

CORRUPTION AND DEVELOPMENT: THE INTERNATIONAL ANTI-CORRUPTION MOVEMENT AND ANTI-CORRUPTIONISM IN INDIA

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A INTRODUCTION

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish ...¹

A familiar yet vague term, the popular notion of 'corruption' is one which is both relative and emotive. Finding itself at the centre of development discourse for the last two decades, corruption has been a 'star' of the international development scene since it was brought to the top of the agenda in the 1990s.² Following the end of the Cold War, a changing geopolitical climate encouraged the establishment of an international commitment to condemning and criminalising corruption at the multilateral level, a process which culminated in the appearance of a coordinated global anti-corruption movement.³ Consisting of international agreements, domestic laws and initiatives, the reorientation of international organisations and the mobilisation of civil society, this global anti-corruption movement was aimed at tackling corruption via the systematic implementation of tools and strategies to address the issue on the ground.

The anti-corruption movement drew positive attention to an issue which had long been selectively ignored and neglected.⁴ However, despite the enthusiasm and accompanying proliferation of initiatives brought about by the movement, developing countries today continue to be plagued by the debilitating consequences of corruption. Bearing particularly harshly on the poor and disenfranchised,⁵ corruption represents a scar on social stability and economic growth.⁶ The effects of corruption are broad and destructive⁷ and the global movement has highlighted a number of difficulties associated with stamping out corruption in any meaningful way. The application of Right to Information Legislation (RTI) and E-Governance techniques in India highlight both the immense potential and the experienced failures of the global movement to assist in development. RTI and E-Governance represent two formidable strategies for the tackling of corruption in India, however the Indian experience has underlined the critical need for the implementation of such initiatives to be culturally

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¹ United Nations Convention Against Corruption (adopted 9 December 2003, entered into force 14 December 2005) GA Res 58/4.

² M Goodwin and K Rose-Sender 'Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse' in F Coomans et al (eds) *Corruption and Human Rights* (forthcoming).

³ See Section D (1) below.

⁴ *ibid.*

⁵ G Hill 'Laws Prohibiting Foreign Bribery: The Practicalities of Legislating for Integrity Internationally' [2000] AMPLA Yearbook 13-14.

⁶ W Kasper 'Make Poverty History: Tackle Corruption' Centre for Independent Studies Working Paper No 67 (2006) 1.

⁷ Hill (n 5).

sensitive, locality specific and practically appropriate.⁸ Corruption and its impediment of development are global problems; however despite their international dimensions, they are, by their very nature, issues that need to be addressed locally and responsively.⁹

B CORRUPTION DEFINED

Corruption has been a persistent feature of human societies from time immemorial, long being recognised as a threat to the order of civility.¹⁰ A vice known to the Egyptians as far back as the 4th Century BC,¹¹ corruption is a key theme in Kautilya's¹² *Arthashastra*, an ancient Hindu treatise on statecraft, economic policy and military strategy written in the 4th Century BC.¹³ Corruption continues to be labelled as 'one of the greatest social evils of our time',¹⁴ described emotionally and emphatically by global corruption-fighting NGO Transparency International (TI) as 'hurting anyone whose life, livelihood or happiness depends on the integrity of people in a position of authority'.¹⁵

In spite of its prominence through the ages, corruption remains difficult to define.¹⁶ A multifaceted concept, there is no universally accepted definition of 'corruption' and there has been disagreement as to what specific acts constitute corruption as a construct.¹⁷ A thorny¹⁸ and loaded term,¹⁹ it has been said that corruption is like an elephant – though it may be difficult to describe, it is generally not difficult to recognise when observed.²⁰

A standard and oft-cited definition of corruption is that it is constituted by 'an act in which the power of public office is used for personal gain.'²¹ Whilst this 'near

⁸ See Section D(2) below.

⁹ H Moroff and D Schmidt-Pfister 'Anti-Corruption Movements, Mechanisms and Machines – An Introduction' (2010) 11(2) *Global Crime* 89.

¹⁰ T S Ait 'Economic Analysis of Corruption: A Survey' (2003) 113 *The Economic Journal* F632, F632; AT Martin 'The Development of International Bribery Law' (1999) 14(2) *Natural Resources and Environment* 1.

¹¹ *ibid.*; Pharaoh Horemheb provided for a law against bribe taking, proclaiming that any judge who took a reward from one litigant and failed to hear the adversary was guilty of a 'crime against justice', penalty being capital punishment.

¹² Also known as 'Vishnugupta'.

¹³ SK Sharma 'Indian Idea of Good Governance: Revisiting Kautilya's *Arthashastra*' (2005) 17-18(1-2) *Dynamics of Public Administration*; V Tanzi 'Corruption Around the World: Causes, Consequences, Scope and Cures' International Monetary Fund Working Paper No 4 (1998).

¹⁴ Goodwin and Rose-Sender (n 2) 1.

¹⁵ Transparency International, About Transparency International: What is Transparency International? <http://www.transparency.org/about_us> (9 February 2011).

¹⁶ Ait (n 10) F632.

¹⁷ J Bacio-Terracino 'Corruption as a Violation of Human Rights' (Graduate Institute of International and Development Studies Geneva for the International Council on Human Rights Policy 2008) 5 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1107918> (9 February 2011).

¹⁸ KS Ivanov 'The Limits of a Global Campaign Against Corruption' in S Bracking (ed) *Corruption and Development: The Anti-Corruption Campaigns* (Palgrave Macmillan 2007) 28, 35.

¹⁹ S Bracking 'Political Development and Corruption: Why 'Right Here, Right Now''? in S Bracking (ed), *Corruption and Development: The Anti-Corruption Campaigns* (Palgrave Macmillan 2007) 3. Loaded both morally and politically.

²⁰ Tanzi (n 13) 6.

