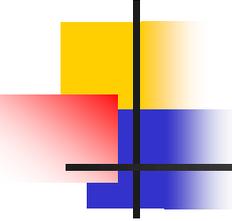


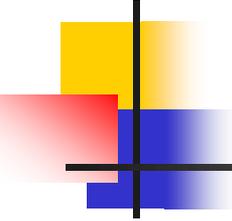
Anti-Corruption Laws in India

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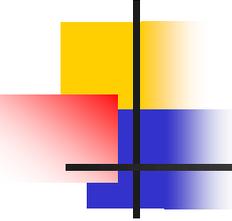
Corruption-Conceptual Analysis

- **Corrupt-to break**
- Corruption- denotes **something spoiled**
- It is **deeply rooted, cancerous, contaminating,** and **impossible to eradicate**
- It is **as old as governance itself**
- It is a **global phenomenon**
- It is **colourless, shapeless, odorless, collusive, secret, stealthy,** and **shameless.**



Anti Corruption Laws in India

- IPC, 1860
- Prevention of Corruption Act, 1988
- Prevention of Money Laundering Act, 2002
- Right to Information Act, 2005
- Central Vigilance Commission Act
- Lok Ayukta Acts of States etc



A) Indian Penal Code (IPC)-Relevant Provisions

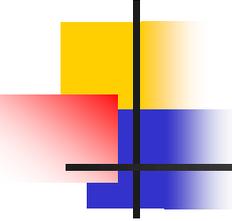
- **Dishonest misappropriation of property**

*Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to **two years, or with fine, or with both.**(Section 403)*

Criminal breach of trust

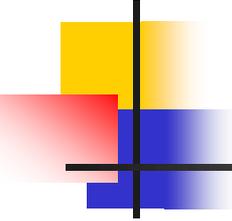
Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust". (Sec. 405)

- **Punishment for criminal breach of trust**
Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. (Section 406)
- **Illustrations : (e)** A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust



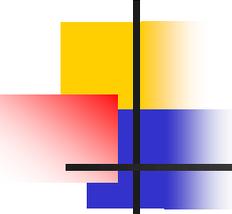
Criminal breach of trust by clerk or servant

- *Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. [Section 408]*



Criminal breach of trust by public servant, or by banker, merchant or agent

- Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits breach of trust in respect of that property, shall be punished with imprisonment for life , or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. [Section 409]



Dishonestly receiving property stolen in the commission of a dacoity

- *Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoity, property which he knows or has reason to believe to have been stolen, shall be punished with 1[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.*

[Section 412]

Cheating

■ **Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". [Section 415]**

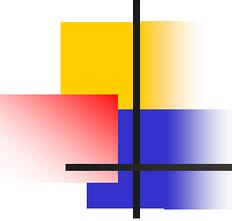
■ **Explanation**

A dishonest concealment of facts is deception within the meaning of this section.

■ **Illustration:** (a) ***A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.***

■ **Punishment for cheating**

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. [Section 417].



B) The Prevention of Corruption Act, 1988

- Scheme-31 Sections
- **Object:** to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith.
- **Applicability** : to Public Servants
- S.3. **Power** of State/Central governments to appoint special Judges (not below the rank of an Assistant Session Judge - *a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis*)

Who is Public Servant ?

[Sec.2(C)]

- ***(i) Any person in the service or pay of' the Government or remunerated by the Government by fees or commission for the performance of any public duty;***
- ***(ii) Any person in the service or pay of a local authority.***
- ***(iii) Any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956.***
- ***(iv) Any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions.***
- ***(v) Any person authorised by a court of justice to perform any duty, in connection with, including a liquidator, receiver or commissioner appointed by such court.***

Public Servant

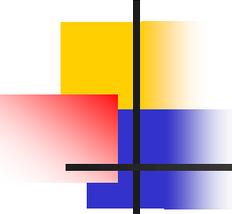
(contd..)

- (vi) Any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority.*
- *(vii) Any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election of part of an election;*
- *(viii) Any person who holds an office by virtue of which he is authorised or required to perform any public duty.*
- *(ix) Any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956;*
- *(x) Any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;*

Public Servant

(contd..)

