that accused public servant has accumulated
assets beyond known source of income.

**Requirement of The Prevention of Amendment Bill, 2013**

The government of India again after implementation of The Prevention of Corruption Act, 1988 realised
that provisions of this Act are not effective to curb the menace of corruption. Hence, the provisions of The
Prevention of Corruption Act, 1988 need to be amended and some new clauses must be added to the present Act
to make it more effective against the corrupt public servants. Therefore, The Prevention of Corruption
Amendment Bill, 2013 was introduced in the Rajya Sabha on August 19, 2013 to amend The Prevention of
Corruption Act, 1988 the Delhi Special Police Establishment Act, 1946 and 1944 Ordinance. The 2013, Bill was
referred to the Standing Committee on Personnel, Public Grievances, Law and Justice on August 23, 2014 and the Committee submitted its report on February 6, 2014. Subsequently, on November 12, 2014 an informal and improved version of the 2013, Bill was circulated and approved at a Cabinet meeting, based on the recommendations of the Standing Committee. This amended draft was sent to the Commission by way of reference. The statement of objects and reasons to the 2013, Bill makes it clear that the amendments were necessitated by India’s ratification of the United Nations Convention against Corruption in May, 2011 judicial pronouncements and the need to bring domestic laws in line with international practices. Pursuant to the informal decision taken at the Cabinet Meeting and the circulation of an improved draft on November 12, 2014 further modifying the 2013 Bill, the Secretary of Department of Personnel and Training requested the Law Secretary at the Department of Legal Affairs to make a reference to the Twentieth Law Commission for its views on the proposed amendments in 2013, Bill. Pursuant to this reference and considering the short span of time within which the report had to be submitted, the Commission carried out a study of the United Nations Convention Against Corruption, provisions of Indian law including the 1944, Ordinance, The Prevention of Money Laundering Act, 2002 and the Lokpal and Lokayukta Act, 2013, provisions in United Kingdom law including the United Kingdom’s Bribery Act, 2010 the Guidance prepared by the United Kingdom’s Ministry of Justice under the Bribery Act, 2010 and the reports prepared by the United Kingdom’s Law Commission, practice and relevant judgments in Indian and British law and provisions under the American Federal Corrupt Practices Act. The Chairman held various meetings with the full time members of the Commission and was very ably assisted by Ms. Vrinda Bhandari, who served as a Consultant to the Commission. Thereafter, upon extensive deliberations, discussions and in depth study, the Commission has given shape to the present report.

Vohra Committee Report on Criminalization of politics

The criminalization of politics starts from 1969 when there was a split in the Congress. The demand for money for party funds for contesting elections emerges the political corruption in India. Once Ministers and other leaders had acquired the taste and tendency of asking for money for party funds, it was almost impossible for them to combat the desire of asking it for themselves. Political corruption emerges with the demand for money for the election funds. Therefore, it gives birth to the black money.

The Vohra Committee report says that corruption in India takes place due to the unholy nexus among politicians, bureaucrats, industrialists. Former Indian Union Home Secretary N.N Vohra submitted its report on criminalization of corruption in the year 1993. The then Home Secretary N.N. Vohra exposed the growing criminalization of politics, networks of money, muscle and political power involving the political elite, bureaucracy, criminals and the mafia. It recommended the setting up of an effective nodal agency in order to operate confidentially under the supervision of the Ministry of Home Affairs to gather and compile all information received from the various intelligence and law enforcement agencies of the Government. Such nodal agency had to be an independent body.
In 1995 Rajya Sabha member Mr. Dinesh Trivedi, the Public Interest Legal Support and Research Centre and the Consumer Education Centre demanding public scrutiny of the Committee’s findings jointly filed a joint Public Interest Litigation xxvi.

