CHAPTER 8
CONCLUSION AND SUGGESTIONS

8.1 Introduction

The constitution of India does not only establish the rule of Law, but also provides for its protection and enforcement. The judiciary has been made the guardian and protector of the constitution by the following provisions.\(^{1091}\)

1) Article 141 provides that the law declared by the Supreme Court shall be binding on all courts except the Supreme Court within the territory of India.

2) Article 142 provides that the Supreme Court, in the exercise of its jurisdiction may pass such decrees or make such orders as is necessary for doing complete justice in any cause or matter pending before it.

3) Article 144 makes it clear that all authorities (civil or judicial) in the territory of India, shall act in aid of the Supreme Court. The authorities which do not comply with its direction shall be liable for contempt of court.

4) Article 226 empower the high court to issue Orders, Writs, etc. only for the enforcement of any fundamental rights and also any other right. Under Article 32 the Supreme Court can issue Orders, Writs, etc. only for the enforcement of any of the fundamental rights. In addition, the contempt power of the Supreme Court and high court has also played an important role in the enforcement of the Rule of Law in the country. The contempt jurisdiction is very wide and inherent in the courts of record.

After the whole research, researcher emphasis on the modern concept of the Rule of Law for controlling arbitrary actions of public authority and make them effectively accountable.

The modern concept of Rule of Law is fairly wide. Davis gives 7 principal meaning of the term Rule of Law.\(^{1092}\)


1. Law and order;
2. Fixed Rules;
3. Elimination of Discretion;
4. Due Process of Law or Fairness;
5. Natural law or observance of the principles of natural justice;
6. Preference for judges and ordinary courts of law to executive authorities and administrative tribunals; and

8.2 Present situation

After exploring the sample survey of society, here researcher tries to put the gist of whole research into present situation by one image.
When we analyses the modern meaning of Rule of Law, then we will find that every class of society understands this concept differently and it is according to their experience. In lay man language, rule of law means governance according to law. Jurist and academicians like Dicey believe the rule of law as the absolute...
supremacy as opposed to the influence of arbitrary power and exclude the existence of arbitrariness or even wide discretionary authority on the part of the government\textsuperscript{1093}. Two basic elements derived from rule of law is –

1. Discretionary
2. Arbitrary

Traditionally, rule of law denotes absence of arbitrary, irresponsible and uncontrolled powers. This leads to the preposition that officials can have discretionary powers but not arbitrary powers. Therefore, discretionary powers should not be too wide, uncontrolled and unrestrained so as to become arbitrary, but subject to proper safeguards. Efforts are thus to be made to restrain an undue expansion of such powers and create proper controls over them. What is pertinent today is not complete absence of discretionary powers but proper safeguards against their abuse or misuse\textsuperscript{1094}.

8.3 Tools to control arbitrary actions of public authority.

To control corruption and arbitrariness in public offices, there are few tools can be prove milestone.

8.3.1 Whistle blower

8.3.1.1 Concept of whistle blower

It is defined as "an act of a man or a woman who, believing in the public interest overrides the interest of the organization he serves, publicly blows the whistle if the organization is involved in corrupt, illegal, fraudulent or harmful activity"\textsuperscript{1095}

8.3.1.2 Background of whistle blower concept in India

1. A bill for protection of Whistleblowers was first initiated in 1993 by Mr. N. Vittal (the then Chief Vigilance Commissioner)\textsuperscript{1096}.

2. In December 2001, Law Commission recommended that in order to eliminate corruption, a law to protect whistleblowers was essential and submitted its report

\textsuperscript{1094} \textit{Id.}, at 22.
\textsuperscript{1096} \textit{Ibid.}
on ‘Public Interest Disclosure Bill’ to Mr. Arun Jaitley (then Minister of Law, Justice and Public Affairs) along with the draft bill.

3. In January 2003, the draft of Public Interest Disclosure (Protection of Informers) Bill, 2002 was circulated\textsuperscript{1097}.

The murder of Satyendra Dubey in 2003 for exposing corruption in NHAI and the subsequent public and media outrage led to the demand for the enactment of a whistleblower’s bill\textsuperscript{1098}. Following the event, in 2004, the Supreme Court directed that machinery be put in place for acting on complaints from whistleblowers till a law is enacted. Government of India notified a resolution to enable Central Vigilance Commission to receive complaints of corruption for Central Authorities in May 2004\textsuperscript{1099}.

Right to Information Act was notified in October, 2005\textsuperscript{1100}.

