
THE ANTI-CORRUPTION ARMOURY OF INDIA

Daizy Thakur, PhD ,Research Scholar, Department of Laws Himachal Pradesh University, Shimla-5

ABSTRACT

India has been struggling through corruption since long. Eliminating corruption today has become a daunting challenge for India. Corruption remains widespread in the country hampering the social, political and economic growth. But in recent years quite commendably India has upped the ante against corruption. New legislations, amendments and many other initiatives have been introduced by the lawmakers in the past few years for dealing with the menace. This paper aims to present an overview of the Indian laws and Authorities fighting against the rampant corruption in India.

Keywords: Corruption; Anti Corruption; Anti Corruption Authorities; Anti Corruption laws

INTRODUCTION

Corruption in India has been a chronic issue, eating away the vitals of our country and system since long. International organisation, the Transparency International defines Corruption as to be *the abuse of entrusted power for private gain*. Corruption is something that adapts and evolves in changing scenarios¹. It has been there since ages and can be traced in many ancient texts of the world. Not just India but nations world over have been battling with the malaise of corruption. The phenomenon of Corruption affects the social, political and economic dimensions of nation and also wears down the economic growth². Harold O'Connell, INTERPOL's former Executive Director of Police Services in Anti-Corruption and Asset Recovery Global Conference 2019 by the INTERPOL, had aptly highlighted the need for collective efforts to curb widespread corruption which is impacting rule of law, fuelling public distrust in government and its institutions, thereby encouraging instability and more crimes³.

Corruption is the biggest obstruction in the path of development for any nation. It has a crippling effect on almost every aspect of a nation's growth. It negatively impacts the rule of law, development initiatives, domestic and foreign investment, public infrastructure, access to justice, healthcare, education sector, human rights and overall sustainable development in any country. In recent times new technologies have also facilitated new forms of corruption to evolve⁴. And it is not that only India has been suffering of the scourge of corruption but world over many developed and developing countries have been severely affected by it.

Recently India has been ranked at 85th position among 180 nations in Corruption Perceptions Index for 2021⁵ and was ranked 86th in the Transparency International's Corruption Perception Index (CPI) 2020⁶. Also according to the largest public opinion based survey the Global

¹ Transparency International, *What is Corruption?*, available at: <https://www.transparency.org/en/what-is-corruption>(last accessed on December 10, 2022).

² United Nations Office on Drugs and Crime, *UNODC's Action against Corruption and Economic Crime*, available at: <https://www.unodc.org/unodc/en/corruption/>(last accessed on December May 12, 2022).

³ INTERPOL, *Shaping a global response to corruption* (2019, November 21), available at: <https://www.interpol.int/en/News-and-Events/News/2019/Shaping-a-global-response-to-corruption>(last accessed on December 15, 2022).

⁴ Jorum Duri . *Corruption and Economic crime*. 4(2021, March 15), available at: https://knowledgehub.transparency.org/assets/uploads/kproducts/2021-Corruption-and-economic-crime_final.pdf(last accessed on December 15, 2022).

⁵ Transparency International, *Corruption Perceptions Index 2021*, available at: <https://www.transparency.org/en/cpi/2021/index/ind>(last accessed on December 18, 2022).

⁶ Transparency International, *Corruption Perceptions Index 2020*, available at: <https://www.transparency.org/en/countries/india>(last accessed on December 18, 2022).

Corruption Barometer Asia 2020, published by the Transparency International⁷ India tops in the bribery rate in Asia with 39 per cent and also has the highest rate of citizens accessing a public services through personal connections at 46 per cent. It presents a very grim picture of the state of corruption prevalent in India and how so deep rooted it is, in the Indian system.