- *(xi) Any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever (resignation called, of any university and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;*
- *(xii) Any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government or local or other public authority.*
- *Explanation 1. - Persons falling under any of the above sub-clauses are public servants, whether appointed by the government or not.*
- *Explanation 2. - Whenever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.*



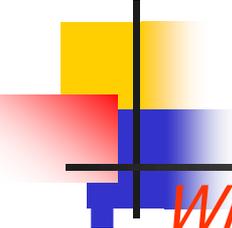
Public servant taking gratification (Sec.7)

- ***Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise shall, be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.***

Public servant taking gratification (Contd..)

Explanation. -

- (a) **"Expecting to be a public servant"**. *If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.*
- (b) **"Gratification"**. *-The word "gratification" is not restricted to pecuniary gratification or to gratifications estimable in money.*
- (c) **"Legal remuneration"**. *-The words "legal remuneration" are not restricted to remunerations which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the Organisation, which he serves, to accept.*
- (d) **"A motive or reward for doing"**. *-A person who receives a gratification as motive or reward for doing what he does not intend or is not in a position to do, or has not one, comes within this expression;*
- (e) **Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.**



Taking gratification, in order, by corrupt or illegal means, to influence public servant.

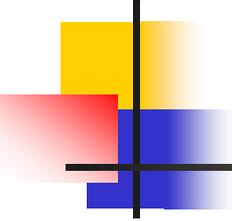
(Sec.8)

Whoever accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five

Taking gratification for exercise of personal influence with public servant

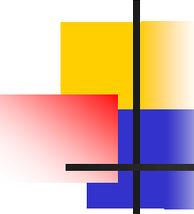
(Sec.9)

- *Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render to attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.*



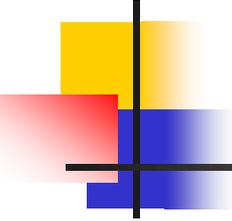
Punishment for **abetment by public servant of offences defined in Section 8 or 9** (Sec.10)

- *Whoever, being a public servant, in respect of whom either of the offences defined in Section 8 or Section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.*



Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant (Sec.11)

- *Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.*



Punishment for abetment of offences defined in Section 7 or 11 (Sec.12)

Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

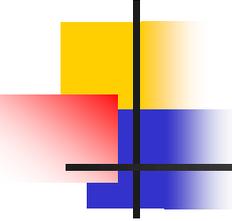
Criminal misconduct by a public servant

(Sec.13)

- ***(1) A public servant is said to commit the offence of criminal misconduct, -***
- ***(a) If he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or***
- ***(b) If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any, person whom he knows to be interests in or related to the person so concerned; or***

Criminal misconduct by a public servant (contd..)

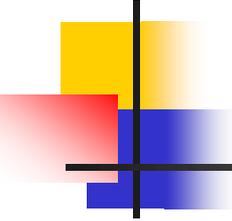
- **(c) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or**
- **(d) If he, -**
 - (i) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or Pecuniary advantage; or**
 - (ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or**
 - (iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or**
- **(e) If he or any person on his behalf, is in possession or has, at any time during the Period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.**
- **Explanation. -For the purposes of this section "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance, With the provisions of any law, rules or orders for the time being applicable to public servant.**
- **(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.**



Habitual committing of offence under Sections 8, 9 and 12. (Sec.14)

Whoever habitually commits.

- *(a) An Offence punishable 'under Section 8 or Section 9; or*
- *(b) An offence punishable under Section 12, shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.*



Punishment for attempt (Sec.15)

- *Whoever attempts to commit an offence referred to in Clause (c) or Clause (d) or sub-section (1) of Section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.*

Persons authorised to investigate (Sec.17)

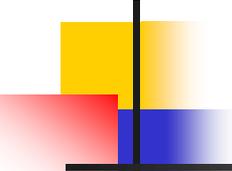
- *Notwithstanding* anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank, -
 - (a) In the case of the Delhi Special Police Establishment, of an Inspector of Police;
 - (b) In the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 9 of the Code of Criminal Procedure, 1973, of an Assistant Commissioner of Police;
 - (c) **Else where, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant;**
- *Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be or make arrest therefor without a warrant:*
- ***Provided further that an offence referred to in Clause (e) of sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.***

Power to inspect bankers' books

(Sec.18)

~~If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under Section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers, books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers, books in so far as they relate to the accounts of the persons suspected to have committed that offence or of other person suspected to be holding money on behalf of such person, and take or cause or to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his power under this section.~~

- **Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.**
- **Explanation. -In this section, the expressions "bank" and "bankers books" shall have the meanings respectively assigned to them in the Bankers' Books Evidence Act, 1891,**



Previous sanction necessary for prosecution (Sec.19)

- (1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -**
 - (a) In the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;**
 - (b) In the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;**
 - (c) In the case of any other person, of the authority competent to remove him from his office.**

- (2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.**

Previous sanction necessary for prosecution (contd..)

- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973-
 - (a) No finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;
 - (b) No court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;
 - (c) No court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in inquiry, trial, appeal or other proceedings.
- (4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. -For the purposes of this section, -

- (a) Error includes competency of the authority to grant sanction;
- (b) A sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

Presumption where public servant accepts gratification other than legal remuneration (Sec.20)

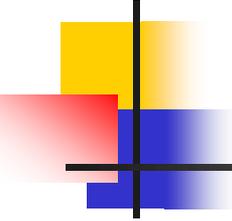
- (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or Clause (a) or Clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain from himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may, without consideration or for a consideration which he knows to be inadequate.**
- **(2) Where in any trial of an offence punishable under Section 12 or under Clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or the valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate**
- **(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.**

Accused person to be a competent witness (Sec.21)

Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

■ ***Provided that-***

- (a) He shall not be called as a witness except at his own request;***
- (b) His failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;***
- (c) He shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless-***
 - (i) The proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or***
 - (ii) He has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or***
 - (iii) He has given evidence against any other person charged with the same offence.***



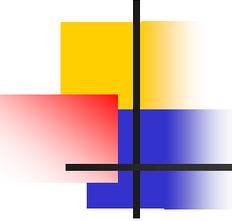
Statement by bribe-giver not to subject him to prosecution (Sec.24)

- *Notwithstanding anything contained in any law for the time being in force, a statement made by person in any proceeding against a public servant for an offence under Sections 7 to 11 or under Sections 13 or Section 15, that he agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under Section 12.*

Appeal and revision

(Sec.27)

*Subject to the provisions of this Act, **the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision** conferred by the Code of Criminal Procedure, 1973, on a High court as if the Court of the special Judge were a Court of Session trying cases within the local limits of the High Court.*



Act to be in addition-to any other law

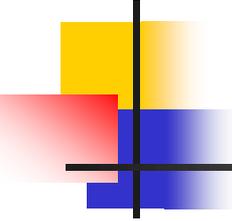
(Sec.28)

- *The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time beings in force, and nothing contained herein shall exempt any public servant from any proceeding, which might, apart from this Act, be instituted against him.*

Omission of certain sections of Act 45 of 1860

(Sec.31)

- *Section 161 to 165-A (both inclusive) of the Indian Penal Code shall be omitted, and Section 6 of the General Clauses Act, 1897, shall apply to such omission as if the said section had been repealed by a Central Act.*

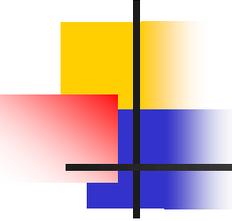


C) The Prevention of Money Laundering Act, 2002

Offence of Money-Laundering

" Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering."

[Section 3]



Punishment for Money-Laundering

- *"Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees:*

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted." [Section 4]

Obligations of Banking Companies, Financial Institutions and Intermediaries of securities market

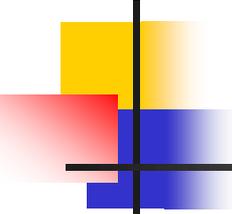
[Section 12]

- (
- 1) Every banking company, financial institution and intermediary shall - (a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month; (b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed; (c) verify and maintain the records of the identity of all its clients, in such a manner as may be prescribed. Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time. [(2)(a) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary, as the case may be.(b) The records referred to in clause (c) of sub-section (1) shall be maintained for a period of ten years from the date of cessation of transactions between the clients and the banking company or financial institution or intermediary, as the case may be.]**Substituted for sub-section (2) vide Prevention of Money-laundering (Amendment) Act, 2009

No civil proceedings

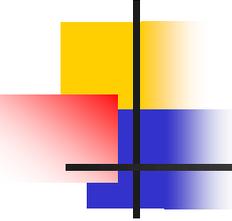
[Section 14]

- *Save as otherwise provided in section 13, the banking companies, financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12."*



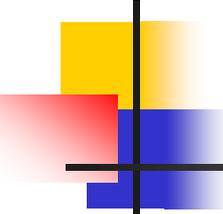
Appeals

- **Section 26 - Appeal to Appellate Tribunal**
- **Section 42 of the Prevention of Money Laundering Act, 2002 provides for appeal to High Court.** *"42. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. Explanation.-For the purposes of this section, "High Court" means- (i)the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and (ii)where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain."*