In 2006, The Public Services Bill 2006 (Draft) stated that within six months of the commencement of the act, the government must put into place mechanisms to provide protection to whistleblowers\textsuperscript{1101}.

In 2007, the report of the Second Administrative Reforms Commission also recommended that a specific law be enacted to protect whistleblowers\textsuperscript{1102}.

India is also a signatory (not ratified) to the UN Convention against Corruption since 2005, which enjoins states to facilitate reporting of corruption by public officials and provide protection against retaliation for witnesses and experts.

On August 26, 2010 Union Minister of State for Personnel, Public Grievances and Pensions Prithviraj Chavan introduced in the Lok Sabha:

Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010, or the Whistle-blower Bill\textsuperscript{1103}.

\textsuperscript{1097} Ibid.
\textsuperscript{1098} Ibid.
\textsuperscript{1099} Ibid.
\textsuperscript{1100} Ibid.
\textsuperscript{1101} Ibid.
\textsuperscript{1102} Ibid.
\textsuperscript{1103} Ibid.
Since 2010, at least 12 RTI activists have been murdered for seeking information to “promote transparency and accountability in the working of every public authority” of India. The Bill was passed in Lok Sabha on December 27, 2011 along with proposed amendments.

Anna Hazare also called for a ‘dharna’ on Jantar-Mantar on 25th March, 2012 demanding for enactment of a strong whistleblower’s protection law. He was an aide of Team Anna and associated with Arvind Kejriwal’s NGO Parivartan since 2005

8.3.1.3 Laws protection for whistle blower.

Need to recalled of a landmark instance whereby one of the prominent whistle Blower, Satyendra Dubey, was murdered in 2003. In the letter to the, then, Prime minister of India, he requested that his name should not be revealed. This request was mocked to an extent that not just his name but the whole letter and the contents thereto became the gossip of the common man and the person was killed shortly thereafter making a deterrent effect on all those people who might have intended to tread on the same path.

Even after the Whistle Blower bill transforming into an act on 9th May, 2014, it is still being awaited to see the light of the day.

Here researcher emphasizes the cases where concept of due process of law, rule of law and no arbitrariness curtailed by whistle blowers to maintain equal protection under article 14 of Indian Constitution.

In present India, important role is played by whistleblower which makes them the hero of the nation, because there is always a fear that after disclosing all corrupted facts, there is a chance that they themselves convicted for the crime.

8.3.2 Right to Information

In recent years, there has been increasing efforts shown by the global community to establish and strengthen the Right to information (RTI). The civil society and

---

1104 Ibid.
1106 Ibid
many classes of the public have invariably been behind these efforts. It has been widely recognized as a fundamental human right, which upholds the inherent dignity of all human beings\textsuperscript{1107}.

The Right to information (RTI), is now accepted as a crucial underpinning of participatory democracy. It has now been widely acknowledged as a prerequisite for ensuring accountability and good governance\textsuperscript{1108}.

It goes without saying, the greater the access of the citizens to information, the greater the responsiveness of the government to community needs. Alternatively, the greater the restrictions that are placed on access to information, the greater the feeling of ‘powerlessness’ and ‘alienation’\textsuperscript{1109}.

Without information, as a matter of fact, people cannot adequately exercise their rights as citizens or make informed choices. Over the past few years, the RTI has gained increasing prominence both in the human rights and democratic discourse. Since a democratic government must be sensitive to the public opinion, it is necessary that information must be made available by it to the people\textsuperscript{1110}.

Actually, meaningful substantive democracy ought to be founded on the notion of an informed public that is able to participate thoughtfully in its own governance. Information and knowledge are the instruments of human transformation\textsuperscript{1111}.

Therefore, without sufficient information, representative democracy is undermined. Apart from the elections, access to information is vital to enable public to engage their representatives and the bureaucracy on an ongoing basis and to participate effectively in the formulation and implementation of policies and activities purportedly for their benefits. It has the potential to empower the citizen in relation to the state by making administration more accountable and

\textsuperscript{1107} Rajvir S. Dhaka, Right to information and good governance, 1 (2010).
\textsuperscript{1108} Ibid.
\textsuperscript{1109} Ibid.
\textsuperscript{1110} Ibid.
\textsuperscript{1111} Ibid.
participatory. Besides, it not only ensure greater transparency but also acts as a deterrent against the arbitrary exercise of official powers.\footnote{1112}{Id., at 2.}

**8.3.2.1 Evolution of the Right to information Act, 2005**

The evolution of the Act may be traced to the following developments and factors:\footnote{1113}{Ibid.}:

1. Good governance
2. Global trends
3. Democratization of governance
4. People’s participation
5. Public accountability
6. Rule of law and right to information
7. Combating corruption
8. Checking the misuse of discretionary powers
9. Administrative efficiency
10. Protection of civil liberties
11. Reforming administration
12. Movement for transparency

The access to information is cardinal to good governance and the whole mechanism of governance in the country has been vitiated owing to lack of it. According to a paper prepared by the human rights initiative, good governance has eight major facets.