India has also ratified the United Nations Convention against Corruption⁸ in 2011 and is bound by the international standards against fighting corruption. Given the heavy cost of corruption for the country's overall growth, indubitably it needs to be dealt on priority basis. Commendably in the last decade or so India has amped up its efforts against tackling corruption and prevalent corrupt malpractices. The year 2011 started with the *India against Corruption* Movement, which was backed by the general public support and it led to a strong wave against corruption in our country. In past few years India has launched various anti-corruption initiatives toward fighting corruption, be it the introduction of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 to tackle black money in our country, Double Tax Avoidance Agreement (DTAA) with various countries **was also strengthened**, the Prohibition Of Benami Property Transactions Act, 1988 was also revamped to strike at **benami transactions**⁹, demonetization of ₹1000 and ₹500 notes in 2016 was also a bold step, the Fugitive Economic Offenders Act, 2018 was introduced to prevent fugitive economic offenders like Vijay Mallaya and Nirav Modi from evading the process of law in India, the Lokpal and Lokayukta Act, 2013 was also operationalised, amendments in the Prevention of Corruption Act, 1988 and various other acts striking at corruption. India has a long list of laws and legislations in place for cleaning up corruption which have been reviewed and updated in tune with current times and has been discussed below.

MAJOR ANTI CORRUPTION LAWS OF INDIA

1. The Prevention of Corruption Act, 1988

⁷Transparency International, *Global Corruption Barometer Asia 2020*, available at: <https://www.transparency.org/en/gcb/asia/asia-2020/results/ind> (last accessed on May 19, 2022).

⁸ UN General Assembly, *United Nations Convention against Corruption General Assembly Resolution 58/4 of 31 October 2003*, available at: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf (last accessed on December 19, 2022).

⁹ Press Information Bureau (Government of India), *Key Initiatives of NDA Government, Anti-Corruption measures by the Government*, available at: <https://archive.pib.gov.in/4YearsOfNDA/timelinee.aspx> (last accessed on December 19, 2022).

The Prevention of Corruption Act 1988¹⁰ is the primary legislation against corruption in India. It came into force on 9th September 1988 and repealed the previous Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952. The Prevention of Corruption Act, 1988 was recently amended by the Prevention of Corruption (Amendment) Act, 2018 which widened its scope and also strengthened the existing provisions under the act. The Prevention of Corruption Act 1988 under section 7 and section 7A punishes public servants obtaining or accepting or attempting to obtain any undue advantage or reward for performance of public duty or if induce other public servant to do so with imprisonment of minimum 3 years to maximum 7 years and fine. The 2018 amendment has extended the scope of 'Undue advantage' under **Section 2(d)**, which now will *include all forms of gratifications*, not necessarily estimable in money. Now the act also punishes offering bribe to public servants under Section 8 of the act with up to 7 years imprisonment and fine, thereby now also punishing the supply side of corruption. Section 4(4) of the Act provides a maximum trial time limit of 4 years to complete trial of the cases under the act. Section 13 punishes Criminal misconduct by a public servant in the form of misappropriation of entrusted property or illegal enrichment during the office term, is punishable with a minimum 4 years to maximum 10 years imprisonment and fine.

In the case of **P. Satyanarayana Murthy v. State of A.P.** [(2015) 10 SCC 152] the Supreme Court held that only the possession or recovery of amount, without any proof of demand, is not sufficient for conviction under section 7 and 13 of the Prevention of Corruption Act, 1988 but *proof of demand for illegal gratification* by the public servant is required.

The 2018 amendment also inserted section 17A which demands prior approval of appropriate authorities before any kind of enquiry, inquiry or investigation into alleged offences by public servant. It was also reiterated in the case of **Yashwant Sinha and Ors v. Central Bureau of Investigation and Ors** [(2020) 2 SCC 338]. By the 2018 amendment section 24 of the act stands omitted, which earlier provided the immunity for the statements made by bribe givers.

2. Prohibition of Benami Property Transactions Act, 1988

The Prohibition of Benami Property Transactions Act, 1988¹¹ bars all the benami transactions. The previous act i.e. Benami Property Transactions Act 1988, was amended by the Benami

¹⁰ The Prevention of Corruption Act, 1988 (Act No. 49 of 1988).