²¹ AK Jain 'Corruption: A Review' (2001) 15(1) *Journal of Economic Surveys* 71.

perennial²² definition has been accepted and used by international institutions including the World Bank since the 1990s, it has been criticised for its limited scope.²³ The specification that corruption involves the abuse of ‘public power’ consigns corruption solely to the public sector, ignoring the role of private enterprise which is increasingly pervasive in everyday life, particularly in view of large-scale modern privatisation.²⁴ Transparency International has addressed this criticism in recent years by broadening the scope of their definition to include the abuse of ‘entrusted power’ for private gain.²⁵ Even with this broader framing, criticisms suggest that differing concepts of morals and ethics across cultures make it difficult to come to a universal definition for corruption as a holistic concept. The ambiguity seems to arise from the popular use of the term which does not require that conduct considered ‘corrupt’ be contrary to law, rather it refers to more subjective and informal elements of morality which in contrast have great propensity for variation across time and space.²⁶ For example, an accepted practice of inheriting important government employment positions in one country²⁷ might be branded unacceptable nepotism in another which holds different values.

Accordingly, on one view, corruption is best conceived of as a range of discrete social practices that can be specifically identified and addressed.²⁸ The approach of international conventions and domestic laws to criminalising corruption reflects such a partitioned management of the concept by relying on categorical definitions of destructive behaviour.²⁹ Recognising the impossibility of criminalising ‘corruption’ as a broad concept, law necessarily focuses on the enumeration of multiple criminal acts which amount to corrupt practice;³⁰ these commonly include bribery, nepotism, abuse of political power, embezzlement, and various forms of misappropriation, influence peddling, prevarication, insider trading and abuse of the public purse.³¹ The most recent international anti-corruption convention, the United Nations Convention Against Corruption (UNCAC)³² evidences this approach in its Chapter III, titled ‘Criminalisation and Law Enforcement.’ Articles 16 to 25 of UNCAC name specific behaviours amounting to corruption for which parties are obliged to establish criminal sanctions.³³

²² Bracking (n 19).

²³ *ibid* 4.

²⁴ *ibid*.

²⁵ Ivanov (n 18).

²⁶ F Anechiarico and JB Jacobs *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective* (The University of Chicago Press 1996) 3.

²⁷ For example, Vietnam, where government posts are highly sought after and only those from established families are eligible to be selected.

²⁸ Bacio-Terracino (n 17) 5.

²⁹ UNCAC (n 1); Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents (signed December 17 1997) (OECD Convention).

³⁰ Bacio-Terracino (n 17) 6.

³¹ JC Andvig and others *Corruption: A Review of Contemporary Research* (Christian Michelsen Institute 2001) 49.

³² UNCAC (n 1).

³³ *ibid*. Specific behaviours are: 15. Bribery of national public officials, 16. bribery of foreign public officials and officials of public international organisations, 17. embezzlement, misappropriation or other diversion of property by a public official, 18. trading in influence, 19. abuse of functions, 20. illicit enrichment, 21. bribery in the private sector, 22. embezzlement of property in the private sector, 23. laundering of proceeds of crime, 24. concealment, 25. obstruction of justice.

In reality, not all stakeholders affected by corruption are in agreement on all questions surrounding the complex roots of and problems posed by the persistence of corruption in societies.³⁴ However they do tend to share a definite conception of the detrimental effects of corruption on general socio-economic development.³⁵ This is a complex relationship which has been subject to much scholarly attention.

C CORRUPTION AND DEVELOPMENT

Amartyr Sen's seminal 'Development as Freedom' is a useful frame to contextualise development and the impact of corruption on development. As defined by Sen, socio-economic development can be seen as a process of expanding the 'real freedoms' that people enjoy so they are able to live without various constraints or 'unfreedoms' operating to limit their capacities.³⁶ Sen argues that such unfreedoms are sources of tyranny and oppression which limit the economic, social and political capacities of individuals and communities, acting to reduce their ability to achieve key development outcomes such as good health and basic education.³⁷ Viewed in this way, corruption constitutes one of many 'unfreedoms', persisting in developing countries as a cause of social deprivation.

Most modern economists view corruption as a major obstacle to development.³⁸ At the 1996 World Bank and International Monetary Fund (IMF) Annual Meeting, World Bank President James Wolfensohn broke a longstanding taboo on discussing corruption in the development sphere, openly bringing the issue to the top of the international development agenda in his 'cancer of corruption' speech.³⁹ In the forward to the UNCAC, Kofi Annan describes corruption as an 'evil phenomenon',⁴⁰ going on to highlight its particular impact on the poor and disenfranchised:

[I]t is in the developing world that [the] effects [of corruption] are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.⁴¹

³⁴ I Krastev 'The Strange (Re) Discovery of Corruption' in R Dahrendorf and others (eds) *The Paradoxes of Unintended Consequences* (CEU Press 2000) 23-41, 39.

³⁵ *ibid.*

³⁶ A Sen *Development as Freedom* (Oxford University Press 2001) 3-7.

³⁷ *ibid.*

³⁸ TS Aidt 'Corruption, institutions and economic development' (2009) 25(2) *Oxford Review of Economic Policy* 271.

³⁹ S Bracking and K Ivanov 'Conclusion' in S Bracking (ed) *Corruption and Development: The Anti-Corruption Campaigns* (Palgrave Macmillan 2007) 302; J Wolfensohn 'Annual Meetings Address' (Speech delivered at the World Bank and IMF Annual Meeting 1 October 1996) <<http://go.worldbank.org/1NQRAFLP50>> (9 February 2011).

⁴⁰ UNCAC (n 1).