It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It is an ideal which is difficult to be achieved in its totality. However, to ensure sustainable human development, action must be taken to work towards this ideal. Access to information is a vital factor for achieving the goals of good governance. It promotes transparency and public accountability in the working of
government functionaries. The end objective of the RTI is also to achieve good governance\textsuperscript{1114}.

Under the RTI it is difficult to deny information without giving reasons. As a result, several matters of corruption and wrongdoing have emerged as more people have used the RTI to access information, and in the process gathered proof to initiate action\textsuperscript{1115}. Therefore, some control mechanism needs to be evolved to discipline the arbitrariness of power to promote justice, equity and fair play. That is why, L.D. white has observed:\textsuperscript{1116}

Power in a democracy requires control, greater the power greater should be the control\textsuperscript{1117}.

RTI is one such device for disciplining the power and ensuring better accountability\textsuperscript{1118}.

8.4 Positive impact of execution of personal liability of public authorities according to researcher.

Every coin has two sides and every side has its own meaning. Here researcher tries to explain the reflection of situation, if personal responsibility of public authority is executed as practice and to achieve this, there should be fix public accountability of authority. When we analysis this situation, then we find a new phase of governance with the following benefits to society and administration.

8.4.1 Low Corruption-

Personal liability will make authorities more accountable. More accountability means chance for less arbitrary actions, favours and thus results in less corruption.

\begin{thebibliography}{9}
\bibitem{1114} Id., at 4
\bibitem{1116} Ibid.
\bibitem{1117} Ibid.
\bibitem{1118} Id., at 5.
\end{thebibliography}
8.4.2 More Transparency -
The fear of personal liability will make system more transparent. This will encourage public authorities to maintain high level of transparency in order to avoid any possible appeal whether actual or by misconception against their work.

8.4.3 No Misuse of Power -
Public authorities will be forced to use their powers within given guidelines. Any deviation from these guidelines will directly affect them and this fear will encourage no misuse of power.

8.4.4 Proper Functioning -
Researcher emphatically points out that personal liability will lead to less shifting of responsibilities as in the current organisations or systems. Direct responsibilities will make the system fast, interactive and therefore proper functioning. Its reduce uncertainty and Encourage predictability by making laws known to people.

It promotes the concept of equal application of law to similarly situated individuals as opposed to arbitrary treatment of the disfavor minority. These equitable considerations are served by cabining the discretionary governmental authority and reducing the arbitrariness in decision making. Importance of equal
protection doctrine is “to encourage that similarly situated individuals not be

treated differently”. When the government creates discretion that is based on
arbitrary and irrational purposes, the distinctions offend basic notions of equal

protection.

8.4.5 Just and fair Administration-

The fear of being caught will increase fair decision making and fair final
outcomes. It is human nature to be unfair due to personal or monitory benefits
unless there is a check and balance present in the system. This personal liability
will act as a strong factor in reducing this human behaviour and will make system
fairer.

8.4.6 Public Awareness -

Personal liability will lead to transparent system and provides vital
information about systems, rules and procedures to public which is not easily
available them. Such knowledge sharing with public about the system will make
public learn gradually and ultimately increase awareness.

8.4.7 Responsible Public Authority-

Accountability is the most requirements for any person whether in home,
in education, in office or in any field of life to become responsible. It is not only
the public offices where we demand concept of accountability but also every
place where they are dealing with general public.

Responsible public authority will give base to the good governance and
also build trust in society.

8.4.8 Work as checks and balances –

As we know that every freedom has always few limitations otherwise it
will be wrongly exercise by the person. In every society, it is law and order who
regulates the functioning and organising peace and order.

When we discuss about power and its use, there is always scope for
limitation. Concept of check and balance is one of the tool to control misuse of
powers given by law. Concept of personal responsibility can be proved as a strong
tool to check the arbitrary actions and to maintain transparency.
8.5 Negative consequences by which Expected loss to system according to researcher.

When we talk about the second side of the same coin, then discussion for the negative consequences is essential. Here it is necessary to discuss the negative consequences faces by the system after implementation of personal responsibility and public accountability.