¹¹ The Prohibition of Benami Property Transactions Act, 1988 (Act 45 of 1988).

Transactions (Prohibition) Amendment Act, 2016 to make it more stringent and renamed the old act as the Prohibition of Benami Property Transactions Act, 1988. Section 2(8) of the act defines Benami Property as the property which is the subject matter of any benami transaction including the proceeds arising out of such property. But the act also exempts certain properties from the definition of benami transaction, like the property held by a member of a Hindu undivided family for other family member's benefit or by person in a fiduciary capacity or in the name of his other half or child but the consideration for such property must be paid with the known sources of the individual. The act strikes at all benami transactions and provides imprisonment of up to 7 years and fine extending up to 25% of the fair market value of that benami property under section 53 of the act. The act completely prohibits the right to recover any property held benami by anyone claiming to be the actual owner under section 4 and also prohibits re-transfer of such properties under section 6. Any such re-transfers of benami property will be considered invalid. The act under section 54 also punishes furnishing of false information or documents under the act with up to maximum 5 years imprisonment and the fine upto 10 percent of the fair market value of the Benami Property. Any non compliance with notices or furnishing of information sought under the act will be penalised at ₹ 25,000 rupees for each such failure as per section 54A. The amended Prohibition of Benami Property Transactions Act, 1988 is far more stringent in dealing with benami properties and transactions, in comparison with the old Benami Property Transactions Act 1988. But there exists confusion surrounding the applicability that whether the provisions of Benami Amendment Act, 2016, will be applicable retrospectively or not? On this different high courts in the case of **Niharika Jain v. Union of India & Ors**¹², **M/s Ganpati Delcom Private Limited v. Union of India & Anr**¹³ and **others** favoured the prospective applicability of the amended provisions of 2016, while the Chhattisgarh High Court took a contrary view in **Tulsiram & Manki Bai v. ACIT (Benami Prohibition) & Ors**¹⁴ ruled in favour of its retrospective applicability. So the uncertainty remains surrounding the applicability of amended provisions and is yet to be settled by the Apex court.

3. The Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act, 2002¹⁵ (PMLA) came into force on 1st July 2005.

¹² 2019 SCC On Line Raj 1640.

¹³ 2019 SCC OnLine Cal 8679 ; (2020) 421 ITR 483.

¹⁴ 2019 SCC OnLine Chh 140.

¹⁵ The Prevention of Money Laundering Act, 2002,(Act NO. 15 of 2003).

PMLA has been amended many times to keep in check the evolving money laundering crimes. Recently the act was amended in 2019 by the 2019 Finance Act. Financial Intelligence Unit – India (FIU-IND) is the main agency responsible for receiving and processing information concerning suspicious transactions in India and Directorate of Enforcement is the main investigating authority for money laundering offences under Prevention of Money Laundering Act, 2002. The PMLA provides rigorous imprisonment for minimum 3 years to maximum 7 years with fine for the offence of money-laundering under section 4, and if offences pertain to narcotics then the imprisonment may **extend to maximum 10 years**.

Section 5 of act provides for Provisional Attachment of any property for a period of 180 days, if having reason to believe that such property is proceeds of crime and can be concealed, transferred or dealt in a way which may frustrate any future court proceedings. Upon adjudication if property is found to be involved in money-laundering, the Adjudicating Authority will confirm the attachment and the property will stand confiscated to the Central Government under section 8 of the act. PMLA under section 11A also mandates Reporting Entities to verify the identity of its clients and to maintain account information for at least 5 years after the transaction ends as per section 12. The act under section 12A also directs reporting entities to furnish information to the enforcement authorities when asked to. The Finance Act 2019 has inserted section 12AA in the act, which prescribes enhanced due diligence on the part of reporting entities and to also report suspicious transactions to specified authorities. The Financial Intelligence Unit - India under section 13 has the power to impose penalty of up to 1 lakh rupees, if any reporting entity fails to comply with the obligations under the act. Authorities under section 16, 17, 18 and 19, also have the power of summons, searches, seizures and arrest subject to conditions provided under the act. Section 45 of the PMLA provides the conditions that need to be satisfied for granting bail for any offence under the Act.

