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“Transparency in Governance is the Ultimate Key to Reforms”



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TRANSPARENCY IN GOVERNANCE IS ULTIMATE KEY TO REFORMS

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KEY WORDS :-

Transparency, Governance, Reforms

INTRODUCTION :-

“Governance is the manner in which power is exercised in the management of a country’s economic and social resources for development. Good governance is synonymous with sound development management.”

-World Bank & Asian Development Bank¹

Governance means "the process of decision making and the process by which decisions are implemented or not implemented". Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance. Nowadays Good Governance word has become very popular in the today’s scenario. Governance is not to be seen as performance of any duty or obligation but as a sincere duty towards the society. Thus Governance should be Good Governance not only the Governance.

For Good Governance, Transparency in governance is an integral part. Without it, it is not possible to have good governance whether at the International level, National level, Local level or at the Corporate level.

Good governance has major characteristics like participation, rule of law, transparency, responsiveness, equity and inclusiveness, effectiveness, efficiency, accountability and

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¹ Asian Development Bank, “Governance Bank Policies,” *Operations Manual*, Section 54, Asian Development Bank, Manila, January 13, 1997; World Bank, *Governance and Development*, World Bank, Washington DC, 1992. p. 1.

strategic vision and consensus orientation. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making and implementation. Transparency is widely recognized as a core principle of good governance. Transparency means sharing information and acting in an open manner. Free access to information is a key element in promoting transparency. Information, however, must be timely, relevant, accurate and complete for it to be used effectively. Transparency is also considered essential for controlling corruption in public life.²

Governance v/s. Good Governance

“The term governance, as generally used, encompasses all aspects of the way a country is governed, including its economic policies and regulatory framework. Corruption is a narrower concept, which is often defined as the abuse of public authority or trust for private benefit. The two concepts are closely linked: an environment characterized by poor governance offers greater incentives and more scope for corruption. Many of the causes of corruption are economic in nature, and so are its consequences – poor governance clearly is detrimental to economic activity and welfare.” — **IMF**.³

“Good governance means ruling justly, enforcing laws and contracts fairly, respecting human rights and property rights, and fighting corruption. Encouraging economic freedom means removing barriers to trade with neighbors and the world, opening the economy to foreign and domestic investment and competition, pursuing sound fiscal and monetary policies, and divesting government from business operations. Economic freedom also means recognizing that it is the private sector that creates prosperity, not central planning or bureaucracies.” — **Paul O’Neill**, till recently Treasury Secretary of the US.⁴

In the World Bank’s definition, ‘governance’ encompasses the form of political regime; the process by which authority is exercised in the management of a country’s economic and social resources for development; the capacity of governments to design, formulate and implement policies and discharge functions. The Bank has defined ‘**Good Governance**’ with six main characteristics:

² V K Parigi, P Geeta and Rameesh Kailasam, “Ushering Transparency for Good Governance”, available at http://www.cgg.gov.in/workingpapers/Ushering_in_Transparency.pdf accessed on September 15, 2012

³ IMF, “The IMF and Good Governance,” A Factsheet, August 31, 2002, p. 1.

⁴ *The Economic Times*, December 17, 2002, p.7.

1. Voice and accountability, which includes civil liberties and political stability;
2. Government effectiveness, which includes the quality of policymaking and public service delivery;
3. The quality of regulatory framework;
4. The rule of law, which includes protection of property rights;
5. Independence of the judiciary; and
6. Curbing corruption.⁵

RESEARCH METHODOLOGY :-

Objectives of the Study

The objective of the current study is to examine level of transparency in the governance prevailing in Government Sector (Legislative & Executive), Judiciary and Private Sector. It will also make an attempt to evaluate the relation in terms of transparency between Government Sector, Judiciary and Private Sector and its effect in bringing reforms in the governance.

Research Questions:-

1. Will the transparency only in the Government Sectors bring reform?
2. Will the transparency only in the Judiciary bring reforms?
3. Will the transparency only in the Private Sectors bring reforms?
4. Will the transparency in the Government Sectors, Judiciary and Private Sectors all together bring reforms?

⁵ Daniel Kaufmann, Aart Kraay, and Pablo Zoido-Lobaton, "Aggregating Governance Indicators," *Policy Research Working Paper*, No. 2195, World Bank, Washington DC, October 1999; and Daniel Kaufmann, Aart Kraay, and Pablo Zoido-Lobaton, "Governance Matters," *Policy Research Working Paper*, No. 2196, World Bank, Washington DC, October 1999.

Research Design/Data Collection

In order to answer the research objectives a Content Analysis has been carried out using website of the government, judiciary, regulating agencies, concerned organizations, reports in different forms, journal papers and newspaper articles.

Findings

The present paper has revealed the various facets of governance in country and the transparency level. It has also highlighted the scenario that how transparency in governance in the government sector, judiciary and the private sector all together help in bringing the reforms in the country. The findings of this paper are based on partial data collection and mainly on secondary data available in different forms.

Originality

The present paper gives us a comprehensive analysis of transparency in governance of government sector, judiciary and private sector and reforms brought from this. In another words we can say that transparency in governance, not only in one sector but in all three segments of the country as mentioned above bring the reforms and this will be originality in the paper.

TRANSPARENCY IN GOVERNMENT SECTOR :-

Government is supposed to govern the affairs of the country in well desired manner but it seems an impossible task to achieve. Government used to live in the era of secrecy. Nobody was knowing what was happening in the government department. Thus this gave birth to the Corruption. Every part of the government is suffering from the decease of corruption. But we can make effort against this by compelling government to bring transparency in their governance. Finally in the year 2005, Right to Information Act (RTI) came into being. After the enactment of the RTI Act, it has become easy to look into the working of the government department and we can know the affairs of government. RTI Act applicable to all public authorities. In the act definition of *Public Authority* is having wide meaning. It also covers Public Sectors Units and organization substantially financed by the governments.