8.5.1 Increases number of formalities-
In order to make the system more transparent resulting from exercising of personal liability, there will be more formalities as every person whether he is doing anything wrong or not, will try to be more clear and safe. This will make the authorities to do more formalities in order to save themselves from any future harm.

8.5.2 Chances to misuse by public-
Public may misuse it by exercising of their personal interests. There may be efforts by certain irresponsible public to defame any public authority by unnecessary questioning over the authority’s actions irrespective of whether
he/she is right or wrong.

8.5.2.1 Irrelevant delay-
More formalities, more safe guards and fear of avoiding mistakes will lead to irrelevant delays. Over all system will slow down.

8.5.2.2 Unreasonable disturbance-
More liability will invite more unwanted views or guidance in many cases which create disturbances in the day to day work of public authorities.

8.5.3 Delay in procedure-
More transparent, more fundamentally correct and systematic system will be slow and procedures will be delayed. Many simple looking procedures which are actually simple in practical will be done by lengthy procedures and will lead to delay in procedures.

8.5.4 Intentional interference in the professional life of public servants-
More every action has an equal and opposite reaction. More openness and access to information will encourage antisocial elements to interfere in the profession life of the public authorities.

8.6 Suggestions

Researcher has cover the concept of existence of public accountability from ancient Indian kingdoms to modern India. In the whole research, the researcher has studied the various secondary sources, text books, legislations, case laws and the data obtained from various research subjects through empirical studies. This concept of public accountability has just started and the enemy that is – current corruption level is too strong to beat. It is like a child is standing in the battle field in front of a huge monster. The time taken by the existing system and non-existence of a direct law regarding public accountability has made this concept itself weak , less known in common public and also less fearful to the public authorities itself. There is a strong need of a direct law with popularity similar to that of Right to Information (RTI). Which gives result faster and well known to common person as well as to the authority itself.

There are already few legislations like –

1. The public servants (inquiries) Act, 1850
2. The prevention of corruption Act 1988  
3. Right to Information Act, 2005  

But all these legislations are somewhere helpful to ask reason for the decision of public authority and not even single legislation exists presently who covers the accountability of public servants.

If we compare both of them as a tool it is like-

<table>
<thead>
<tr>
<th>Right to Information</th>
<th>Public accountability and personal responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. It is strong legislation</td>
<td>It is not recognized so yet as legislation</td>
</tr>
<tr>
<td>2. It is called as tiger with teeth.</td>
<td>It is called as tiger with teeth’s but in cage\textsuperscript{1119}.</td>
</tr>
<tr>
<td>3. In the range of common man.</td>
<td>It is not as easy for common man to use, important role for execution is played by judiciary only.</td>
</tr>
</tbody>
</table>

\textsuperscript{1119} Cage, here means without legislation.

**Researcher’s view in Image 46.**

**8.6.1 Tools to develop the concept -**

The judicial thinking on the subject of right to Know and criticism by the various agencies of the non-disclosure of the information by the government departments has compelled the central government to enact the long awaited law on the subject to make the public authorities open, transparent and accountable. Free flow of information for the citizens suffers from existing legal framework and an attitude of secrecy within the civil services. Article 19 of the constitution
and universal declaration of human rights, 1948 also recognize the right to information, which states that everyone has a right to freedom of opinion and expression. This right includes freedom to hold opinion without interference and to seek, receive and impart information through any media.  

8.6.1.1 Right to Information as tool to maintain accountability

It must be admitted that the assessment of the RTI on good governance and development is indeed a daunting task, since data are lacking to permit methodological rigor of analysis.  

The assessment of impact is proposed to be made in terms of the stated objectives of the RTI Act, which are outlined in its preamble, as under:

An Act to provide for setting out the practical regime of right to information for citizens to secure access in the information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

It is stated furthermore that:

Democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

In addition to the above, the Prime Minister of India, while piloting the Bill for its passage by the National Parliament, stated, as under, on May 11, 2005:

This Bill will see the dawn of a new era in our processes of governance, an era of performance and efficiency, an era which will ensure that benefits of growth flow to all sections of our people, an era which will eliminate the scourge of corruption, an era which will bring the common man’s concern to the heart of

---

1122 Statement of objects and reasons, Right to Information Act, 22 of 2005.
1123 Ibid.
1124 Supra note 1121, at 6.
all processes of governance, an era which will truly fulfill the hopes of the founding fathers of our Republic.\textsuperscript{1125}

Clearly, the Act has laid emphasis on good governance, of which the major elements that have been identified are informed citizenry for encouraging people’s participation in development process, transparency, accountability and reduction in corruption. Thus, the major objectives of the Act are\textsuperscript{1126}:

i) Greater Transparency in functioning of public authorities\textsuperscript{1127};

ii) Informed citizenry for promotion of partnership between citizens and the Government in decision making process;

iii) Improvement in accountability and performance of the Government; and

iv) Reduction in corruption in the Government departments.