⁴¹ *ibid.*

Modern research has shown that corruption perpetuates low incomes and generates poverty traps,⁴² undermines the rule of law and produces systemic failure to provide for equitable distribution of resources.⁴³ It does this when a culture of exploitative rent seeking⁴⁴ among officials in positions of power forces people to pay premiums for services that they should be able to access free of charge, as well as by the systematic diversion of funds for development projects which are appropriated for other uses.⁴⁵ Where corruption pervades societies, access to justice systems to formally challenge such inequities is often available only to those who are able to pay rents to both initiate and sustain complex administrative procedures requiring relatively large fees over long periods of time. This of itself provides a reinforcement mechanism by which corruption acts to maintain existing socio-economic imbalances.⁴⁶ TI gives many examples of such effects and estimated that during the three months starting November 2007, millions of Indians earning less than US\$1 per day had paid an estimated US\$220 million in bribes, for services such as healthcare, education and policing.⁴⁷

In spite of the strength of recent popularised rhetoric, the negative effects of corruption have not always been so unequivocally accepted. A view demonised as outmoded by more recent literature, in the past some commentators have argued that corruption might facilitate rather than detract from development by ‘greasing the wheels’ of inefficient bureaucratic systems.⁴⁸ The grease applied by corruption to oil the wheels of commerce is conceptualised by this approach as ‘speed money’ to enhance the performance of an ineffective civil service.⁴⁹ Some have argued along these lines that corruption helped build modern America and similarly that it aided significantly in the fast tracking of development in Japan and of the Asian Tigers.⁵⁰ In 1965 Professor Colin Leys went so far as to insinuate that corruption could prove functional to national integration, institution-building and economic development.⁵¹ Leys postulated that bribes could be viewed as an incentive or bonus to get things done, a factor which may have potential to bring about institutional change towards practical efficiency, particularly in over-regulated societies operating under many layers of administrative red-tape.⁵²

⁴² Aidt (n 38) 271.

⁴³ M Khemani ‘The Role of Anti-Corruption Commissions in Changing Cultural Attitudes Towards Corruption and the Rule of Law’ Georgetown University Working Paper Series (2009) 2 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1386496> (9 February 2011).

⁴⁴ Rent-seeking is

the process by which an individual or organisation seeks to profit through a manipulation of the economic environment rather than through the production or trade of goods or services. It is commonly used to refer to situations where an individual or organisation demands payment (in money, goods, etc) in return for a separate, favourable outcome.

Australian Government Aus AID ‘Tackling Corruption for Growth and Development: A Policy for Australian Development Assistance on Anti-Corruption’ (March 2007) 18.

⁴⁵ Bracking (n 19) 16.

⁴⁶ Khemani (n 43) 6.

⁴⁷ R Bedi ‘Bribery and Corruption in India Pervasive’ *New Zealand Herald* (New Zealand 1 November 2010).

⁴⁸ SJ Wei ‘Corruption in Economic Development: Beneficial Grease, Minor Annoyance or Major Obstacle?’ (paper presented at the Workshop on Integrity in Governance in Asia, organised by the UNDP and TI Thailand Chapter) (Bangkok 29 June - 1 July 1998) 3.

⁴⁹ Aidt (n 38) 272.

⁵⁰ C Leys, ‘What is The Problem About Corruption?’ (1965) 3 *Journal of African Studies* 215-230.

⁵¹ *ibid*

⁵² *ibid*.

Whilst the issue was keenly debated in the Cold War era,⁵³ the international climate surrounding this issue has changed dramatically.⁵⁴ The idea that corruption could be beneficial to development is now said to have been based solely on anecdotal evidence⁵⁵ and the ‘greasing’ hypothesis is seen as ‘downright dangerous’.⁵⁶ Over the past two decades, empirical studies have shown the net impact of corruption on investment growth and poverty to be profoundly negative,⁵⁷ commentators musing that under current conditions ‘... arguing against corruption as a social evil of mammoth proportions is like arguing against Christmas or in favour of drowning kittens.’⁵⁸ Corruption is thus seen to ‘sand’, rather than grease the wheels of modern socio-economic development, a position which is firmly entrenched in contemporary development discourse.

It is clear that corruption is now a focus of international development.⁵⁹ Anti-corruptionism is a narrative that places corruption at the centre of development concerns and is tightly bound up with the modern ‘good governance’ movement and the corresponding global shift towards legal formalisation.⁶⁰ The emergence and operation of the anti-corruption movement poses interesting questions for any student of international law and development. Importantly, if corruption has been recognised as harmful to societies since ancient times, what was it about the 1990s that spurred the international community to formally address it on a multilateral level? Further, how has the movement affected development on a local level and what have been its effects? The following section will examine anti-corruptionism by beginning with the genesis of the movement. It will then examine India as a case study of methods and outcomes of the movement’s anti-corruption techniques. Whilst anti-corruptionism has brought international attention to an area which was previously somewhat neglected, critics argue that aspects of the movement itself have been counter-productive.⁶¹

D THE ANTI-CORRUPTION MOVEMENT

1 Origins

And let's not mince words: we need to deal with the cancer of corruption.

⁵³ NH Leff ‘Economic Development Through Bureaucratic Corruption’ (1964) 8(2) *The American Behavior Scientist* 8; SP. Huntington *Political Order in Changing Societies* (Yale University Press 1968); F Lui ‘An Equilibrium Queuing Model of Bribery’ (1985) 93(4) *Journal of Political Economy* 760.

⁵⁴ DR Brown ‘Foreward’ in S Bracking (ed) *Corruption and Development: The Anti-Corruption Campaigns* (Palgrave MacMillan 2007) x.

⁵⁵ Aidt (n 38) 271.

⁵⁶ Brown (n 54).

⁵⁷ *ibid.*

⁵⁸ Goodwin and Rose-Sender (n 2) 1.

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ Ivanov (n 18) 28.

– James Wolfensohn, President of the World Bank, 1996.⁶²

Owing to anti-corruptionism, corruption has reached a state of quasi-omnipotence in current development scholarship.⁶³ Culminating in the institution of a ‘global anti-corruption movement’ in the 1990s, this focus on corruption and its role in development emerged in stark contrast with attitudes of the international community in the period that immediately preceded it.⁶⁴

Practically, the global movement’s origins have been suggested to lie in the interests of the US Government, multinational companies and multilateral donors.⁶⁵ Corporate complaints about corruption as a non-tariff barrier to trade were a key motivation for the application of moral pressure to the international community for it to take action against international corruption.⁶⁶ The US led the charge to encourage the appearance of a unified global agenda, a major concern being the fact that American companies were losing billions of dollars in international contracts from their inability to pay bribes by virtue of the operation of the US Foreign Corrupt Practices Act.⁶⁷

The first attempt to implement multilateral prohibitions on international corruption was through the UN Economic and Social Council in 1979.⁶⁸ The council produced a draft document that outlawed all bribes to public officials, however the Council of the General Assembly took no action to conclude or formalise the agreement.⁶⁹ Having been unsuccessful at the UN, the US in 1981 began lobbying at the Organisation for Economic Co-operation and Development (OECD) for that body to implement an alternative to the failed UN effort, illicit payments agreement.⁷⁰ However many OECD countries declined to cooperate due to concerns about the interaction of such an agreement with their domestic law.⁷¹

With the fall of the Berlin Wall, the post-Cold War era ushered in a period of immense geopolitical change.⁷² With that change, the attention of the international community was increasingly focussed on the internationalisation of economics brought about by increasing levels of globalisation.⁷³ The problem of foreign bribery

⁶² Wolfensohn (n 39).