D)THE ANDHRA PRADESH LOKAYUKTA AND UPA-LOKAYUKTA ACT, 1983

- An Act to make provision for the appointment and functions of Lokayukta and Upa-Lokayukta for the investigation of Administrative action taken by or on behalf of the Government of Andhra Pradesh or certain Local and Public Authorities in the State of Andhra Pradesh (including any omission and commission in connection with or arising out of such action) in certain cases and for matters connected therewith.
- **Scheme** : 22 Sections



Definitions [Sec.2]

- (a) **'action'** means action taken by a public servant in the discharge of his functions as such public servant, by way of decision, recommendation or finding or in any other manner, and includes any omission and commission in connection with or arising out of such action; and all other expressions connecting action shall be construed accordingly;
- (b) **'allegation'** in relation to a public servant means any affirmation that such public servant-
 - (i) has abused his position as such, to obtain any gain or favour to himself or to any other person, or to cause undue harm or hardship to any other person;
 - (ii) was actuated in the discharge of his functions as such public servant by improper or corrupt motive and thereby caused loss to the State or any member or section of the public; or
 - (iii) is guilty of corruption, or lack of integrity in his capacity as such public servant;
- (c) **'Competent authority'** in relation to a public servant, means,-
 - (i) in the case of a Minister, The Chief Minister, Chief Secretary, or Secretary.
 - (ii) in the case of a Member of The Speaker of the either House of the State Legislative Assembly or Legislature as the case may be, Chairman of the Legislative Council.
 - (iii) in the case of any other Such authority as may Public Servant. be prescribed.
- (d) **'Corruption'** includes anything made punishable under Chapter IX of the Indian Penal Code (Central Act 45 of 1860), or under the Prevention of Corruption Act,1947 (Central Act 2 of 1947);
- (e) **'Government'** means the State Government;

Matters which may be investigated by Lokayukta or Upa-Lokayukta [Sec.7]

(1) Subject to the provisions of this Act, **the Lokayukta may investigate any action** which is **taken by**, or with the general or specific approval of, or at the behest of,-

(i) **a Minister or a Secretary**; or

(ii) **a Member of either House of the State Legislature**; or

(iii) **a Mayor of the Municipal Corporation constituted by or under the relevant law for the time being in force**; or

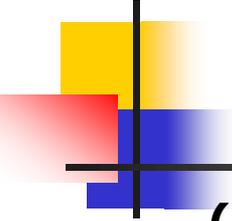
(iv) **any other public servant, belonging to such class or section of public servants, as may be notified by the Government** in this behalf after consultation with the Lokayukta, in any case where a Complaint involving an allegation is made in respect of such action, or such action can be or could have been, in the opinion of the Lokayukta, the subject of an allegation.

(2) Subject to the provisions of this Act, the Upa-Lokayukta may investigate any action which is taken by, or with the general or specific approval of, any public servant, other than those referred to in sub-section (1), in any case where a complaint involving an allegation is made in respect of such action, or such action can be or could have been, in the opinion of the Upa-Lokayukta, the subject of an allegation.

(3) Notwithstanding anything in sub-section (2), **the Lokayukta may, for reasons to be recorded in writing, investigate any allegation in respect of an action which may be investigated by the Upa-Lokayukta** under that sub-section, whether or not complaint has been made to the Lokayukta in respect of such action.

(4) Where two or more Upa-Lokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them matters which may be investigated by them under this Act:

Provided that no investigation made by the Upa-Lokayukta under this Act and no action taken or thing done by him in respect of such investigation shall be called in question on the ground only that such investigation relates to a matter which is not assigned to him by such order.



Matters not subject to investigation by Lokayukta or Upa-Lokayukta [Sec.8]

(1) The Lokayukta or Upa-Lokayukta **shall not investigate** any allegation,-

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850 (Central Act 37 of 1850);

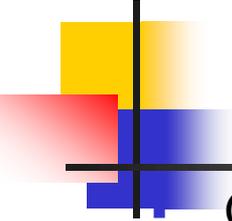
(b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act,1952(Central Act 60 of 1952); In case where the Lokayukta or Upa-Lokayukta, as the case may be, has given his prior concurrence for such inquiry: Provided that if, on an application for such concurrence, no intimation of withholding it is communicated within ninety days after the receipt of the application by the Lokayukta or Upa-Lokayukta, as the case may be, the concurrence shall be deemed to have been given.