All these parameters are critical elements of good governance, which entails full accountability to stakeholders, who are partners in development process. And, have the powers to enforce accepted policies, common norms and recognized benchmarks. It is expected, therefore, that the citizens, armed with information obtained through their exercise of right to know, would be able to protect life and liberty as well as secure equity and justice before the law. An attempt is therefore made below to examine the extent to which the RTI has been successful in influencing the above factors in the desirable direction\textsuperscript{1128}.

The Act is divided into six chapter\textsuperscript{1129}:

One; preliminary which includes definition and commencement clause\textsuperscript{1130}. Two; citizen’s right to information and obligation of public authorities, Three and four; constitution of central and state information commissions\textsuperscript{1131}, Five; powers and functions of the commissions and Six; includes miscellaneous provisions.

Chapter two of the Act defines citizen’s right to information as access to the information, which is held by the public authority and includes the right to

\textsuperscript{1125} Ibid.
\textsuperscript{1126} Ibid.
\textsuperscript{1127} Ibid.
\textsuperscript{1128} Ibid.
\textsuperscript{1129} Ibid.
\textsuperscript{1130} Ibid.
\textsuperscript{1131} Ibid.
inspection of documents and records. Section 4 casts an obligation on the public authority to maintain its records and if possible on the computer network. The authority shall publish within four months from the enactment of this Act the following information:

1. The particulars of its organization, function and duties;
2. Powers and duties of its officers and employees;
3. Procedure followed in the decision making process including supervision and accountability.

The RTI provides people with the mechanism to access information, which they can use to hold the government to account or to seek explanation as to why decisions have been taken, by whom and with what consequence or outcomes. In addition, every public authority is required ‘to provide reasons for its administrative or quasi-judicial decisions to the affected person’ u/s 4(1) (d) of the Act. There is therefore no scope for any arbitrary decision.

Section 5 provides that every public authority shall designate officer to provide information to the persons. Section 6 prescribe the procedure for obtaining the information.

Until the implementation of the RTI Act, it was not possible for an ordinary persons to seek the details of a decision making process, which was found most often, as ineffective in terms of its outcome. It was therefore not possible to hold a free and frank discussion on issues of common concern of people or to fix the responsibility for any action. Such an era of darkness in policy planning, including monitoring and evaluation of schemes by affected persons, is over.

The Commission, u/s 20(1) of the Act, has the mandate, inter-alia, to impose penalty and/or to recommend disciplinary action against the information.
providers, if held responsible for obstructing the free flow of information. The Commission may also award compensation for any detriment suffered by a requester for seeking information\textsuperscript{1137}.

The information seekers and the NGOs have put pressure on the public authorities for promoting the culture of openness in functioning of the Government. A large number of PIOs have already been fined for violation of the provisions of the Act, which has, in effect, created conditions for providing information to a requester.

Due to perceived benefits of transparency and accountability, RTI applications have annually increased by 8 to 10 times. There is thus massive use of the right to know. Of the millions of applications for information, less than 5 per cent have been denied information under various exemption categories, u/s 8(1) of the Act, on the grounds of national interest, personal or third party information or those pertaining to commercial confidence, the disclosure of which would affect competitiveness of public authorities\textsuperscript{1138}.

In effect, thus, there is greater transparency than ever before in the working of the public bodies. In a large number of cases, the Commission has ordered for providing the details of the decision-making processes, which include ‘file noting, cabinet papers, records of recruitment, selection and promotion of staff, documents pertaining to tender processes and procurement procedure, the lists of beneficiaries of the Government’s subsidized schemes, such as, food grains supplied through ration shops, water and electricity, domestic gas, educational and health facilities, shelter for poor, muster rolls under employment guarantee schemes, health insurance scheme for poor, old age pension, food security for destitute, etc. The disclosure of vital information, such as above, has thus resulted in checking corrupt practices in delivery of services and ensuring the reach of entitlements to the poor\textsuperscript{1139}.