⁶³ Moroff and Schmidt-Pfister (n 9).

⁶⁴ Martin (n 10).

⁶⁵ Ivanov (n 18) 29.

⁶⁶ *ibid* 30.

⁶⁷ *ibid*. American companies had long complained that the US Foreign Corruption Practices Act placed them at a critical disadvantage to competitors from other countries who were not constrained by such laws, allowing them to secure contracts by participating in corruption of foreign officials. US corporations were increasingly frustrated by the tacit endorsement of corruption by governments of other countries, Germany and France going so far as to allow the payment of bribes to foreign officials to be written off as tax deductible expenses. Believing that its companies were competing on an uneven playing field, the American government began seeking multinational cooperation on global corruption in the 1970s.

⁶⁸ Martin (n 10) 7.

⁶⁹ *ibid*.

⁷⁰ *ibid*.

⁷¹ Report of the International Monetary Fund Policy Development and Review Department (approved by Jack Boorman) *OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions* (18 September 2001) <<http://www.imf.org/external/np/gov/2001/eng/091801.pdf>> (9 February 2011).

⁷² D Detzer *The Impact of Corruption on Development and Economic Performance* (GRIN Verlag 2010) 1.

⁷³ *ibid*.

and corruption was suddenly given new priority by previously hesitant OECD countries who were then more receptive to the idea of an international agreement on the issue.⁷⁴

In May 1994, the OECD Ministerial Council adopted the Recommendation of the Council on Bribery in International Business Transactions, which asked members to take concrete and meaningful steps to amend their laws, tax systems, accounting and record keeping requirements and public procurement procedures.⁷⁵ In 1997, all twenty-nine member countries of the OECD and five non-member countries agreed to sign the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.⁷⁶ The OECD Convention in effect obliged signatory countries to conform to a US model prohibiting bribery and money laundering. This model was then extended further in the UN Convention Against Corruption in 2003. The UNCAC included new commitments to transparency in public works procurement and currently represents the broadest, most recent international commitment to tackling global corruption.⁷⁷

In this new era of international enthusiasm, institutions such as the World Bank and the IMF came to include anti-corruptionism in their assistance conditionalities.⁷⁸ Corruption was newly packaged as a socio-economic rather than political concern, by these institutions in order for them to depoliticise and therefore legitimately target the problem.⁷⁹ Following this, there was widespread publication of the effects of corruption by NGOs and civil society, spearheaded by TI.⁸⁰ NGOs and civil society worked to transmit the anti-corruption movement to citizens around the world and were aided by a post-communist trend towards free and active media facilitating the diffusion of the key tenants of anti-corruptionism.⁸¹

The radical change of geopolitical climate, growth in international trade spurred by globalisation, participation by civil society, and moral push from the US, converged to popularise a 'fight' against corruption. All this culminated in the appearance of the global anti-corruption movement in the 1990s. The international movement married global and local initiatives as subsets of the one force and was aimed at raising awareness of corruption as well as promoting the facilitation of knowledge transfer on the general format of anti-corruption tools and institutions.⁸² States, organisations and citizens were targeted and called to action by the movement which continues to seek limitation of the negative effects of corruption, with a particular focus on development.⁸³ Many tools and strategies have been implemented as part of the global anti-corruption movement; these are most usefully demonstrated by looking to a case study. The following section will examine some current

⁷⁴ Martin (n 10) 7. Many states and institutions had been politely silent about corruption during the Cold War due to the perceived need to prevent states from turning towards communism: Tanzi (n 13) 4.

⁷⁵ Boorman (n 71) 4.

⁷⁶ *ibid*; OECD Convention (n 29) (Paris 17 December 1997).

⁷⁷ Ivanov (n 18) 30.

⁷⁸ *ibid* 39.

⁷⁹ Wolfensohn (n 39); Ivanov (n 18) 31.

⁸⁰ Ivanov (n 39); TI was established by former World Bank official Peter Eigen in 1993: Transparency International (n 15).

⁸¹ Tanzi (n 13) 5.

⁸² B Hindess and L de Sousa 'The International Anti-Corruption Movement' European Consortium for Political Research Call to Workshop 2006

<<http://www.essex.ac.uk/ecpr/events/jointsessions/nicosia/outlines/ws2.pdf>> (9 February 2011).

⁸³ Tanzi (n 13) 5-6.

initiatives in place in India to combat corruption, examining the two main contemporary strategies: Right to Information (RTI) and E-Governance.

2 Anti-Corruptionism in India: A Case Study

Occupying 2.4% of the Earth's landmass, India supports over 15% of the world's population.⁸⁴ Socio-economic development is a major concern in India where 37% of the country's 1.35 billion people live below the poverty line.⁸⁵ India is one of the largest democracies in the world, and has a written constitution which provides for fundamental rights irrespective of caste, creed or religion.⁸⁶ In reality however, wealth distribution and fulfilment of rights are significantly uneven across the country.⁸⁷ Whilst India's rural inhabitants make up 70% of the overall population (the largest rural population of any country), those residing in agricultural areas contribute to only 20% of the national GDP.⁸⁸

Since Independence in 1947, many development programs and schemes have been launched in India in an effort to uplift the rural masses and encourage development by improving health, literacy, nutrition, employment opportunities and infrastructure.⁸⁹ Indian development and welfare programs have however long been shrouded in the mystery and bureaucratic delays associated with an administrative culture of corruption.⁹⁰ India has signed the UNCAC and Indian law condemns corruption in both the Indian Penal Code and the Prevention of Corruption Act 1947,⁹¹ but despite this, corruption has persisted as a threat to development and associated concerns of good governance and capacity building.⁹²

Anti-corruptionism has a long history in India both independently and as part of the global anti-corruption movement.⁹³ Right to Information and E-Governance are two primary strategies recently introduced within India to address the problems concerned with corruption and its impact on development. Both strategies have clear ties to the global movement as well as the particular heritage of modern India itself.