179th Report of Law Commission of India on Whistleblowers Protection

The Law Commission of India in its 179th Report has proposed a Public Interest Disclosure Protection of Informers Bill. This Bill provides whistleblowers protection mechanism in the comprehensive manner. The Bill contains the provisions for providing safeguards to the whistleblowers against victimization in the public organizations. It further contains that the whistleblower may himself seek transfer in case where there is apprehension of victimization. xxvii The Law Commission in its report referred to the evil of corruption among public servants and maladministration. The adverse effects of corruption to the country and what measures need to be adopted to eradicate the evil of corruption. The commission in its report further discusses the right to freedom of expression, right to know and the limitations of the right to privacy. xxviii The protection afforded to whistle blowers in various countries by the judiciary and in particular by the English Courts, the European Courts and by the American Courts. In this report, it discusses the salient features of various laws protecting whistleblowers in UK, Australia, New Zealand, and USA. Whistleblowers can also play a very important role in providing information about corruption and mal administration. xxix

The Law commission of India in 2001, recommended in its report to formulate a specific legislation in order to protect whistleblowers, so that they can blow the whistle against any corruption and mal administration by public servants in their concerned departments without any fear of retaliation and harassment. There is a need to provide effective protection to the whistleblowers.

Recommendations of Law Commission of India on Whistleblowers Protection Mechanism

Law Commission of India in its 179th report recommends a draft bill named “Public Interest Disclosure (Protection of Informers) Act, 2002” for protection of whistleblower.”xxx There is Act to prevent the corruption i.e. Prevention of Corruption Act, 1988 but there was no legislation giving protection to persons who disclosed corruption in public interest in India. Based on the recommendations of Law Commission of India the Public Interest Disclosure and Protection of Informers Bill, 2002 was tabled in the Parliament but unfortunately it could not be passed . xxxi

Public Interest Disclosure and Protection of Informers’ Resolution-2004 : Central Vigilance Commission to be a designated authority in order to receive complaints from whistleblowers

The Law Commission of India’ xxxii in 2001 had recommended that in order to eliminate corruption, there is need to enact a law to protect the whistleblowers. It had also drafted a Bill in its report. Thereafter, Public Interest Litigation was filed in the Supreme Court in 2004 after the murder of Satyendra Dubey for the protection of whistleblowers. In this regard, the Supreme Court gives directions to the Central Government to set up a
suitable mechanism in order to deal with complaints from whistleblowers until such time a suitable legislation was enacted to that effect xxxiii.

The Government notified the PIDPI Resolution in the year in 2004. xxxiv This resolution gave powers to the Central Vigilance Commission the power to receive the complaints from whistleblowers. Therefore, the Central Government by PIDPI Resolution, 2004 made provisions for the protection of whistleblowers. xxxv

The Freedom of Information Bill, 2000

The Press Council of India prepared the first draft on Right to Information in 1996. The draft provides that the right to information is already protected under Article 19(1) (a) of the Constitution as has been observed by the Supreme Court in a series of cases. Consumer Education Research Council prepared another draft Bill on right to information. It provided for the repeal of the Official Secrets Act. The right to information in India got an importance in 1997 when a conference of Chief Ministers discussed an action plan for the responsible governance and resolved to pass right to information laws. The Conference concluded that lack of transparency is mainly responsible for the corruption in the country. The Central Government agreed to take immediate steps to ensure passing of right to information law along with amendments to official Secrets Act, 1923, and Indian Evidence Act, before the end of 1997 itself. xxxvi As a result of this resolution, States of Goa and Tamil Nadu passed right to information laws in 1997 itself and Government of India appointed H.D.Shourie Committee which drafted Freedom of Information Bill, 1997. Freedom of Information Bill, 2000, was introduced in Lok Sabha on July 25, 2000. However, it could not be passed and was referred to the Parliaments’ Standing Committee of Ministry of Home under the leadership of Mr. Pranab Mukherjee by the Chairman, Rajya Sabha on 14 September 2000, for examination and report. The Committee examined the Bill in all its aspects and submitted its report on 25 July 2000. xxxvii

The Right to Information Act, 2005 xxxviii

The Right to Information Act, 2005 (herein after referred as RTI Act, 2005) has been enacted by the Parliament. The Right to Information Bill was passed by Lok Sabha on May 11, 2005 and by Rajya Sabha on May 12, 2005, and it received assent of the President of India on June 15, 2005, which came into force in India in totality with effect from October 12, 2005 is regarded as a milestone in the history of democratic India.