(2) The Lokayukta or Upa-Lokayukta **shall not investigate** any complaint involving an allegation, **if the complainant is made after the expiry of six years** from the date on which the action complained against is alleged to have been taken place.

Provision relating to complaints

[S.9]

- (1) Subject to the provisions of this Act, a complaint may be made by any person under this Act to the Lokayukta or Upa-Lokayukta relating to an allegation in respect of any action: Provided that where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate, or as the case may be, by any person who is authorised by him in this behalf.
- (2) Every complaint shall be made in such form and shall be accompanied by such affidavits as may be prescribed.
- (3) Notwithstanding anything in any other law for the time being in force, any letter written to the Lokayukta or Upa-Lokayukta by a person in police custody, or in a goal or in any asylum, or other place for insane persons shall be forwarded to the addressee unopened and without delay by the police officer or other person in charge of such goal, asylum or other place and the Lokayukta or Upa-Lokayukta, as the case may be, may treat such letter as a complaint made in accordance with the provisions of sub-section (2).



Procedure in respect of investigations [S.10]

- (1) Where the Lokayukta or Upa-Lokayukta after making such preliminary verifications as he deems fit, proposes to conduct any investigation under this Act, he,-
- (a) shall forward a copy of the Complaint or, in the case of any investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefor, to the public servant concerned and the competent authority concerned;
 - (b) shall afford to the Public servant concerned an opportunity to offer his comments on such complaint or statement; and
 - (c) may make such orders as to the safe custody of documents relevant to the investigation as he deems fit.
- (2)(a) Every preliminary verification referred to in sub-section (1) shall be conducted in private and in particular, the identity of the complainant and of the public servant affected by the said preliminary verification shall not be disclosed to the public or the press, whether before or during the preliminary verification, but every investigation referred to in sub-section (1) shall be conducted in public: Provided that the Lokayukta or Upa-Lokayukta may conduct any such investigation in private, if he, for reasons to be recorded in writing thinks fit to do so.
- (b) Every such investigation shall be completed within a period of six months, unless there is sufficient cause for not completing the investigation within that period, so however, that the total period for completing such investigation shall not exceed one year.
- (3) Save as aforesaid, the procedure for conducting any investigation shall be such as the Lokayukta or, as the case may be, the Upa-Lokayukta considers appropriate in the circumstances of each case.
- (4) The Lokayukta or Upa-Lokayukta may, in his discretion, refuse to investigate or discontinue the investigation of any complaint involving any allegation if in his opinion,-
- (a) the complaint is frivolous or vexatious, or is not made in good faith; or
 - (b) there are no sufficient grounds for investigation or, as the case may be, for continuing the investigation; or
 - (c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.
- (5) In any case where the Lokayukta or Upa-Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of the complaint, he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

Evidence

[S.11]

- (1) Subject to the other provisions of this section, for the purpose of any investigation (including the preliminary verification if any, before such investigation) made under this Act, the Lokayukta or Upa-Lokayukta may require any public servant or any other person, who in his opinion is able to furnish information or produce documents relevant to the the investigation to furnish any such information or produce any such document.
- (2) For the purpose of any such investigation (including the preliminary verification) the Lokayukta or Upa-Lokayukta shall have all the powers of a Civil Court while trying a suit under the code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely,-
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any Court or Office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) such other matters as may be prescribed.
- (3) Any proceedings before the Lokayukta or Upa-Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code, 1860 (Central Act 45 of 1860).
- (4) Subject to the provisions of sub-section (5), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the Government or any public Servant, whether imposed by or under any law or by any instrument having the force of law, shall apply to the disclosure of information for the purpose of any investigation made under this Act and the government or any Public Servant shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any law or instrument as aforesaid in legal proceedings: Provided that no person shall be compelled for the purpose of any investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in any proceedings before a Court.
- (5) No person shall be required or authorised by virtue of this Act, to furnish any such information or answer any such question or produce so much of any document,-
 - (a) as might prejudice the security or defence or international relations of India (including India's relations with the Government of any other country or with any international organisation); or (b) as might involve the disclosure of the proceedings of the Council of Ministers of Government or any Committee of that Council; and for the purpose of this sub-section a certificate issued by the Chief Secretary to the Government certifying that any information, answer or portion of a document is of the nature specified in Clause (a) or Clause (b) shall be binding and conclusive.