⁸⁴ 'Population of India Studies and Research on India's Population' Indian Child <http://www.indianchild.com/population_of_india.htm> (9 February 2011).

⁸⁵ 37% of the population; 'Poverty in India' Economy Watch

<<http://www.economywatch.com/indianeconomy/poverty-in-india.html>> (9 February 2011).

⁸⁶ D Mohapatra 'Democracy, Right to Information and Development' in SS Mishra SK Das and RK Sahoo (eds) *Right to Information and Rural Development in India* (New Century Publications 2009) 35.

⁸⁷ Economy Watch (n 85).

⁸⁸ BB Swain and G Nayak 'RTI and the Changing Face of Rural India' in SS Mishra SK Das and RK Sahoo (n 86) 125.

⁸⁹ SS Mishra SK Das and RK Sahoo 'Editor's Note on the Book' in SS Mishra SK Das and RK Sahoo (eds) (n 86).

⁹⁰ *ibid.*

⁹¹ T Patel 'Corrupt Practices in India: No Payoff' (1998) 20 Loyola of Los Angeles International & Comparative Law Journal 389, 399.

⁹² *ibid* 406; Transparency International India Annual Report (Delhi 2009) 2.

⁹³ H Mander and A Joshi 'The Movement for Right to Information in India: People's Power for the Control of Corruption' <<http://www.humanrightsinitiative.org/programs/ai/rti/india/articles/The%20Movement%20for%20RTI%20in%20India.pdf>> 6 (9 February 2011).

(a) Right to information

I see before my eyes, a nation is advanced in proportion as education and intelligence spread among the masses.

– Swami Vivekananda⁹⁴

As part of the international anti-corruption movement, organisations such as the World Bank and TI have encouraged governments to adopt Freedom of Information legislation to increase transparency and promote efficiency of governments.⁹⁵ The philosophy that ‘information is power’⁹⁶ underpins the role of freedom of information in tackling corruption towards development, acting as a significant tool for the empowerment of citizens by attempting to balance the uneven dynamic between the marginalized and their governments.⁹⁷ In India, the struggle for Right to Information has its origins in a grass-roots movement for the empowerment of rural people which was led by Mazdoor Kisan Shakti Sangathan (MKSS), a group dedicated to justice in wages, livelihoods and land,⁹⁸ supported by growing international intolerance for corruption as forged by the global movement.

The Indian bureaucracy, whose fundamental features were established during the era of British Colonial rule, is very powerful and has been described as sharing the British bureaucracy’s penchant for secretiveness.⁹⁹ In May 2005, the Right to Information (RTI) Act was adopted by India’s Parliament, giving Indian citizens a right to obtain information held by public authorities at national, state and local levels of government.¹⁰⁰ The RTI Act was praised as a ‘great and revolutionary law’,¹⁰¹ as the ‘greatest development in the legal history of the country.’¹⁰² Ideally the RTI Act was to usher in a new age of transparency, maturity, dignity and solidarity into India’s participatory democracy – qualities which together promote justice and equality, thus enhancing the conditions for development.¹⁰³

⁹⁴ SK Das ‘Friendly Operationalisation of RTI Act’ in SS Mishra SK Das and RK Sahoo (n 86) 67.

⁹⁵ A Roberts ‘A Great and Revolutionary Law? The First Four Years of India’s Right to Information Act’ (2010) Suffolk University Law School Research Paper No 10-02 and forthcoming in 70(6) *Public Administration Review* 1-2.

⁹⁶ Prime Minister Atal Behari Vajpayee as quoted in Basanta Kumar Panda ‘Movement for Right to Information Act’ in SS Mishra SK Das and RK Sahoo (n 86) 58.

⁹⁷ SK Das ‘Right to Information and Economic Development’ in SS Mishra SK Das and RK Sahoo (n 86) 75.

⁹⁸ Mander and Joshi (n 93).

⁹⁹ A Singh ‘Corruption and Economic Development: Right to Information as a Remedy’ Paper prepared for presentation at the Third South Asian Economics Student Meet at the University of Dhaka 10-12 March 2006 7.

¹⁰⁰ Roberts (n 95) 3.

¹⁰¹ *ibid* 3: Lord Meghnad Desai at a national conference in Delhi October 2009.

¹⁰² SK Das ‘Right to Information and Social Audit of NREGA’ in SS Mishra SK Das and RK Sahoo (n 86) 138.

¹⁰³ AK Panda and N Dhal ‘Right to Information Act and Social Empowerment’ in SS Mishra SK Das and RK Sahoo (n 86) 84.

(i) Success of the RTI Act

Reports show that since its implementation, the RTI Act has been used effectively to fight mismanagement and corruption and to improve general government responsiveness to development concerns.¹⁰⁴ An example cited often in the literature is the case of Triveni Devi,¹⁰⁵ an adult literacy teacher from an East Delhi slum. Triveni has a monthly income of only 400 rupees and holds an Antyodaya card for the poorest of the poor. Her ration card entitles her to 5kg of wheat at 2 rupees per kilo and 10kg of rice at 3 rupees per kilo each week. Routinely denied her entitlements by her local ration shop, Triveni was forced to pay market prices of 13 and 15 rupees per kilo for wheat and rice respectively, a significant drain on her income and quality of life.¹⁰⁶ Suspicious, with support from Delhi-based NGO Parivartan, Triveni filed an RTI application to request a copy of her records from the Department of Food and Supply (DFS).¹⁰⁷ When her application was processed, Triveni found that receipts indicated that she had received 25kg of both rice and wheat at ration prices each month, a thumb impression printed on the paperwork to indicate her consent.¹⁰⁸ Triveni is literate and always signs her name on documents. When confronted, the shop owner who had denied Triveni her rations immediately offered Triveni both 20,000 rupees and six months of free ration to remain silent. Triveni refused to take the money and with the assistance of Parivartan, went public with her story.¹⁰⁹

Triveni's example encouraged several other poor women to follow suit and the DFS was soon swamped in requests to supply details of why several ration shop owners were not supplying rations to benefit card holders.¹¹⁰ Stories such as Triveni's, and there are many, highlight the usefulness of RTI legislation in providing the people with a mechanism to combat transparency issues in government development programs, showcasing RTI's immense potential to expose corruption where it occurs.