Few famous personalities booked under the act are P. Chidambaram in INX Media case, Vijay Mallya in bank loan default case, A. Raja in 2G Spectrum scam, Nirav Modi and Mehul Choksi in Punjab National Bank scam and list goes on.

4. The Whistleblower Protection Act, 2014

The Whistleblower Protection Act 2014¹⁶ provides mechanism to receive complaints of alleged corruption or misuse of power and also provides safeguards against victimisation of

¹⁶ The Whistle Blowers Protection Act, 2014, (Act No. 17 of 2014).

complainant. Though the Act has already received the President's assent but it has not been operationalised as yet because of the pending Whistleblowers Protection (Amendment) Bill, 2015, which has been widely criticised for weakening the act. Section 4 of the act provides for Public Interest Disclosure to a Competent Authority, but the disclosure must also specify the identity of the complainant and the Competent Authority can not divulge the identity of complainant without his or her consent. With many incidences of attacks on whistleblowers coming to light, the act under section 11, 12 and 13 provides safeguards against victimization of complainants, of witnesses and persons assisting in inquiries. Any negligent or malafide disclosure of the identity of the complainant under section 16 will be punished with up to 3 years imprisonment and fine up to 50,000 rupees. But because of the pending Whistleblowers Protection (Amendment) Bill, 2015, the act has not been enforced yet.

5. The Right to Information Act, 2005

The Right to Information Act, 2005¹⁷ become operational from 12th October, 2005. It bestows the citizens with the statutory right of *Right to Information*. In **People's Union for Civil Liberties vs. Union of India**¹⁸ the court held Right to Information as an indisputable fundamental right and the part of the freedom of 'speech and expression' under article 19(1) (a) of the Indian constitution. The act provides the regime for accessing public information under the control of public authorities by the citizens. The RTI online portal has also been (www.rtionline.gov.in) launched for filing online RTI requests and first appeals to the Central Ministries/Departments and other Central Public Authorities mentioned. **Section 4** of the act mandates public authorities to keep their records duly catalogued and indexed. And the act also directs computerisation of all records and *suo motu* disclosures of information by every public authority. All Public Information Officers (PIOs) at centre and state offices are also directed to provide information to the citizens requesting for any kind information under section 5 of the act. Act exempts certain categories of information from disclosure under section 8 and 9 of the act affecting nation or its interests. The act empowers Information Commission to penalise Public Information Officers under section 20 if found erroneous under the act and will be liable for fine of ₹ 250 per day with total amount of penalty not exceeding ₹25,000. No doubt RTI is an imperative anti-corruption tool for tackling the menace of corruption which should be further strengthened to enhance transparency in system and keep corruption in check.

¹⁷ The Right to Information Act, 2005(Act 22 of 2005).

¹⁸ AIR 2004 SC 1442

6. The Lokpal and Lokayukta Act 2013

The Lokpal and Lokayukta Act, 2013¹⁹ came into force on 16 January 2014 and it provides for the establishing Lokpal at the Union and Lokayukta at the States level, in order to inquire into allegations of corruption by certain public functionaries. Though the act was passed in 2014, but it was not implemented all these years because there was no Leader of Opposition to sit in the selection committee of Lokpal. It was in 2019 that former Supreme Court judge Justice **Pinaki Chandra Ghose** was appointed as the country's first Lokpal and the act became operative. The office of Lokpal consists of one chairperson and a maximum of 8 members. The Jurisdiction of Lokpal extends to Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers defined under the Prevention of Corruption Act, 1988 and Officials of Central Government, but excludes matters relating to the Prime Minister concerning international relations, security, public order, atomic energy and space. The act punishes frivolous or vexatious complaints with imprisonment up to 1 year and fine up to 1 lakh rupees under section 46. The Lokpal cannot inquire or investigate into any complaint, if that complaint is made after the expiry of 7 years or more as per Section 53. The act mandates the identity of the complainant to be kept undisclosed unless complainant himself or herself reveals it.

7. Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015

Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015²⁰ became effective from July 1 2015. The act tackles the menace of Black money that is undisclosed foreign income and assets. Act imposes tax on any undisclosed foreign income and asset held outside India. It also provided a **One Time Compliance window** in 2015 for the persons to disclose any such undisclosed assets in foreign countries to authorities in India. Failure to furnish income tax returns or particulars or furnishing incorrect particulars in the return for foreign income and assets as per the act will attract penalty of Rs 10 lakh and rigorous imprisonment up to 7 years under section 42, 43 & 49 respectively. Second and subsequent offences committed under Section 58 of the act will be punished with rigorous imprisonment

¹⁹ The Lokpal and Lokayukta Act, 2013(Act 1 of 2014).

²⁰ Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015,(Act NO. 22 of 2015).

of 3 to 10 years with fine up to maximum Rs. 1 crore. The act has been mainly directed towards undisclosed foreign income and asset held outside India.

8. Foreign Contribution Regulation Act 2010

The Foreign Contribution Regulation Act 2010²¹ came into effect from 1st May, 2011. The act aims to regulate utilisation of foreign contributions, donations and foreign hospitality by certain individuals, associations, companies; and prohibit its use against anti national activities. **The act has been recently amended by the Foreign Contribution (Regulation) Amendment Act, 2020, which brought about many significant changes in the act.** Section 3 of the Act prohibits certain classes of persons from receiving ‘foreign contribution’, except under section 4 as salary or payment due or in the ordinary course of business transactions or as a gift to member of any Indian delegation as per the rules made by the Central Government. Act also prohibits acceptance of foreign hospitality by member of a Legislature or political party, Judge or Government servant or employee of body under the control of Government except with the permission of the Central Government under Section 6 of the act. Section 7 completely bars the transfer of foreign contributions to any person or organisations which was transferrable earlier with prior permission. Under the act Central Government has the power to ask to furnish information regarding foreign hospitality or foreign contribution or restricting the use of foreign hospitality or foreign contribution. The act also mandates every recipient of foreign contribution to have “FCRA Account” at designated banks for receiving funds under section 12 and 17 of the act. Section 12A mandates Aadhaar number as an identification document of all its office bearers or directors or other key functionaries for receiving foreign contribution. Overall the 2020 amendment act has introduced many stringent measures in the act to enhance transparency and the accountability regarding foreign contributions received within the country.

9. The Fugitive Economic Offenders Act, 2018

The Fugitive Economic Offenders Act, 2018²² (FEOA) came in force from 21st April 2018. The act aims to prevent fugitive economic offenders from escaping the process of law in India by running away to foreign territories. The Act under section 12 provides for the declaring a person as fugitive economic offender and further attachment and confiscation of the tainted

²¹ The Foreign Contribution (Regulation) Act, 2010(Act No.42 of 2010).

²² The Fugitive Economic Offenders Act, 2018,(Act No. 17 of 2018).

properties under section 5. Economic offences with value over 100 crores or more comes within the scope of the act. Vijay Mallaya, former Member of Parliament and Liquor baron was the first individual declared as fugitive economic offender, for unpaid dues of Rs 9,000 crore in India and Nirav Modi, the diamond jeweller, involved in PNB fraud case was the second person declared fugitive economic offender under provisions of the Fugitive Economic Offenders Act, 2018. Under section 12, the act provides for confiscation of his properties that are proceeds of crime, benami or any other properties located in India or abroad and all the rights and title will be vested in the Central Government. Act also disallows the person once declared fugitive economic offender from putting forward or defending any civil claim under section 14.