Reports of Lokayukta or Upa-Lokayukta [Sec.12]

- (1) If, after investigation of any allegation in respect of any action under this Act, the Lokayukta or Upa-Lokayukta is satisfied that such allegation is substantiated either wholly or partly, he shall by a report in writing, communicate his findings and recommendations along with the relevant documents, materials or other evidence to the competent authority.
- (2) The competent authority shall examine the report forwarded to it under sub-section (1) and without any further inquiry take action on the basis of the recommendation and intimate within three months of the date of receipt of the report, the Lokayukta or, as the case may be, the Upa-Lokayukta, the action taken or proposed to be taken on the basis of the report.
- (3) Where, in a report forwarded by the Lokayukta or Upa-Lokayukta, any recommendation imposing the penalty of removal from the office of a Public Servant falling within sub-clause (iv) or sub-clause (v) of clause (k) of Section 2 has been made, it shall be lawful for the Government without any further inquiry to take action on the basis of the said recommendation for the removal of such Public Servant from his office and for making him ineligible for being elected to any office specified by the Government in this behalf, notwithstanding anything contained in any law for the time being in force.
- (4) If the Lokayukta or Upa-Lokayukta is satisfied with the action taken or proposed to be taken on his findings and recommendations referred to in sub-section (1), he shall close the case under intimation to the complainant, the Public Servant and the competent authority concerned; but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the complainant.
- (5) The Lokayukta and the Upa-Lokayukta shall present annually a consolidated report on the work done under this Act to the Governor.
- (6) On receipt of the special report under sub-section (4) or the annual report under sub-section (5), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before each House of the State Legislature.
- (7) Subject to the provisions of sub-section (2) of Section 10, the Lokayukta may, at his discretion make available, from time to time, the substance of cases closed or otherwise disposed of by him or by the Upa-Lokayukta, which may appear to him to be of a general, public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

Prosecution for false Complaints

[Sec. 13]

(1) Notwithstanding anything in Section 10 or any other provisions of this Act, whoever willfully or maliciously makes any false complaint under this Act, shall, on conviction, be punished with imprisonment for a term which may extend to one year and shall also be liable to fine.

(2) No Court, except a Court of the Judicial Magistrate of the First Class shall take cognizance of the offence under sub-section (1).

(3) No such Court shall take cognizance of any such offence except on a complaint made by a person against whom false complaint was made, and after obtaining the previous sanction of the Lokayukta or Upa-Lokayukta, as the case may be.

(4) Such Court, on conviction of the person making false complaint, may award, out of the amount of the fine, to the complaint such amount of the compensation as it thinks fit.

Secrecy of Information

[Sec.15]

(1) Any information obtained by the Lokayukta or Upa-Lokayukta or any member of their staff in the course of, or for the purposes of, any preliminary verification made under this Act, and any evidence recorded or collected in connection with such information, shall, subject to provisions of Clause (a) of sub-section (2) of Section 10, be treated as confidential; and notwithstanding anything in the Indian Evidence Act, 1872, (Central Act 1 of 1872) no court shall be entitled to compel the Lokayukta or Upa-Lokayukta or any Public Servant to give evidence relating to such information or produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars:-

(a) for purposes of the investigation or in any report to be made thereon or for any action or proceedings to be taken on such report; or (b) for purposes of any proceedings for an offence under the Official Secrets Act, 1923 (Central Act of 19 of 1923) or an offence of giving or fabricating false evidence under the Indian Penal Code, 1860 (Central Act 45 of 1860) or for purposes of any trial of an offence under Section 13 or any proceedings under Section 16, of this Act; or

(c) for such other purposes as may be prescribed.

(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokayukta or Upa-Lokayukta, as the case may be, with respect to any document or information specified in the notice or any class of documents so specified, that in the opinion of the Government the disclosure of the documents or class of documents or information would be prejudicial to public interest; and where such a notice is given the Lokayukta or Upa-Lokayukta may, for reasons to be recorded, decide as to whether the disclosure of such document / or class of documents or information involves public interest. In case the disclosure of any document or information so specified is held to involve public interest, the Lokayukta, the Upa-Lokayukta or any member of their staff shall not communicate to any person any such document or information.