(ii) Limitations of the RTI Act

Though the RTI Act offers significant hope towards eliminating the harmful effects of corruption on development, there have in practice been a number of difficulties associated with its implementation, particularly in rural areas. Legal provisions are only as effective as the institutions through which they are implemented¹¹¹ and the application of the Act thus far has thrown up many challenges including public awareness and cultural aversion to change within the Indian Civil Service.¹¹²

¹⁰⁴ Roberts (n 95) 4.

¹⁰⁵ Singh (n 99); SS Mishra SK Das and RK Sahoo (n 86).

¹⁰⁶ R Sehgal 'Triveni Devi and 109 other women vanquish corrupt ration shop dealers' *Info Change News & Features* (Delhi June 2004) <<http://infochangeindia.org/200406056381/Right-to-Information/Features/Triveni-Devi-and-109-other-women-vanquish-corrupt-ration-shop-dealers.html>> (9 February 2011).

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.*

¹¹¹ Panda and Dhal (n 103) 91.

¹¹² Das (n 97) 81.

A lack of awareness about rights, particularly among marginalised groups is a key barrier to overcoming corruption via the RTI Act in rural areas in India.¹¹³ In Alasdair Roberts' study of the RTI Act's first four years of implementation, he found that only 15% of people in India were aware of the law, and that awareness and therefore use of the RTI Act was skewed toward the urban middle class, men constituted 90% of RTI Act applicants.¹¹⁴ The effectiveness of any RTI scheme is inherently dependent on literacy levels and the motivation of people to seek formal justice, two developmental concerns which feed into the critical power imbalances that are the very source of corruption in development. The result is that negative reinforcement retards the effectiveness of RTI efforts themselves.

As concerns the difficulty of cultural change of the Indian Civil Service, Roberts notes that despite popularised rhetoric of the RTI Act's ability to overhaul Indian Administration, in practice, in many places it is difficult for citizens to lodge an application under the RTI Act. Pursuant to the act, RTI requests must be made to a Public Information Officer (PIO), yet surveys have found that three-quarters of local government offices do not display information about how to contact a PIO and that PIOs themselves are reported as unfriendly and unhelpful.¹¹⁵ Some authorities have been found to impose additional requirements on RTI applications by insisting on proof of identity of the applicant, limitations on the length or scope of requests and requirements that application fees are paid only by bank cheques or postal orders rather than cash; factors which augment the difficulty of the process for applicants and may deter them from utilising the scheme at all.¹¹⁶

There is also a reported psychological impediment to use of the RTI Act. 40% of rural respondents to an RTI Assessment and Analysis Group survey in 2009¹¹⁷ expressed that the most significant constraint they faced in utilising the RTI Act was harassment and threats from officials, applicants experiencing intimidation, threats and even physical violence on lodgement or submission of an application.¹¹⁸ In some areas, RTI has been construed by officials and village authority figures as an assault on their long-standing power relationships, resistance to transparency being entrenched in the hierarchical culture of many rural communities.¹¹⁹

Administrative obstacles such as record-keeping, lack of computers and photocopiers, lack of training and lack of enthusiasm of staff have also been shown to contribute to the RTI Act failing to be relevant to the situation as it exists in poor communities.¹²⁰

While the RTI Act has significant potential as demonstrated by its application by the disadvantaged to access records of services and bypass rent-seeking officials in an effort to hold them accountable, it remains the fact that the illiterate and disempowered are commonly not in a position to access or even be aware of RTI benefits. There are many barriers between India's poor and access to the 'information revolution' supposed by the RTI Act. However, Roberts concludes his survey of the

¹¹³ Roberts (n 95) 8. Roberts includes nine recent assessments of the RTI Act in his analysis of its effectiveness. Each of these assessments has been undertaken by a relevant Indian, regional or international body between 2007 and 2009.

¹¹⁴ *ibid.*

¹¹⁵ *ibid* 9-10.

¹¹⁶ *ibid.*

¹¹⁷ RTI Assessment and Analysis Group 'Safeguarding the Right to Information: Report of the People's RTI Assessment 2008' (Delhi October 2009) 10, 38.

¹¹⁸ Roberts (n 95) 12.

¹¹⁹ *ibid.*

¹²⁰ *ibid* 13.

Act's implementation by recalling that four years is a very short time in which to achieve substantial overhaul of the entire Indian public sector¹²¹ and despite its pitfalls, RTI continues to represent a positive way forward.

(b) E-Governance

E-Governance is the delivery of government services and information to the public using electronic means.¹²² E-Governance consists of the use of Information and Communication Technologies (ICTs) to facilitate an efficient, expeditious and transparent process for disseminating information to the public and other agencies, providing services and performing administrative activities.¹²³ E-Governance is a strategy that complements RTI principles, in its goal to promote transparency and efficiency in government. The potential for ICTs to play a helpful role in governance has been recognised around the world and represents a critical shift from traditional bureaucratic systems of governance to public-centric systems,¹²⁴ centralising processes and making administration more equitable by removing the opportunity for corruption to occur.¹²⁵

India has been described as having a 'historical tryst' with technology¹²⁶ by virtue of the large role the country has played in global software development, IT and call centre operations.¹²⁷ India is therefore in a very good position to take advantage of the digital information revolution to apply ICTs to development concerns, and has done so to varying levels of effect.