There are many success stories of RTI. Few of are shown as under

- Village primary health center got doctors.
- Village school got the teachers.
- Transparency in public distribution system for BPL families.
- School uniforms distributed in schools.
- Exposing corruption in medicine procurement at public sector unit.
- Payment of pension dues to railway staff.

This has helped to greater transparency in the working of government departments. In the initial years, citizen of India got lot of information from various government departments. But with the passage of the time government officials have learnt to cope up with the applications filed under the RTI Act. RTI application, appeal procedure have become an arduous task. Many governments department deny the informations taking the improper shelter under the exemption clauses provided under RTI Act. In most of the cases they give incomplete reply. Sometimes they give such informations that have not been asked in the RTI application at all. Government official really under threat hence they feel unsecured while replying the RTI applications.

One can make an appeal against the order or non-reply of Public Information Officer. Appeal mechanism has completely collapsed set up under RTI Act. It takes 2-3 years for first hearing of RTI Appeal. In some of the office of Information Commissioners, vacancies are there. There are shortages of Information Commissioners to hear and dispose the appeal. It was also revealed through the RTI application that Central Information Commissioner has fined in only 1% of the total appeal. CIC is empowered to impose fine on PIO and Appellate Authority but they are not using this power enshrined in the RTI Act. Unless and until there is deterrent effect on the government official, they will act as they like.

Many RTI Activists are trying to expose corruption by using RTI Act in efficient manner. But it is strange that till today more than 150 attacks are noticed and out of this around 20 are the fatal ones. To protect the killings of the RTI Activist government has formed the bill called The Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010 and it has been passed by the Lok Sabha and it is pending before the Rajya Sabha.

TRANSPARENCY IN JUDICIARY :-

Transparency in Judiciary also can bring reforms in the country. In some previous incidents we have seen judges' reluctance toward transparency. One of the most important example was Judges' Assets case, in year 2009 Subhash Chandra Agarwal filed an RTI Application to Central Public Information of Supreme Court of India asking informations about the assets of judges of the Supreme Court and ultimately matter reached to Division bench of Delhi Court. Delhi High Court upheld the decision of single judge bench and declared that details of the assets of Supreme Court judges to be declared.

Delhi HC made strong remark in end of the judgment that "It was Edmund Burke who observed that "All Persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust and that they are to account for their conduct in that trust". Accountability of Judiciary cannot be seen in isolation. It must be viewed in the context of a general trend to render governors answerable to the people in ways that are transparent, accessible and effective. Behind this notion is a concept that the wielders of power – legislative, executive and judicial – are entrusted to perform their functions on condition that they account for their stewardship to the people who authorize them to exercise such power. Well defined and publicly known standards and procedures complement, rather than diminish, the notion of judicial independence. Democracy expects openness and openness is concomitant of free society. Sunlight is the best disinfectant.

(Secretary General, SCI v/s. Subhash Chandra Agarwal, Delhi HC, Date of Judgment 12th January, 2010)

Judge's main contention is that transparency will obstruct the independence of the judiciary and ultimately hindering the justice delivery system. Judiciary is one of the organs of Government; other two are Legislative and Executive. Judiciary also be as transparent as Legislative and Executive.

Looking at the many complaints filed by the public against judges of higher judiciary, Parliament introduced The Judicial Standards and Accountability Bill, 2010. The Bill, which provides a mechanism for looking into complaints against judges, not only lays down judicial standard but also makes it necessary for judges of Supreme Court and High Courts to declare their assets and liabilities. After passing this bill, more transparency and accountability will be seen in Judiciary, ultimately strengthening the credibility and independence of the judiciary.⁶

⁶ "Cabinet nod for Judicial Transparency Bill", Times of India, October 6, 2010 available at http://articles.timesofindia.indiatimes.com/2010-10-06/india/28252263_1_accountability-bill-judges-high-courts accessed on September 10, 2012

In year 2010 Chief Justice S H Kapadia took a bold decision ordering mass transfer of 20 judges in ‘public interest’. This helps to beat the corruption avoiding long tenure of judges at one particular place.

Corruption is rampant in Indian Judiciary. According to Transparency International, judicial corruption in India is attributable to factors such as “delays in the disposal of cases, shortage of judges and complex procedures, all of which are aggravated by a preponderance of new laws”. Anti-corruption tools such as the Right to Information Act (RTI), social audit, citizens’ charters and use of technology are wonderful tools to check corruption, but majority of the population in the country are not aware of these instruments. Transparency International has also devised tools such as Integrity Pact and Development Pact to check corruption in areas of procurement and political institutions, respectively.⁷

I made a survey on pendency of cases in India while writing a paper titled “*Delayed Justice – Denial of Fundamental Rights*” and it was found that fifty percent of the respondent opined that cases are delayed because of corruption in the judiciary. It was also found that there is no proper monitoring of the cases from its initiation to implementation. Independent Case Monitoring Authority is required for effective justice delivery system. This independent authority will bring the transparency in the judicial system.⁸

TRANSPARENCY IN PRIVATE SECTOR :-

Private Sector i.e. Corporates should not be immune to transparency. Companies are having various stakeholders and they are very much interested in the good governance of the corporates. Corporates have to run the business in the well desired manner without jeopardizing the interest of the stakeholder. But it is not plausible that all are operating their business in very transparent manner. We have seen lot of scams in the corporates including latest one Satyam Case. It is challenging to bring transparency in the corporates as there is no mechanism like Right to Information Act which is only applicable to public authority. Until

⁷ A Abdulraheem, “Corruption in India :An Overview, Causes, Consequences and Remedial Measures”, Social Action, Vol 59, October-December, 2009 available at <http://www.isidelhi.org.in/saissues/articles/artoct09.pdf> accessed on September 20, 2012

⁸ Kalpeshkumar L Gupta, “Delayed Justice – Denial of Fundamental Rights” in *Contemporary Challenges and Prospects for Strengthening Rule of Law and Democracy in the Midst of Anarchy and Chaos in the Indian State Separation of Powers, Judicial Accountability and Relevant Provisions of the Indian Constitution Revisited*, published by Gujarat National Law University, February 2012, p 57,

and unless a whistle blower informs the outer world about the mal-administration in the company, it is next to impossible to know that. There are some reporting systems under the various corporate laws but that are inefficient for bringing transparency in the private sectors.