Intentional insult or interruption to, or bringing into disrepute, Lokayukta or Upa-Lokayukta

[Sec.16]

- (1) Whoever, intentionally offers any insult or causes any interruption to the Lokayukta or Upa-Lokayukta while the Lokayukta or Upa-Lokayukta is conducting any investigation under this Act, shall, on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

- (2) Whoever, by words spoken or intended to be read makes or publishes any statement or does any other act, which is calculated to bring the Lokayukta or Upa-Lokayukta into disrepute, shall, on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

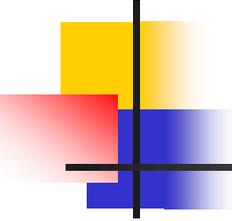
- (3) The provisions of Section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (1) of the said Section 199; subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor, except with the previous sanction-
 - (a) in the case of an offence against Lokayukta, of the Lokayukta;
 - (b) in the case of an offence against Upa-Lokayukta, of the Upa-Lokayukta concerned.

Protection of action taken in good

faith [Sec.17]

- (1) No suit, prosecution or other legal proceedings shall lie against the Lokayukta or Upa-Lokayukta or against any officer, employee, agency or person referred to in Section 14 in respect of anything which is in good faith done or intended to be done under this Act.
- (2) No proceedings of the Lokayukta or Upa-Lokayukta shall be deemed to be invalid by reason only of a defect or infirmity in his appointment or with the conduct of the Proceedings.
- (3) No proceedings, decision, finding or recommendation of Lokayukta or Upa-Lokayukta shall be liable to be challenged, renewed, quashed or called in question in any Court or Tribunal.

Judicial response to corruption in India

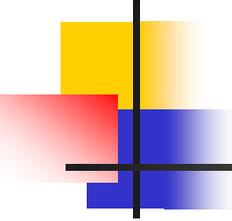


- A.R.Antulay's case
- Common Cause case
- Vineet Narain's case
- Jayalaittha's case
- P.V.Narasimha Rao v.CBI
- Ram Jethmalani's case (2011 July)

e) The central Vigilance Commission

Act 2003

- Created to tackle governmental corruption in February, 1964 on the recommendations of the *Committee on Prevention of Corruption*, headed by Shri K. Santhanam
- Not an investigating agency, and works through either the CBI or through the Departmental Chief Vigilance Officers [except the investigation carried out by the CVC is that of examining Civil Works of the Government which is done through the Chief Technical Officer]
- Headed by a Central Vigilance Commissioner who is assisted by two Vigilance Commissioners
- **Commission's Jurisdiction under CVC Act** - Members of All India Services serving in connection with the affairs of the Union and gazetted officers of the Central



f) The RTI Act 2005

- **the preamble of the Right to Information Act highlights –**
- **containing corruption,**
- **improving transparency; and**
- **making servants accountable by empowering citizens to get information..**

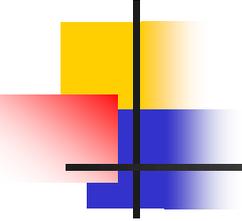
RTI Act – Recent Judgments / Case Studies relating to corruption

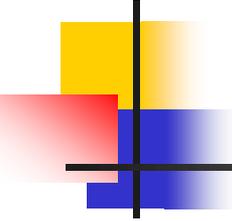
- **NRI uses new information law to beat corruption -**
An NRI has used the RTI Act to get his income tax refund without bribing. After waiting for five years without any reply from the income tax office, 60-year-old Tushar Dalvi, an NRI living in Mumbai, filed an application under the Act and got his refund - in fact, **in a week.**
- Earlier, he tried to use the services of a CA who wanted which was almost half of the refund, Dalvi filed a query under RTI and got speedy action.

RTI Act used to highlight irregularities in appointment to IPAB

www.spicyip.googlegroups.com March 11 , 2011

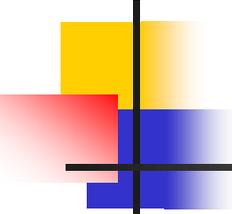
- Syed Obaidur Rahaman, Technical Member of the IPAB (recently retired): When the Madras High Court admitted the PIL challenging the constitutionality of the IPAB, an RTI application by one Mr. Kalra had revealed that Syed Obaidur Rahaman had claimed to have appeared in English cases dating back to the 19th Century! The **ToI** has carried a story on this. Well now we have a copy of his original application which confirms our initial suspicion (available over here). As per the application form for the post of Technical Member, IPAB all applicants are required to cite the judgments in which they have appeared because the Trade Marks Act, 1999 required the appointment of either former Trade Mark Registrars or advocates with extensive experience in Trade Mark Law. In his application form Mr. Rahaman has claimed to have appeared in **Lever v. Goodwin**, an English case dating back to 1887. As per his application form his date of birth is the 18th of January, 1959. How could he even claim to appear in an English case in 1887? Of the remaining 13 cases he cites in his favour, at least 12 cases were decided even before he joined the Bar in 1986. The one case that was decided in 1987 does not have his name on it.