\textsuperscript{1137} \textit{Ibid.}
\textsuperscript{1138} \textit{Ibid.}
\textsuperscript{1139} \textit{Supra} note 1118 at 8.
8.6.1.2 Accountability as tool for Good Governance

Fox Meyer (1995) defines accountability as the 1140:

[R]esponsibility of government and its agents towards the public to achieve previously set objectives and to account for them in public” It is also regarded as a commitment required from public officials individually and collectively to accept public responsibility for their own action and inaction. In this case, the burden of accountability rests on each public functionary to act in the public interest and according to his/her conscience, with solutions for every matter based on professionalism and participation 1141.

Accountability in the public sector is broader than in the private sector. In the private sector, everyone in the company is accountable to its board. The public sector is also accountable to a board of sorts: the minister, cabinet and legislature. But the public sector has additional accountability to its employees and to its customers, the citizens who use the services — as well as to its non – customers, the citizens who don’t use the service. 1142

The United Nations has taken a leading role in conceptualizing governance. In the UN’s paradigm, governance is defined as “the exercise of political, economic, and administrative authority to manage a nation’s affairs. It is the complex mechanisms, processes, relationships and institutions through which citizens and groups articulate their interests, exercise their rights and obligations and mediate their differences.” In this framework, the State is only one of the institutions through which authority is exercised. The private sector and civil society organizations play important roles in helping citizens articulate their interests and exercise their rights. Government’s role is not only to exercise political governance but to interact effectively with the private sector and civil society organizations in achieving public goals and objectives 1143.

1141 Ibid.
1142 Ibid.
1143 Ibid.
As the United Nations Development Programme (UNDP) has defined good governance, its characteristics include widespread participation by all citizens, decision making by rule of law, transparency in the actions of governance institutions, responsiveness to the needs and desires of citizens, equity in the treatment of citizens, effectiveness and efficiency in the use of public resources, public accountability, and the exercise of strategic vision in planning for development\textsuperscript{1144}.

Underlying the United Nations’ conception of good governance is the need for governments to reinvent themselves in order to conform to the basic characteristics of good governance and to enhance their capacity to work effectively with other governance institutions in the private sector and civil society organizations\textsuperscript{1145}.

8.6.1.2 United Nations Development Programme characteristics of Good Governance

Much has been written about the characteristics of efficient government, successful businesses and effective civil society organizations, but the characteristics of good governance defined in societal terms remain elusive. The characteristics are\textsuperscript{1146}:

- Participation - All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.
- Rule of law - Legal frameworks should be fair and enforced impartially, particularly the laws on human rights\textsuperscript{1147}.
- Transparency - Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.

\textsuperscript{1144} Dennis A. Rondinelli, Governments serving people: The changing roles of public administration in democratic governance, CTR on Public Administration and Democratic Governance: Government Serving Citizens, 7 (Jan. 09-2015).
\textsuperscript{1145} Ibid.
\textsuperscript{1146} Ibid
\textsuperscript{1147} Ibid
• **Responsiveness** - Institutions and processes try to serve all stakeholders.\(^{1148}\)

• **Equity** - All men and women have opportunities to improve or maintain their well-being.\(^{1149}\)

• **Effectiveness and efficiency** - Processes and institutions produce results that meet needs while making the best use of resources.\(^{1150}\)

• **Accountability** – Decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organization and whether the decision is internal or external to an organization.\(^{1151}\)

• **Strategic vision** - Leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.\(^{1152}\)

Dr. Manmohan Singh stated that\(^{1153}\):

> [W]e live in an age of information, in which the free flow of information and ideas determines the pace of development and wellbeing of the people. The implementation of RTI Act is, therefore an important milestone in our quest for building an enlightened and at the same time, a prosperous society. Therefore, the exercise of the Right to Information cannot be the privilege of only a few.\(^{1154}\)

Every public authority required to maintain all its records duly catalogued and indexed in a manner which facilitates the right to information.\(^{1155}\)

Protecting the rule of law is essential for progress and development in all societies. Most countries, including countries in Asia, have laws against corruption. The problem of corruption has been recognized, and the legal and institutional framework to

---

\(^{1148}\) Ibid.

\(^{1149}\) Ibid.

\(^{1150}\) Ibid

\(^{1151}\) Ibid

\(^{1152}\) Ibid

\(^{1153}\) Supra note 1121 at 5.

\(^{1154}\) Ibid.

\(^{1155}\) Ibid.
fight against corruption has been strengthened. However, there is a threshold problem that the countries in Asia face concerning the protection of the rule of law\textsuperscript{1156}.

The laws relating to corruption are violated like many other laws, and the enforcement machinery is too weak to pursue action against the violators. The relationship of the rule of law to corruption can be understood in three stages. First, there is wide disregard for the law and its instrumentalities, and consequently, a lack of respect for law\textsuperscript{1157}.