Companies Bill 2011, Transparency and Accountability

Companies Bill 2011 is designed on the principles of accountability and transparency. Thus almost all the provision aims towards achieving higher level of transparency and accountability. But the bigger question is how far these provisions can be practically implemented. Some of the major provisions of new bill which brings about more transparency and accountability are – Independent Directors, Reconstitution of National Advisory Committee on Accounting and Auditing Standard (NACAAS) as National Financial Reporting Authority (NFRA), Increase liability of Auditors and Auditor's Firm, Whistle Blowers Policy etc.

Whistle Blower Policy

In the light of the recent experience of corporate delinquencies and mis-governance not only in India but also in the developed economies of the world, the standing committee on finance had expressed their concern on the need for an internal watchdog mechanism in the company.

Overseas investors' cold shoulder to India may not all be due to economic woes, but the steadily rising worries about corporate governance may be also playing a role. Allegations of misuse of funds and not honouring agreements have begun to crop up from across the country as many past assumptions on businesses turned sour. Companies that promised bountiful returns to investors stand ravaged. Last year saw the arrest of the managing director of an education company for fraud, easing off of the doyen of micro-finance industry, a promoter of a tea company accusing partner of diverting funds. All these may not be of the magnitude of Satyam Computer Services, the biggest 7,000-crore corporate fraud in the country, but are getting prominent and are capable of hurting investor sentiment.⁹

“Corporate Governance and Foreign Direct Investment into a jurisdiction have an important correlation” says Ravi Singhania, Managing Partner of law firm Singhania & Partners. “The higher the level of corporate governance, greater the amount of FDI flows into the country”.

⁹ Maulik Vyas, “Corporate Governance issues too play spoilsport for fund flows”, Economic Times, January 3, 2012, available at http://articles.economictimes.indiatimes.com/2012-01-r03/news/30584756_1_corporate-governance-corporate-fraud-companies-bill accessed on August 5, 2012

"Corporate governance or lack of it seems to be one of the top-most concerns of foreign funds wanting to invest in India," says Pratibha Jain, partner, Nisith Desai & Associate. "Lack of transparency coupled with series of scams without a strong response from the regulators to address the fundamental issues relating to corporate mismanagement in India, could have a negative impact on foreign investments into India." ¹⁰

Companies from Norway's Telenor to private investor Bain Capital are embroiled in controversies. Telenor's joint venture partner Unitech's founding family member was behind bars for months for allegedly playing a role in loss to the exchequer in purchase of telecom license. Bain accused its investee company Lilliput, maker of kids garments, of fudging accounts. India ranks 134, out of 183 countries on the World Bank's index of 'Ease of Doing Business'. Some hope could be revived if the proposed Companies' Bill is cleared by Parliament, since it has provisions that would strengthen the role and increase the responsibility of independent directors on the companies' board. "The delays in the passing of the new Companies Bill have certainly impacted reforms which could have made India Inc more transparent," says Pradip Khaitan, partner of Khaitan & Co. ¹¹

TRANSPARENCY INITIATIVE – SOME CASE STUDIES

1. Integrity Pact :-

The Integrity Pact (IP) is a tool developed in 1990s by Transparency International (TI) to help governments business and civil society to fight corruption in public contracting and procurements. Transparency International India (TII) came into existence as a national chapter of TI in the year 1997. TII has advocated IP as one of the important tool to curb corruption in procurement. IP establishes mutual contractual rights and obligations to reduce the high cost and effect of corruption. It covers all contract related activities from pre-selection of bidders, bidding, contracting, implementation, completion and operation. Thus IP is intended to make public contracting and procurement transparent by bidding to all ethical conduct. It also envisages a monitoring role for the civil society which is the ultimate beneficiary of such action. ¹²

¹⁰ ibid

¹¹ ibid

¹² Transparency International India, available at

http://www.transparencyindia.org/resource/project_files/Brochure-_Integrity_Pact.pdf_1289376032.pdf
accessed on September 15, 2012

The IP was introduced in India in 2006 with the support of Central Vigilance Commission (CVC). The second Administrative Reforms Commission (ARC) has also supported the concept of IP for controlling corruption in contracting. The Prime Minister in his address in year 2009 to CBI and State Anti-corruption Bureau mentioned IP as a tool to curb corruption. Since 2006, 44 Central Public Sector Undertakings (PSUs) have developed IP. Some of them are ONGC, HPCL, Coal India, BSNL, SAIL, GAIL etc. As reported by various PSUs, it has proved an effective tool in dealing with malpractices in procurement. The IP consist of a process of signing an agreement between the government or a government department and bidders for a public sector contracts. It contains commitment to the effect that neither side will pay, offer, demand or accept bribes or collude with competitors to obtain the contract, or while carrying it out. Besides, bidders will disclose all commissions and similar payments made by them to anybody in connection with the contract. IP also introduce a monitoring system that provides for independent oversight and accountability.¹³

2. e-Governance bringing the Transparency, Case of Tamilnadu Medical Services Corporation Ltd. :-

Tamil Nadu Medical Services Corporation Ltd. (TNMSC) was set up with the primary objective of ensuring ready availability of all essential drugs and medicines in the Govt. Medical Institutions throughout the State by adopting a streamlined procedure for their procurement, storage and distribution. It was incorporated under the Companies Act, 1956 in 1994 and commenced its functions of purchase, storage and distribution of drugs and medicines from 1995. TNMSC aim is to make the drugs and materials available to the poorest of the poor and ‘Service to the Public’.