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- The Selection Committee which short-listed Mr. Rahaman's name had three members – Secretary, DIPP; Secretary, Legal Affairs & Secretary, Department of Personnel & Training (DoPT). Of the three applications received by the Committee it narrowed down Mr. Rahaman's name along with another candidate. It does not give any reasons for dis-regarding the name of the third candidate. Mr. Rahaman was to be given the first preference and if he turned down the offer it would go to the next candidate. Also please note that the applications are not accompanied by copies of educational qualifications and cases in which he has appeared. If you look at page 23 of Mr. Rahaman's file you will note that the DIPP asked Mr. Rahaman to submit his certificates only after the Selection Committee has made its decision. How then does the Selection Committee make its decision? God knows!



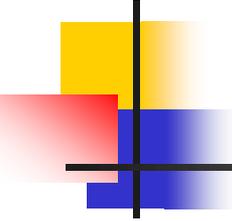
RTI Success Stories

- **“Sir, did you get a cut on my dam?”** [Nov 1-15, 2008 - Down To Earth]-Corruption in constructing check dam in village Kharula in Maharashtra’s Yavatmal district - check dam (<I year old) flooded after a spell of heavy rains & rushing waters destroyed the seedlings on Banabai’s land- she complained to Tehsil,district Collector & ultimately asked the CM Vilasrao Deshmukh – Banabai went back to the collector’s office on July 1, and asked him directly, “ *Tumhi paise khalle ka* (did you take a bribe)?” – Result: the concerned official (supervisor in agricultural department) was suspended pending inquiry



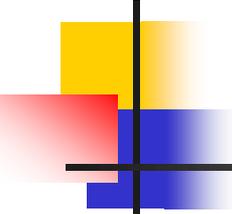
RTI Act – Recent Judgments / Case Studies relating to corruption

- **RTI exposes employment generation scheme** - about the poor implementation of the National Rural Employment Guarantee Act (NREGA) -**Santhpur Village in Bidar District of Karnataka**. -RTI activist Rajani received four projects for Santhpur village but three of the project report did not have any details of the project making inspection impossible. Further **the people employed in all four projects were the same** (member of a local politicians family who have never stepped out ever for any hard labour). **None of the projects and labour rolls contained signatures or thumb impressions of the recipients**. In a hearing on a complaint filed by the Rajani at the Karnataka Information Commission, the Commissioner pulled up the CEO of the District and asked him to investigate the matter immediately and report back to the Commission. The CEO's report is awaited.



RTI Success Stories

- **Rickshawpuller benefits from RTI** –[NDTV Correspondent Sunday, July 2, 2006 (Jhanjharpur, Bihar)]- Mazloom Nadaf, a 70-year old rickshaw puller in Bihar has built his own house after exercising his right to know. But he spent a long time to get his home under the Indira Awas Yojana - the country's national housing scheme. Five years after he applied, authorities demanded Rs 5000 to process his application. But he refused to give in and instead fought back with the help of the Right To Information Act in his success story
- Nadaf approached the legal aid centre of an NGO and with their help filed a RTI application asking for the daily progress report made on his application to avail of the Indira Awas Yojana. The BDO on receiving the RTI application sent for Mazloom and treated him like a VIP and with a lot of respect handed him a cheque of Rs. 15,000 (first installment payment) under the Indira Awas Yojna.
- Mazloom's house is now under construction. He has also been assured by the BDO that all his other requests will also be taken care of.



Conclusion

- **The laws are plenty to tackle corruption**
- Corruption-the result of unholy alliance between Netas (Politicians), Babus (Bureaucrats), Dadas (People with muscle power), and Lalas (Businessmen)
- In today's globalized, democratized, informatized world, incorruptible governments can be constructed only using incorruptible citizens as their bricks and mortar.
- Are our social, economic, political and spiritual systems producing such incorruptible citizens?
- Please respect the law and more importantly the anti-corruption laws.