The RTI Act, 2005 provides for setting out the practical regime of right to information for citizens in order to secure access to information under the control of public authorities. This Act, promote transparency and accountability in the working of every public authority. xxxix This Act creates the Constitution of a Central Information Commission and State Information Commission for the proper functioning of this law. The landmark Right to Information Act, 2005 aimed at making the system of government more transparent and accountable. The deaths of RTI activists and whistleblowers prove that the RTI Act has threatened many powerful, unscrupulous authorities. Therefore, there needs to be a comprehensive mechanism to protect the whistleblowers in the corporate sector as well as public sector or government sector.
Second Administrative Reforms Commission- 2005

Administrative Reforms Commission (ARC) is the committee appointed by the Government of India to give recommendations for reforming the Indian Public administration system. The first Administrative Reforms Commission was constituted in 1966 and the second Administrative Reforms Commission in 2005. The Ministry of Personnel, Public Grievances, and Pensions, Government of India as a Commission of Inquiry, set up the Second Administrative Reforms Commission on August 31, 2005. The main object of the Commission was to suggest measures to achieve a proactive, responsive, accountable, sustainable, and efficient administration for the country at all levels of the government. The second Administrative Reforms Commission was initially set up under the Chairmanship of Mr. Verappa Moily, who resigned with effect from April 1, 2009. Then, V. Ramachandran succeeded him. Fifteen reports have been prepared by the Commission from 2006 to 2009 for Government’s consideration.

Most redressal for information are usually to use it as a tool for grievance redressed. States may be advised to establish independent public grievance redressal authorities to deal with complaints of delay, harassment and corruption. These authorities should work in close coordination with the Information Commission.

Public Interest Disclosure and Protection of Informers Bill -2010

There are times in a country’s history when inaction and silence can be a culpable wrong, and we are living in such times. The nation is standing on the escalator of anarchy and chaos. To protect the whistleblowers and to establish a proper system to dispose of the cases related with corruption and willful misuse of power, Public Interest Disclosure and Protection to person making the Disclosure, 2010, was drafted and placed the House for approval.

The Public Interest Disclosures (Protection of Informers) Bill, 2010 (herein after referred as ‘PIDPI Bill, 2010’) was enacted with a view to set up a mechanism in order to receive complaints of corruption or willful misuse of power by a public servant. It also provides safeguards against victimization of the person making the complaint.


Whistleblowers Protection Regime

Whistle Blower Bill, 2011 provides for setting up a regular mechanism to encourage persons to disclose information on corruption or willful misuse of power by public servants, including ministers, was passed by Lok Sabha on December 27, 2011 and Rajya Sabha on February 21, 2014 and received the assent of President on May 9, 2014. Thereafter, The Whistleblowers Protection Act, 2014 was passed in Parliament on February 21, 2014. Minister of state for personnel V Narayanasamy said the Whistle blower Bill 2011 would supplement the RTI
Act in checking corruption in the country. The government has already brought a resolution in 2004 under which the CVC was empowered to protect the whistleblowers. Narendra Modi’s Government introduced the Whistleblowers Protection (Amendment) Bill, 2015 in Lok Sabha on May 11, 2015. However, still the Government of India does not notify this law.

Conclusion

Political and bureaucratic corruption in India is major concern. Moral crusades against corruption in high places also involve exposure by people in high places. Corruption is found to be one of the most damaging consequences of poor governance and poverty. It is classified by lack of efficiency, transparency, and accountability. Corruption diminishes investment, suppresses economic growth and development and also reduces effectiveness of public administration. It diverts public resources towards corrupt politicians and officials and away from needy and poor people. Though there are adequate laws in India to fight corruption, they have been made ineffective. Many people think that only government has responsibility for eliminating corruption and we often blame the government. “There are several deficiencies in our anti corruption systems because of which despite overwhelming evidence against the corrupt, no honest investigation and prosecution takes place and the corrupt are hardly punished. The whole anti corruption set up ends up protecting the corrupt.

BIBLIOGRAPHY


Ibid.


Ibid.


Ibid.


Ibid.


Ibid.


Ibid.


Ibid.


Ibid.

Retrieved from http://civilacademy.in/uploads/team/k49a7mSV8XYIdlACFHyESjyS(19319)5eB(19319)ZhGrhyLDOKiGY=1.pdf, visited on March 7, 2020


Ibid.