This includes is used as a method to violate laws, break rules and regulations, abuse powers, and also exercise discretion in a wrongful manner. In all these aspects, the regulatory framework of the state apparatus is made dysfunctional due to institutionalized corruption across all department mechanisms are manipulated by way of corruption in a manner by which corruption becomes a tool for promoting lack of respect for the rule of law\textsuperscript{1158}.

In this context, many violations and violators overcome legal scrutiny or law enforcement by paying bribes and engaging in other forms of corrupt behavior. This has created a situation where the rule of law is replaced by the rule of powerful people, be it politicians, bureaucrats, business persons, or other powerful interest groups who are able to manipulate the law enforcement machinery through corruption. Even when anti-corruption cases come before the courts, there is a strong element of non-legal and political factors in play that undermines the neutrality of the criminal justice system and all the legal and judicial processes related to fighting corruption\textsuperscript{1159}.

The rule of law is protected only when there is a fairly predictable legal system that responds to needs and problems in a fair, non-discriminatory, and effective manner, and when there is access to justice. The problem of law enforcement, including anti-corruption law, attacks the very basis of democracy

\textsuperscript{1156} C. Raj Kumar, \textit{Corruption And Human Rights In India}, 30-31 (2011)
\textsuperscript{1157} \textit{Ibid.}
\textsuperscript{1158} \textit{Ibid.}
\textsuperscript{1159} \textit{Ibid.}
and the time has come to tackle it in a systematic manner in countries in the Asia-Pacific region. While there is no single solution, it is important to recognize that initiatives should primarily be intended to inculcate a respect for law among the citizenry.\textsuperscript{1160}

It is useful to understand the jurisprudential foundations of the rule of law in order to be able to relate them to the issue of corruption. In its Rule of Law Project, the International Commission of Jurists defines the rule of law as ‘[t]he principles, institutions and procedures, not always identical but broadly similar, which the experience and traditions of lawyers in different countries of the world, often themselves having varying political structures and economic backgrounds, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man.’\textsuperscript{1161}

Summarizing the various conceptions of rule of law given by modern theorists, Hernandez-Truyol has observed that-

\begin{quote}
[T]here are three characteristic central to a cogent notion of the rule of law: (1) the absence of arbitrary power on the part of the government, (2) the administration of ordinary law by ordinary tribunals, and (3) the existence of a general rule of constitutional equality resulting from the ordinary law of the land. With these characteristics, the rule of law serves three purposes: (1) it protects against anarchy; (2) it allows persons to rely on laws and plan their lives in a way by which they can predict what consequences will flow from their actions; and (3) it protects against arbitrary and capricious of the rule of law, it is particularly useful to see how corruption affects the fulfillment of the rule of law and thereby undermines law and justice.\textsuperscript{1162}
\end{quote}

Accountability is the pillar of democracy and good governance that compels the State, the private sector, and civil society to focus on results, seek clear

\textsuperscript{1160} Ibid.
\textsuperscript{1161} Ibid.
\textsuperscript{1162} Ibid
objectives, develop effective strategies, and monitor and report on performance\textsuperscript{1163}.

It implies holding individuals and organizations responsible for performance measured as objectively as possible. It has three dimensions. Financial accountability implies an obligation on the part of the person(s) handling resources, or holding public office or any other position of trust, to report on the intended and actual use of the resources. Political accountability means regular and open methods for sanctioning or rewarding those who hold positions of public trust through a system of checks and balances among the executive, legislative, and judicial branches. Administrative accountability implies systems of control internal to the government, including civil service standards and incentives, ethics codes, and administrative reviews\textsuperscript{1164}.

8.6.1.3 Strong legislation to count accountability

The RTI provides people with the mechanism to access information, which they can use to hold development of a new legislation with the name of “The public accountability and personal responsibility Act” is the strong need of society. As after Right to Information Act there is a significant change in the society. Now it is active, knowledge full and smart society who can call for their rights easily. After the legislation of this Act public accountability and personal responsibility, there will be responsible and accountable public servants. Which give base to the good governance in the democratic country like India.

\begin{center}
\textbf{Need for Strong legislation}
\end{center}

Named as - The Public Accountability and Personal Responsibility Act

\begin{itemize}
\item[]\textsuperscript{1163} Supra note 1144.
\item[]\textsuperscript{1164} Ibid
\end{itemize}
The Public Accountability and Personal Responsibility Bill.

PREAMBLE:

For regulating accountable behavior of public servants or authorities.

AIM & OBJECTIVE:

Whereas it is expedient to amend the law for regulating accountability into the behavior of public servants or authorities for their arbitrary actions to maintain rule of law throughout India.