The Tamilnadu Medical Services Corporation Limited is engaged in the procurement, storage and supply of 268 drugs and medicines, 84 suture items and 63 surgical items to the various Government Hospitals, Primary Health Centres and through them to the Health Sub-Centres throughout Tamilnadu. TNMSC is also engaged in Procurement, storage and distribution of 114 veterinary drugs to the various veterinary dispensaries under the control of the Directorate of Animal Husbandry.

¹³ ibid

Robust IT architecture holds key to making government's new health care plan effective.¹⁴

India's per capita public spending on health is an abysmal \$32 or about Rs 1,800 per annum. The neediest of patients are often denied drugs critical for their survival. Against this backdrop, the government's decision to provide free essential drugs to all is a belated but welcome step towards a much-needed universal healthcare policy. The Right to Health is as important as the Right to Education. The 12th five-year Plan has proposed an outlay of Rs 28,560 crore or \$6 billion for healthcare. The plan must be well thought out and executed or it will fail like many well-meaning projects. The central government is doing well in using the Tamil Nadu model as the blueprint for the national healthcare policy.

Tamil Nadu took the lead in providing universal health coverage by setting up an effective drugs procurement and distribution mechanism in 1994. It is IT-enabled supply chain management system ensures delivery to needy patients, transparency to prevent misuse and stringent quality control to eliminate spurious drugs. Kerala and Rajasthan are successfully emulating this model.

To implement an effective policy, the government will need to put in place robust IT infra-structure, stringent processes with checks and balances, quality compliance measures and the infrastructure to procure and distribute drugs. With the right approach, India can build one of the most advanced healthcare systems in the world. The challenge is monumental, but as the TN model shows, e-healthcare structured around a robust IT infrastructure is the key. It ensures transparency and accountability along with efficient supply and inventory management. This is fundamental to ensuring timely and free medication for those who need it most.

¹⁴ Kiran Mazumdar Shaw, “Robust IT architecture holds key to making government's new health care plan effective”, Times of India, August 22, 2012 available at http://articles.timesofindia.indiatimes.com/2012-08-22/edit-page/33304120_1_tn-model-spurious-drugs-drugs-account accessed on September 10, 2012

The Tamil Nadu Medical Services Corporation (TNMSC), a state-owned company, was set up with the mission to ensure availability of essential affordable drugs to all. The TNMSC built its procurement and distribution system on a well-designed IT architecture, ensuring that the supply chain from manufacturer to warehouses to pharmacy and, finally, to the patient is tracked. The IT system ensures quality compliance, transparency in procurement and distribution, and prevention of abuse. Based on this successful model, the Centre will ask state governments to set up autonomous corporations for bulk purchase of essential drugs through a transparent tendering process.

As far as quality control and transparency go, TNMSC's efficient tendering process helps discover the lowest possible price. It purchases only from manufacturers holding Good Manufacturing Practice certificates and follows a stringent testing process that tests each batch. If a product fails, the batch is returned; if a company fails thrice, it is blacklisted. Its procurement process is just as effective. Tendered drugs received at the central warehouse undergo testing, and, on approval, TNMSC releases them to its 23 district warehouses. A centralized computerized management information system tracks inventory and places orders, ensuring drug availability without overstocking. In the final stage, distribution, all government-run clinics and hospitals are issued a passbook — the backbone of the system. When they require a drug, it is noted in the passbook and the system informs the nearest warehouse to fulfill the requirement.

3. e-Setu

E-Setu has become the electronic bridge between the people and the government especially for people in distant places. 'Setu' in the local language means bridge. E-Setu has been considered as a unique example of Government-to-Citizen (G2C)

The e-Setu practice is located in Jorhat district of Assam. The e-Setu practice is a sincere attempt to bridge the citizen's access to Information and government services. It attempts to provide public services delivery at the doorsteps of common man with mixed success. Instead

of the citizens had to travel to offices at the district headquarters from remote far away villages everyday to receive various services like receiving certificates/copies of public records, etc , the practice has helped to avail these in the vicinity of their villages through the e-Setu platforms. With this the loss for the citizens in the form of loss of day's income, cost of transportation, uncertainty regarding availability of the relevant official/information is drastically reduced. Citizen services and grievances or requirements are fulfilled within a maximum period of 10 days and at minimal user charges. E-Setu is thus a bridge to address delay, time consuming and costly public service delivery using technology or online platform.¹⁵

4. National e-Governance Plan (NeGP)

Over the years, a large number of initiatives have been undertaken by various State Governments and Central Ministries to usher in an era of e-Government. Sustained efforts have been made at multiple levels to improve the delivery of public services and simplify the process of accessing them. **e-Governance** in India has steadily evolved from computerization of Government Departments to initiatives that encapsulate the finer points of Governance, such as citizen centricity, service orientation and transparency. Lessons from previous e-Governance initiatives have played an important role in shaping the progressive e-Governance strategy of the country. Due cognizance has been taken of the notion that to speed up e-Governance implementation across the various arms of Government at National, State, and Local levels, a programme approach needs to be adopted, guided by common vision and strategy. This approach has the potential of enabling huge savings in costs through sharing of core and support infrastructure, enabling interoperability through standards, and of presenting a seamless view of Government to citizens.¹⁶

The National e-Governance Plan (NeGP), takes a holistic view of e-Governance initiatives across the country, integrating them into a collective vision, a shared cause. Around this idea, a massive countrywide infrastructure reaching down to the remotest of villages is evolving, and large-scale digitization of records is taking place to enable easy, reliable access over the

¹⁵ "E-Setu – Bridge Online Between People & Government" available at <http://indiagovernance.gov.in/files/E-setu.pdf> accessed on September 21, 2012

¹⁶ Department of Electronics and Information Technology, Govt. of India available at <http://www.india.gov.in/outerwin.php?id=http://mit.gov.in/content/national-e-governance-plan> accessed on September 15, 2012

internet. The ultimate objective is to bring public services closer home to citizens, as articulated in the Vision Statement of NeGP.