(i) Bhoomi land records

An example of the employment of E-Governance to combat corruption in India is the Bhoomi Project for the computerisation of land records in Karnataka.¹²⁸ Given the vast population employed in India's agricultural centre, land ownership is a survival issue.¹²⁹ The Bhoomi Project was conceived of to provide for the digitisation of all land records to be accessed by citizens via fingerprint authentication at centrally situated electronic information kiosks.¹³⁰ By streamlining such records electronically, the Bhoomi Project aimed to eliminate rent seeking from officials who, by virtue of the system, would cease to act as 'gatekeepers' to land records, the automation also

¹²¹ *ibid* 25.

¹²² S Paul 'A case study of E-governance initiatives in India' (2007) 39 *The International Information & Library Review* 176.

¹²³ *ibid*.

¹²⁴ V Bekkers and E Korteland 'Just Governance, ICT and the Modernisation Agenda of Public Administration: A Comparison of Some European Policy Initiatives' Paper presented at the European Group of Public Administration (Bern 1-2 September 2005).

¹²⁵ E-governance has the capacity to achieve this through the elimination of rent-seeking.

¹²⁶ P Thomas 'Bhoomi, Gyan Ganga, e-Governance and the Right to Information: ICTs and Development in India' (2009) 26 *Telemation and Information* 20, 21.

¹²⁷ *ibid* 20.

¹²⁸ *ibid*.

¹²⁹ *ibid* 24.

¹³⁰ *ibid* 20.

assisting to prevent any future interference with the records. A 2006 study noted that 80.3% of respondents found the Bhoomi system very simple to use, 9.6% finding it simple and thus preferable to the older, more bureaucratic, time consuming system.¹³¹

Despite the sound theoretical underpinnings of the Bhoomi Project and its above-mentioned satisfaction ratings, like the RTI Act its effectiveness has been hampered by problems of implementation. Not only does the use of the system depend on the willingness of farmers to travel long distances to use the information kiosks, but infrastructure issues such as electricity bottlenecks render the system dysfunctional in some areas at certain times during the day, compromising the immediacy and therefore effectiveness of the system.¹³² With those factors in mind, although the computerisation of the records limits opportunities for officers to be corrupt, it does not deal with the power imbalance maintained between the public and those who operate the kiosks who may still exploit the ignorance of peasants and rural farmers to extract rents.¹³³ Factors such as training of kiosk operators, general lack of use and caste discrimination at kiosks themselves have proved to be further limitations on the effectiveness of the project.¹³⁴

The original intent was for the Bhoomi Project to develop for broader use in the community across government departments, information to be connected to provide a form of social identity, which may be employed to obtain a bank loan or as collateral for bail.¹³⁵ However, a lack of willingness between Departments and the lack of ease with which data can be cross-referenced by Departments is an issue that awaits resolution, meaning that for now the Bhoomi Project remains an isolated initiative.¹³⁶

Pradip Thomas notes that for ICTs to be effective in dealing with development concerns, qualities such as local support, popular mobilisation and popular participation in the planning, execution and evaluation of initiatives are vital.¹³⁷ As with the impact of the RTI Act, literacy (both traditional and computer literacy), resources and mobilisation are key factors limiting the effectiveness of E-Governance initiatives such as the Bhoomi Project and it is imperative they be located in environments which support them with appropriate economic policies, technological conditions, political will and trained social capital.

3 Critique of the Anti-Corruption Movement

The global anti-corruption movement has been premised on a shared understanding of corruption as a measurable problem requiring a global, technocratic solution.¹³⁸ In reality however, due to its clandestine nature, corruption is often difficult to accurately assess and requires nuanced and integrated interventions where it occurs. Critics have suspiciously described the global anti-corruption movement as an

¹³¹ J Manor 'Successful Governance Reforms in Two Indian States: Karnataka and Andhra Pradesh' IDS Discussion Paper No 385 (2006) 19.

¹³² Thomas (n 126) 27.

¹³³ *ibid* 26.

¹³⁴ *ibid* 28.

¹³⁵ *ibid*.

¹³⁶ *ibid*.

¹³⁷ *ibid* 23.

¹³⁸ Ivanov (n 18) 37.

‘industry’, the impact of which has been described as unclear.¹³⁹ It has been questioned whether or not the resources mobilised around the concept of anti-corruption have positively affected the phenomenon they were intended to reduce.¹⁴⁰ Two strong criticisms of the anti-corruption movement are its want of translation into positive change for people on the ground and the negative effects of its tendency to use all-encompassing rhetoric to promote anti-corruption as a singular solution for development.

(a) Implementation

Related to a disjunction between perceptions locally and globally, the difficulties of implementation discussed in the context of RTI and E-Governance in India demonstrate the broader problem of the effective implementation of strategies associated with the global anti-corruption movement. Richard Heeks offers an interesting perspective on this particular failure of the movement describing the problem in terms of technology transfer and contextual collision.¹⁴¹ In his conception of the main barriers to effective implementation of anti-corruption measures such as RTI and E-Governance, Heeks uses the term ‘technology transfer’ to deal with the idea that large scale initiatives conceived in a particular context may not necessarily have the desired effects when appropriated to another.¹⁴² The idea is that a system of tools, processes, values and resources designed in one context to address a particular problem carry with them inscribed assumptions about the skills, values and resources of the user context. Similarly, the notion of ‘contextual collision’ deals with the discrepancy between the circumstances of design and those of use, where incompatibility compromises the viable intervention of the proposed solution. Heeks contends that many failures of anti-corruption projects associated with the global movement have been due to the incompatibility of implicit assumptions involved in the creation and perceived application of anticorruption measures to different social contexts. When requirements of local agencies and civil service (that PIOs in the RTI Act scheme are honest, efficient and rational) are mismatched with the reality of the situation on the ground (that they are unfriendly and unhelpful or not easily identifiable), it becomes inevitable that the theoretical impact of the particular model will be reduced in practice.¹⁴³ Heeks describes the need for the accommodation of anti-corruption measures into the specific time and place of implementation to account for the deficits created by the differences between the ideal and the real.