Section 1 Short title – This Act may be called the ‘The public accountability and personal responsibility Act’.

Section 2 Definition of Government- Here government means central or state or both.

Section 3 Public Authority – It is same as defined under Prevention Corruption Act, 1988.

Section 4 Court – Here Court means special courts. These courts are situated at each district. They comprises of:

- One sitting judge of High court
- One retired civil servant
- One member of general public

Section 5 Public Accountability - Public Accountability means that every administrative action should be taken in just, fair, reasonable and rational manner.

Section 6 Charges of allegation – when any person aggrieved by the act of authority, complaint to court and on the basis of that complaint court nominated some persons to conduct the inquiry on same, on behalf of court. Here the appointed committee submits charges against public authority.
Section 7 Charge of allegation for arbitrary action taken by Public authorities – whenever government shall be of opinion that there are sufficient cause for making a public inquiry for allegation or imputation of arbitrary action or decision in violation of rule of law, such imputation shall cause to be drawn into article of charge.

Section 8 Notice to Public authorities- Once there is Charge of allegation framed against public authority, there shall be at least 30 days’ notice given to public authorities for the explanation of allegation.

Section 9 Accountability of the Authority - In general every public authority accountable to public but in case of specific explanation and answer for arbitrary actions, authority accountable to court.

Section 10 Security- when the court appointed commission given imputation against public authority, there shall require to furnish reasonable security from complainant that he will attend & prosecute the charge effectually. In case of malicious prosecution or perjury or subordination of perjury, there will be forfeiture of security.

Section 11 Copy of charge to public authority- A copy of Charge of allegation, lists of documents and witnesses by which each charge is to be sustained, and shall be delivered to the public authority, at least 30 days before the hearing.

Section 12 Power to Prosecute or Abandon the charges- At any stage of proceeding if complainant may think fit to abandon or further continue prosecution, after mentioning reason they can do so.

Section 13 Institution of case- After reading report from the commission appointed by the court, if the court is satisfied itself with reasonable cause. That may confirm the institution of suit.
Section 14 Procedure for Suit- At the first hearing the prosecutor shall exhibit the Charge of allegation to the court, which shall be openly read, and the person accused shall thereupon be required to plead ‘guilty’ to each of them, which pleas shall be forthwith recorded with the charge of allegation. There shall be examination of witnesses, cross-examination and examination by the court according to the rules framed hereunder.

Section 15 Defence or explanation to be recorded- during the course of prosecution, explanation or defence given by accused public authority shall be recorded and a copy shall be given to the prosecutor free of cost.

Section 16 Power to require amendment of charge- when the commission, board or court shall be of opinion that charge of allegation, with sufficient specification may change or changes of all are not drawn require the same to be amended and may thereupon require to inform guilty public authority within reasonable time.

Section 17. Report of Proceedings- After the close of hearing, it is duty of the court to report government their proceeding and shall send one copy to guilty public authority also.

Section 18. Power of Court- If court found the public authority guilty, it can impose personal liability and responsibility of authority. Such personal liability may in pecuniary form and no limit deciding for pecuniary jurisdiction.

Section 19. Penalty – Whoever being , or expected to be public servants, fails to act justly, reasonably and rationally while taking any administrative decision shall be punished with imprisonment not less than 6 months but which may extend to 5 years. It shall also be liable to fine up to Rs. 50,000.

Section 20. Prosecution for violating Fundamental Rights- Nothing in this Act shall be construed to repeal article 32 for these action. If public servants not providing equality to the public as provided under article 14, there may direct Prosecution of Public Authority.
Section 21. Saving of Powers of Government and High Court and Supreme court- Nothing in this Act shall be construed to affect the authority of government and High court and Supreme Court for suspending or removing any public servant for any cause given under this Act.

8.7 Access to Justice by amending rigid formal procedure.
Access to Justice is a fundamental right of every individual. State’s responsibility to implement fundamental right to access to justice is more in case of illiterate, uninformed or poor complainants.

In order to fulfill such responsibility, it is mandatory for the state to make rigid formal procedure less technical and easy accessible justice system.

It has been observed that people, who live in remote areas, numerous difficulties in invoking writ jurisdiction of their respective High courts. Therefore, it is required for the state to constitute free legal aid centers at every police station. Such initiative would make access to justice more effective.

It is further suggested that legal awareness camps should be organized by above said, free legal aid centers at village level. People should be trained and sensitized towards their fundamental rights, for only informed citizens could make public system more accountable.