"Make all Government services accessible to the common man in his locality, through common service delivery outlets, and ensure efficiency, transparency, and reliability of such services at affordable costs to realize the basic needs of the common man"

The Government approved **the National e-Governance Plan (NeGP), comprising of 27 Mission Mode Projects (MMPs) and 8 components, on May 18, 2006. The Government has** accorded approval to the vision, approach, strategy, key components, implementation methodology, and management structure for NeGP. However, the approval of NeGP does not constitute financial approval(s) for all the Mission Mode Projects (MMPs) and components under it. The existing or ongoing projects in the MMP category, being implemented by various Central Ministries, States, and State Departments would be suitably augmented and enhanced to align with the objectives of NeGP.¹⁷

Online Services under National e-Governance Plan covering Income Tax, Passport/VISA, Company Affairs, Central Excise, Pensions, Land Records, Road Transport, Property Registration, Agriculture, Municipalities, Grampanchayats (Rural), Police, Employment Exchange, E-Courts

ISSUES & CHALLENGES REGARDING TRANSPARENCY IN GOVERNANCE :-

GOVERNMENT SECTOR

Government used to work in culture of secrecy. People were not able to know about the working of the government. This culture led to non-transparent behavior of the government. In the year 2005, much needed Right to Information Act passed to bring transparency in the governance. Tool of RTI helped to unearth inefficiency and mal administration in the governance. RTI is having many success stories till date but it is also noticed that it is gradually dying. Appeal system has completely collapsed. According to RTI activists, if you file a second appeal to information commissioner, first hearing will come up after two to three year. There are vacancies of information commissioner who are entrusted to dispose of

¹⁷ ibid

appeal in well desired manner. RTI Activist play an pivotal role in uncovering corruption in the system but unfortunately till date there are more than one hundred fifty attack on these activist out of these around twenty are fatal ones. To cope-up with this problem government has introduced **The Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010** better known as Whistle Blowers Bill. The Bill seeks to protect whistleblowers i.e. persons making a public interest disclosure related to an act of corruption, misuse of power or criminal offence by a public servant. This bill is still pending in the parliament.

Lokpal Bill can help to bring transparency and accountability in the system but unfortunately it has not been passed till today. We can see lot of agitation for passing the strong **Lokpal Bill 2011** unlike government bill. The Bill seeks to establish the office of the Lokpal to investigate and prosecute cases of corruption. The Lok Pal will cover the Prime Minister after he demits office, Ministers, Members of Parliament, Group 'A' officers and officers of organizations which are either government aided or funded by public donations.

One more tool that can play a vital role in bringing transparency and accountability that is Citizen Charter. Parliament has introduced **The Right of Citizen for Time Bound Delivery of Goods and Services and Redressal of their Grievance Bill, 2011** in December 2011. The Bill seeks to confer on every citizen the right to time bound delivery of specified goods and services and provide a mechanism for grievance redressal. The Bill makes it mandatory for every public authority to publish a Citizen's Charter and appoint Grievance Redress Officer (GRO) within six month of the Act coming into force.

JUDICIARY

Judiciary is also affected by the deasease called Corruption. Corruption has stepped slowly in the judicial system and it has been affected badly. People can hope for justice from Judiciary only but having affected by corruption how a person can rely on the system. We do not see any transparency in the judicial system. This is one of the reason for delay in disposal of cases and biased decision.

In December 2010, parliament introduced **The Judicial Standards and Accountability Bill, 2010**. This Bill requires judges to declare their assets, lays down judicial standards and establishes process for removal of judges of the Supreme Court and High Courts. This bill will repeal the Judges Inquiry Act, 1968. Looking at the allegation of corruption and recent

impeachment motion against the judges of the higher judiciary, this bill help to hold the judges accountable for their acts. The Bill establishes the National Judicial Oversight Committee, the Complaint Scrutiny Panel and an Investigation Committee. Any person can a complaint against a judge to the Oversight Committee on grounds of ‘misbehaviour’ This bill make an attempt to restore the confidence of people in the higher judiciary.

Justice Delayed is Justice Denied is inherently associated with Indian Judiciary. More than 3.2 crore cases are pending in the judicial courts in India. There are many reason for such delay in disposal of cases i.e. Shortage of judges, courts, low case disposal rate, infrastructure etc. Apart from this one reason is of lack of proper monitoring of cases from its initiation to implementation of order passed. Indian Judiciary requires an independent case management authority which will keep vigil on the cases lying in the different judicial and quasi-judicial body of the county.¹⁸

PRIVATE SECTOR

Recent scams shows the mal-administration going in the private sectors i.e. Corporates. There is no mechanism as such for transparency in the private sector. Government cannot compel corporates to act in the transparent manner unlike public authority as we seen above. We can certainly develop some mechanism so that, transparency level can be set in the private sector as well to the some extent. Independent Director and the Auditor can be whistle blower in the private sector.