Whilst tools and strategies have been helpful where their targets are literate and not isolated or insurmountably disempowered, application of them without due consideration of the cultural context to which they are applied will not be effective. This is the experience of E-governance as experienced at the Bhoomi project and also of the RTI scheme as implemented in traditionally hierarchical rural areas in India. As

¹³⁹ S Sampson ‘The Anti-Corruption Industry: From Movement to Institution’ (2010) 11(2) Global Crime 261, 264.

¹⁴⁰ *ibid.*

¹⁴¹ R Heeks ‘Why Anti-Corruption Initiatives Fail: Technology Transfer and Contextual Collision’ in S Bracking (ed) *Corruption and Development: The Anti-Corruption Campaigns* (Palgrave Macmillan 2007) 258.

¹⁴² *ibid.*

¹⁴³ *ibid* 264.

observed by scholar Kalin Ivanov, ‘although the global agenda aims to be multipronged and tailored to local circumstances, it still prescribes similar policies from Nigeria to Bulgaria’.¹⁴⁴ Whilst global strategies are helpful, they are not a panacea in and of themselves. Technology transfer and contextual collision represent one way of conceptualising the difficulties faced by anti-corruptionism as a movement, problems that need to be addressed for corruption to be effectively dealt with at a local level.

(b) Rhetoric

A further criticism of the movement is its use of very powerful and emotive rhetoric which in its most extreme form, suggests that anti-corruptionism is the single most important factor in development. Whilst useful for advertising the key, very important relationship between development and corruption, this over-emphasis has been demonstrated to have negative as well as positive effects on local communities. The danger of such an all-encompassing discourse focussed on corruption is that corruption has in some situations become the one tangible explanation for all experienced ills, in effect creating a channel for social resentment and/or a facility to allocate blame to government systems, irrespective of the actual existence of corruption on a case by case basis.¹⁴⁵ To provide an example, author Steven Sampson indicates that the abundant prevalence of strong anti-corruption rhetoric in Romania led many Romanians who lost civil trials to become convinced that the judge had been bribed, regardless of whether or not this was actually the case.¹⁴⁶ For many Romanians, corruption was the perceived answer to any personally unfavourable outcome, a vehicle through which they could lament their own experience by attributing blame to governance systems.¹⁴⁷ Further, there is evidence that if strong anti-corruption rhetoric lacks tangible results it may reinforce rather than combat local cynicism about politics, government and development generally by entrenching a hopelessness and systemic lack of faith in leadership.¹⁴⁸

Disturbingly, strong rhetoric against corruption has been suggested to have added to the appeal of extremists whose propaganda pits an underprivileged, innocent people against a corrupt elite,¹⁴⁹ effectively arming political groups with a powerful lexicon that they have no incentive to use responsibly and often use to further weaken the legitimacy of the state.¹⁵⁰ Former Executive Director of the World Bank, Dr Moises Naim, was once optimistic that global trends would shrink corruption. However he has since observed that ‘today, war on corruption is undermining

¹⁴⁴ Ivanov (n 18) 28.

¹⁴⁵ *ibid.*

¹⁴⁶ S Sampson ‘Integrity Warriors: Global Morality and the Anti-corruption Movement in the Balkans’ in D Haller and C Shore (eds) *Corruption: Anthropological Perspectives* (Pluto 2005).

¹⁴⁷ *ibid.*

¹⁴⁸ J Chubb and M Vannicelli ‘Italy: A Web of Scandals in a Flawed Democracy’ in AS Markovits and M Silverstein (eds) *The Politics of Scandal: Power and Process in Liberal Democracies* (Holmes & Meier 1988) 138-9.

¹⁴⁹ Ivanov (n 18) 38.

¹⁵⁰ M Philp ‘Political Corruption, Democratisation and Reform’ in S Kotkin and A Sajo (eds) *Political Corruption in Transition: a Sceptic’s Handbook* (Central European University Press 2002) 79.

democracy, helping the wrong leaders get elected and distracting societies from facing urgent problems.¹⁵¹

Whilst corruption is an important variable contributing vitally to the development debate, the criticisms suggested herein imply that the anti-corruption movement has in certain circumstances failed to be adequately sensitive to its own limitations. There are dangers in corruption becoming a universal diagnosis for a nation's ills and experience suggests that a more contextualised analysis of corruption as a social construct with careful focus on implementation, could inform more successful policies.¹⁵²

E CONCLUSION

The phenomenon of corruption is as old as humankind and corruption persists in all modern societies in some form or other. Harmful to law, order and governance wherever it occurs, the impact of corruption on socio-economic development is particularly acute. Whilst there are many elements to 'corruption', various forms of criminalised behaviours such as rent seeking and misappropriation of funds for development projects are the particular manifestations which most strongly compromise the ability of development initiatives to achieve their targeted impact. The effects of corruption on development are profoundly negative and are difficult to overcome, as proven by the global anti-corruption movement's twenty year-long 'fight against corruption'. Anti-corruptionism has grown to play a large role in the international development scene, as nations, organisations and civil society have recognised its major impediment to development. A broadly experienced phenomenon, corruption is a value-ridden, context-dependent problem and experience has shown that treating it as if it were clear-cut and cohesive is inappropriate.¹⁵³

Whilst contributing significantly to development through initiatives such as RTI and E-Governance in India, global efforts to address corruption and the pursuit of streamlined knowledge about corruption can themselves be seen as partly responsible for the flaws of the anti-corruption movement itself.¹⁵⁴ Whilst international and domestic laws against corruption are firmly in place, the impact of those laws on development is contingent in practice on their implementation. Technology transfer and contextual collision are important considerations for the application of anti-corruption tools and strategies to specific contexts, underlining the imperative fact that strategies need be responsive to the particular contexts to which they are applied; be that cultural, technological, political or economic. In spite of the remaining chronic need to address corruption to promote development, overzealous promotion and insensitive application of anti-corruptionism may have negative rather than positive outcomes depending on a multitude of factors operating in any given place and time. Whilst anti-corruptionism remains relevant and important, international actors must learn from the failures of the global movement to move to adequately guard against the negative effects of corruption on development into the future.

¹⁵¹ Ivanov (n 18) 40.

¹⁵² *ibid* 41.

¹⁵³ *ibid*.

¹⁵⁴ *ibid*.