10. Companies Act 2013

The Companies act 2013²³ has few provisions to curb corruption in the corporate sector. The old Companies Act, 1956 did had provisions to combat frauds by corporate but were not strong enough to cover cases like Satyam scam and others. The new Companies Act, 2013 have provisions for reporting obligations under Section 143 of the act, for establishment of a vigil mechanism [Section 177(9)], prescribes establishment of Serious Fraud Investigation Office to investigate into frauds relating to companies under section 211 and provision of punishment for committing fraud under section 447 and others.

11. Indian Penal Code, 1860

Indian Penal Code, 1860 from Sections 161 to 165 prescribed punishments for the corrupt public servants but these provisions were later repealed by the Prevention of Corruption Act, 1988 and were incorporated into the said Act. There are other provisions dealing with bribery, forgery and fraud matters, including offences relating to criminal breach of trust and cheating in the code.

MAJOR ANTI CORRUPTION AUTHORITIES IN INDIA

1. Central Vigilance Commission (CVC)²⁴ : It is an autonomous body established in 1964 which monitors the vigilance activities under the control of central government. It exercises

²³ The Companies Act 2013,(Act No. 18 of 2013).

²⁴ Central Vigilance Commission, available at <https://cvc.gov.in/> last accessed on December 20, 2022).

superintendence over CBI in matters of investigation under the Prevention of Corruption Act, 1988.

2. Central Bureau of Investigation (CBI)²⁵ : CBI is the prime investigative agency of India which derives its powers from the Delhi Special Police Establishment act (DSPE) 1946. It investigates and prosecutes corruption cases apart from economic offences and other conventional crimes.

3. Serious Fraud Investigation Office (SFIO)²⁶ : SFIO is a statutory organisation established in 2003, which works under the Ministry of Corporate Affairs of the government. It investigates cases of corporate frauds in India.

4 Comptroller and Auditor General (CAG)²⁷: CAG is the constitutional audit authority of India which acts as the watchdog of governmental financial transactions. It has a very crucial role in the public accountability process and upholding transparency in the system. Scams like 2G spectrum scam, Commonwealth Games scam etc have been exposed by the CAG.

5. Lokpal²⁸ : Lokpal is a statutory anti-corruption body established under the Lokpal and Lokayuktas Act, 2013 to inquire and investigate charges of corruption against certain public functionaries including the prime minister.

CONCLUSION

Corruption free environment is fundamental for the long-term sustainable development of a country. Despite best efforts and laws in place India still is plagued with rampant corruption. India does have an effective blueprint against corruption but what we need for its success is strict effectual enforcement, public sensitization, teamwork and regular updation of laws since corrupt practices keep evolving with time. Commendably in the past decade India has introduced massive changes in its anti corruption crusade. But India will have to be genuinely consistent with the Anti corruption efforts and should further strengthen its anti corruption institutions and legal framework. Strong political determination ²⁹ coupled with collective

²⁵ Central Bureau of Investigation, available at: <https://cbi.gov.in/> (last accessed on December 21, 2022).

²⁶ Serious Fraud Investigation Office, available at: <https://sfio.nic.in/> (last accessed on December 21, 2022).

²⁷ Comptroller and Auditor General, available at: <https://cag.gov.in/en> (last accessed on December 23, 2022).

²⁸ Lokpal, available at: <http://lokpal.gov.in/> (last accessed on December 23, 2022).

²⁹ Roberto Martínez B. Kukutschka, *Building Political Will 4* (October 31, 2014), available at: https://www.transparency.org/files/content/corruptionqas/Topic_Guide- Political_Will.pdf (last accessed on December 23, 2022).

efforts from citizens and other stakeholders is going to be crucial in cleaning up corruption from the country.