Parliament has introduced the **Companies Bill, 2011** and significance and accountability of Independent Director and Auditor have been specifically pointed out in the said bill. This bill will repeal the Companies Act, 1956 and come up with big changes and provisions. This new act will improve the corporate governance practices especially the role of independent directors and auditors and introduction of whistle blowing mechanism. Clause 149 of Companies Bill, 2011 states that an independent director must not have "any pecuniary relation" with the company, beyond specified limit thus this will help to adjudge the independence of the director. Independent Director can play a crucial role in whistle blowing as he is very well aware about affairs going in the board room. Apart from Independent Director, an auditor is expected to blow the whistle

¹⁸ Kalpeshkumar L Gupta, “Delayed Justice – Denial of Fundamental Rights” in *Contemporary Challenges and Prospects for Strengthening Rule of Law and Democracy in the Midst of Anarchy and Chaos in the Indian State Separation of Powers, Judicial Accountability and Relevant Provisions of the Indian Constitution Revisited*, published by Gujarat National Law University, February 2012, p 57,

and report to the central government at the first hint of the financial fraud perpetrated by any employee of the company against the company

Challenges against the transparency in governance

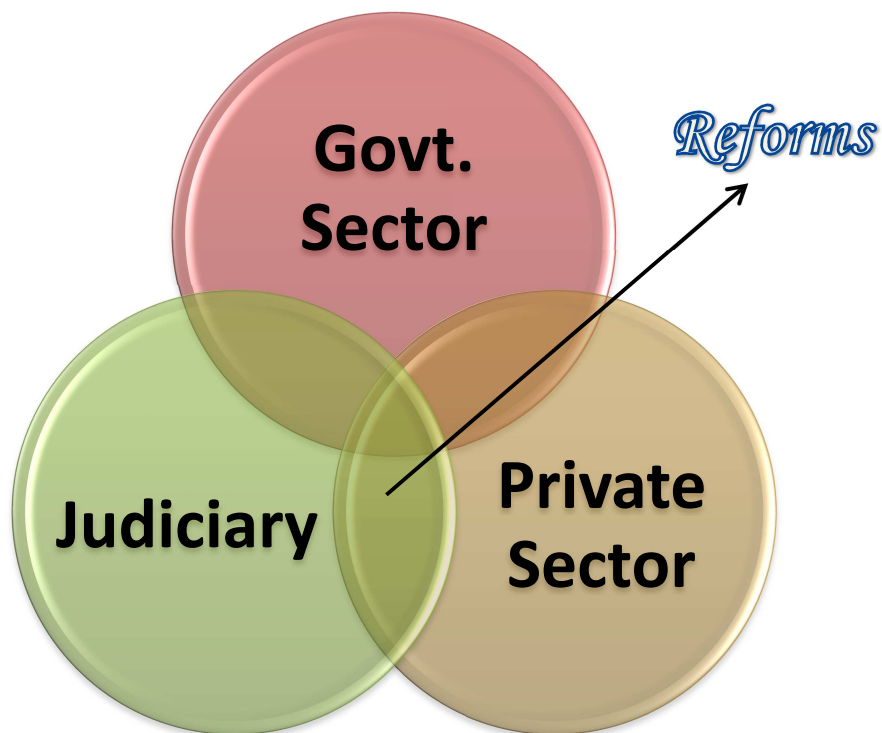
As we seen above that, transparency tool in the form of different Bills are pending before the parliament. There is always apprehension about the passing of these bills that can play a pivotal role in bringing transparency. Till date all above bills are lying in cold storage. We can hope transparent governance in the country as soon as all above bills are passed.

CONCLUDING REMARKS :-

Conclusion

As we seen in the above discussion, it is evident the transparency helps in good governance in the system whether it is government or private bodies. In another way we can say that *Transparency in Governance is the Ultimate Key to Reforms*. Ultimately it helps the stakeholders to attain their expectations attached to any organization. We always associate transparency with the government sector (Legislative & Executive) but that is not the case. Transparency also required in Judiciary which claiming about its independence and in Private sector which do not bother about the transparency and accountability. We need to focus on an overall transparency in governance. All these three segment cannot operate in isolation, they need to be integrated. An active mechanism is needed for bringing the transparency in the governance by way of enacting a law else whistle blower will have to come in the picture to uncover the bad governance in the system.

We hope that parliament will pass the all previously mending Bills that can be effective tool for bringing transparency and accountability in governance. Moreover more and more acts are not the solutions to cope up with any bad governance but organizations have to act ethically. In absence of ethical behavior, any act or policy will not help in longer term and it will gradually lose its effectiveness. For example lacks of proper administration of RTI act, many appeals are pending in the office of various Informations Commissions. According to RTI activist RTI act is gradually dying. Transparency is all about the one's own conscience not the act done under the pressure of outsider force.



OVERALL TRANSPARENCY IN GOVERNANCE LEADING TO REFORMS

Now we will have a look at the research questions raised in the beginning of the paper.

1. Will the transparency only in the Government Sectors bring reform?

Transparency only in the Government Sectors will not bring reforms in the country. Transparency also required in other two segment of the system i.e. Judiciary and the Private Sectors as well.

2. Will the transparency only in the Judiciary bring reforms?

Transparency only in the Judiciary will not bring reforms in the country. Transparency also required in other two segment of the system i.e. Government Sectors and Private Sectors as well.

3. Will the transparency only in the Private Sectors bring reforms?

Transparency only in the Private Sectors will not bring reforms in the country. Transparency also required in other two segment of the system i.e. Government Sectors and the Judiciary as well.

4. Will the transparency in the Government Sectors, Judiciary and Private Sectors all together bring reforms?

As we seen in above three research questions that, transparency only in one sector cannot bring reforms. None of the sector can operate in isolation. They need to act in harmony for development of the country and its citizen. Thus Transparency in all three sectors i.e. Government Sectors, Judiciary and the Private Sectors is required to bring complete reforms in the country.

Recommendation

Government Sector

For bringing the more transparency in we need a power laws such as Whistle Blower's Bill, Citizen Charter Bill, Lokpal Bill which are pending before the parliament. We need to save Right to Information Act which is dying gradually for its lethargic appellate system and vacancies in the commission's office. Office of the information commission should work with the full staff capacity as provided in the RTI Act. Central Information Commission is not working with its full strength of commissioner and many state information commissions are having only 2-3 commissioners as against the sanction strength of eleven information commissioner including one Chief Information Commissioner. This causes delay in disposal of appeals. Speedy implementation of e-Governance is needed in all part of the government sector for more transparency in the system.

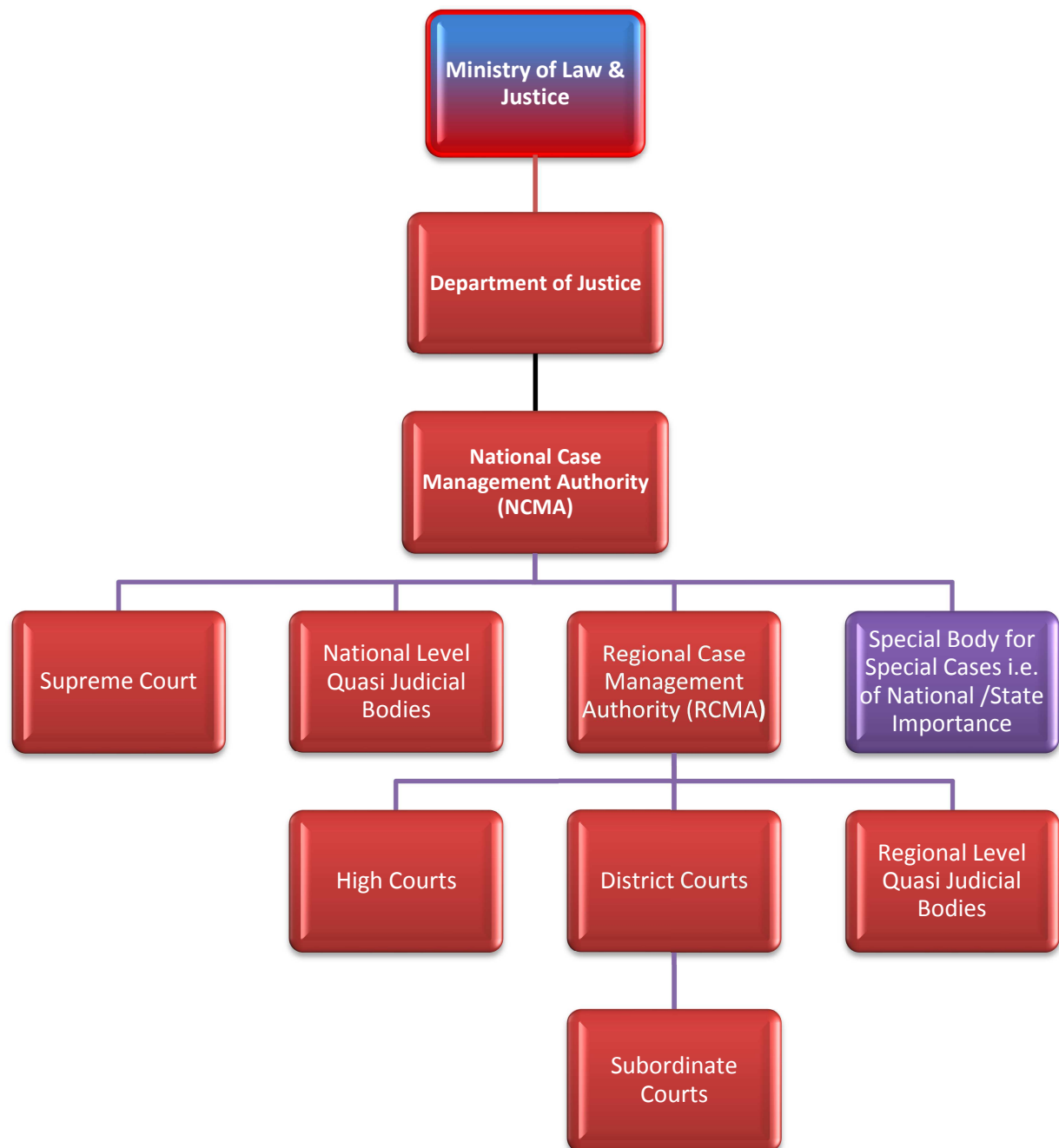
The model of Integrity Pact developed by Transparency International India should be made compulsory in every public authority of the country. State Government should adopt this model as per the guidelines given by Chief Vigilance Commission, New Delhi.

Judiciary

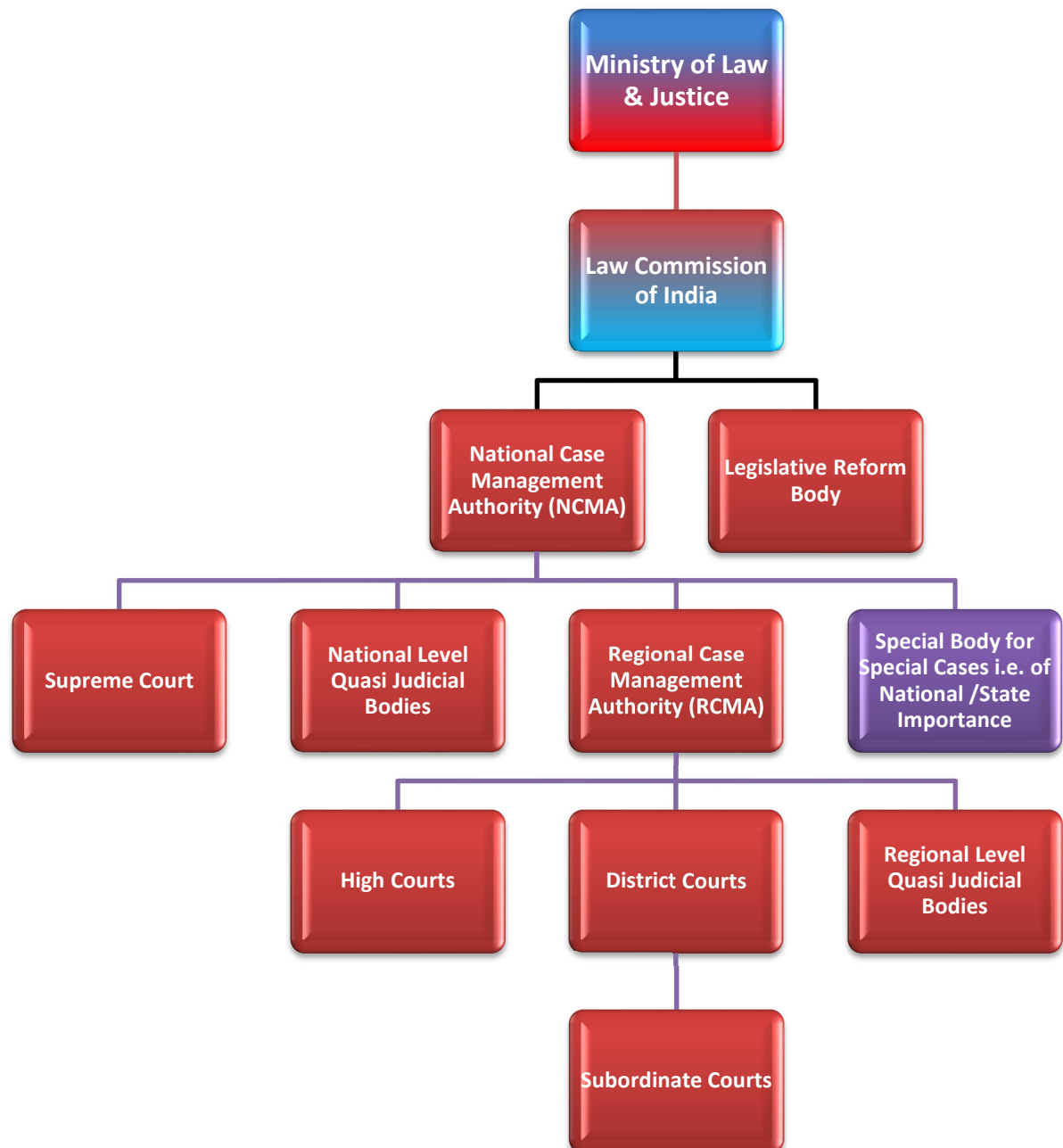
Judicial Standard and Accountability Bill is also pending before the parliament which will hold the judges of higher judiciary accountable, ultimately bringing reform by way of transparency in the judicial system. This will help to restore the faith of the citizen in the Judiciary. This bill deals only with the higher judiciary but what about the subordinate judiciary which is dealing with more than 85 percent of the cases pending in the judicial system. Subordinate Judiciary is also affected by the corruption and hence it should be covered under this bill. All courts are needs to be enabled with Information Technology system so that justice delivery system can be expedited.

Lack of proper monitoring of the cases also causes corrupt practice in the judicial system. An Independent Case Management Authority is need of the hour to cope up with this situation and it will also reduce the backlog of the cases. I propose two models for better monitoring of the cases as under

Model 1 – National Case Management Authority (NCMA)



Model 2 – National Case Management Authority (NCMA)



Working of the National Case Management Authority (NCMA) :-

- Collecting data on institution of cases.
- Collecting data on progress of the cases along with the stage, adjournments with reasoning.
- Collecting data on Judgments, orders pronounced by the courts, forums and tribunals etc.
- Monitor the implementation of Judgments, Orders.
- Study on overall aspects of judgments, orders pronounced by the courts, forums, tribunals etc.
- Prepare a report and submit to Department of Justice for further action.

Private Sector

As we are aware that there is no proper mechanism to curb mal-administration and bring the transparency in the private sector. After passing the Companies Bill, 2011 we can have good governance in the private sector as well. Recently Prime Minister of India Shri Manmohan Singh told a conference on Economic Growth in Asia and Changes of Corporate Environment “We must build a climate that attracts investments and encourages and rewards innovation and establish fair and effective regulatory institutions and also legal processes. Above all, we have the responsibility to ensure probity, transparency and accountability in processes of governance. The Companies Bill is a key part of these aspirations, because once voted into law by Parliament, it would create checks and balances to prevent frauds, make corporate board room decisions transparent and hold auditors and directors more accountable.”¹⁹ Transparency in governance of the private sector is only possible when Independent Director and Auditor perform their duty with due diligence.

¹⁹ “Companies Bill Soon : PM”, Hindustan Times, September 23, 2012, p 1, available at <http://www.hindustantimes.com/News-Feed/Chunk-HT-UI-BusinessSectionPage-Economy/Companies-Bill-soon-says-PM-Manmohan-Singh/Article1-934268.aspx> accessed on September 23, 2012

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Author has done Bachelor of Law, Commerce & Master of Laws from Veer Narmad South Gujarat University, Surat, Gujarat. He has also done Master of Business Laws from NLSIU, Bangalore. He has been pursuing Ph.D. in Law from Gujarat National Law University, Gandhinagar, Gujarat. He is having more than eight years of work experience working since first year of law. He has worked with Advocates, CAs, Tax Consultants, Export House, Engineering company. Presently he has been working as an Academic Associate in Business Policy Area at Indian Institute of Management, Ahmedabad. He has participated many National and International Conferences and presented the paper in it.