



**FIGHTING CORRUPTION  
IN SOUTH ASIA:  
BUILDING ACCOUNTABILITY**

**Transparency International is the global civil society organisation leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.**

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This report is compiled and edited by Andy McDevitt, based on the findings of National Integrity System Assessments conducted by Transparency International national chapters in Bangladesh, the Maldives, Nepal, Pakistan and Sri Lanka, and a background study on India by Madhumita Mitra.

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of May 2014. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

Errata:

Please note that the following mistakes occurred in the report:

Page 10:

In the box titled "India RTI Law: A ray of light", the first line in the second paragraph read: "Under the act, all Indian citizens have a right to ask for information from central and state governments and public authorities (except in the state of Jammu and Kashmir)", when it should read: "Under the act, all Indian citizens have a right to ask for information from central and state governments and public authorities."

Page 15:

In the section "Powerless oversight bodies", the fourth line in the third paragraph read: "In India, a similar provision requiring the Central Vigilance Commission to get prior government approval before conducting an investigation or launching a prosecution against a senior public officer, was deemed unconstitutional by the Supreme Court", when it should read: "In India, a similar provision requiring the Central Bureau of Investigation to get prior government approval before conducting an investigation or launching a prosecution against a senior public officer was deemed unconstitutional by the Supreme Court."

We have corrected the report accordingly and apologise for these mistakes.

Revision:

Page 4:

In the section "Anti-corruption watchdogs: Tied up and toothless", the seventh line read: "By placing close allies in key positions within these institutions, governments in the region are able to assert strong influence on decisions which may negatively affect them." It has been amended to: "Through politically motivated appointments to key positions within these institutions, governments are often found to assert strong influence on the outcomes of key decisions which may affect their effectiveness and credibility."

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# EXECUTIVE SUMMARY

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Hardly a speech is delivered in South Asia without mention of the need to fight corruption in the region. Yet despite the lofty promises, corruption is on the rise. This report shows how a serious lack of political will on the part of governments to make laws work, means that government action to fight corruption is largely ineffective.

The report draws on the findings of in-depth research on anti-corruption efforts in Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka, which analysed almost 70 institutions across the six countries. While none of the institutions assessed were found to be free from corruption risks, this report focuses in particular on the judiciary and anti-corruption agencies as critical actors in the fight against corruption. It highlights common challenges in the region and presents the governments of South Asia with a clear set of urgent priorities which need to be addressed in order to translate their anti-corruption rhetoric into concrete action.

The key findings of the report are:

1. Citizens find themselves unable to access key information on how their governments are performing in order to hold them to account.
2. The lack of meaningful protection for whistleblowers means that the chances of detecting wrongdoing by those in positions of power are slim.
3. Widespread political interference in the critical work of anti-corruption agencies and the judiciary makes them ineffective in keeping a check on government.

This situation presents serious challenges for the rule of law in the region. Some laws are inconsistent with international standards, while others are not equally enforced and independently adjudicated. As a result, corruption and other crimes are not effectively and impartially investigated or punished. This creates an atmosphere where the corrupt continue to get away with abusing their positions for their own personal gain at the public's expense.

Nevertheless, there have been some positive developments in the fight against corruption over the last 10 years. Most significantly, all six countries in this study have ratified the UN Convention against Corruption. However, there is still a long way to go to turn these commitments into meaningful action. The analysis presented here suggests a worrying reluctance on the part of the governments concerned to enable citizens to help shape the decisions that affect their daily lives.

## The right to information: A long way to go

Citizens continue to face challenges in realising their right to information. When citizens' right to know is denied, they are less able to hold decision makers to account for their actions. Comprehensive Right to Information (RTI) legislation is in place in Bangladesh, India and Nepal and has recently been passed in Maldives. In Pakistan a new law is under discussion while the right to information is non-existent in Sri Lanka. Even where it is in place, however, public agencies do not respond to citizen requests for information effectively and systematically. In Bangladesh, for example, despite having a strong RTI law, a survey found that 29 per cent of citizens reported facing harassment and eight per cent reported having to pay additional money when seeking information

from public authorities. At the same time, citizens in the region are not always aware of their right to information, often due to a lack of commitment on the part of government and others to promote the laws.

## Whistleblowers left out in the cold

There is almost no legal protection for whistleblowers in the region. As a result, wrongdoing by those in positions of power is not being reported. Prior to 2014, Bangladesh was the only country in South Asia to have a dedicated whistleblower protection law. However there has been very little progress in implementing the law and awareness among potential users is almost non-existent. Indeed, one year after the law was passed, only 10 per cent of mid-ranking civil servants knew that it even existed. In India meanwhile a new whistleblower protection law was passed in early 2014, but it falls well short of recognised international standards. Moreover, the agency responsible for implementing the act lacks adequate powers and has a poor record of enquiring into complaints and imposing penalties.

## Anti-corruption watchdogs: Tied up and toothless

To compound the problem, in many cases, the vital watchdog institutions of the judiciary and anti-corruption agencies are unable to keep a check on government abuse. This is particularly true of anti-corruption agencies in India, Nepal and Sri Lanka and the judiciary in Bangladesh, which have all been accused of selecting cases for political motives. The effectiveness of these supposedly independent accountability bodies is seriously undermined by systematic political interference and manipulation, either through deliberate restrictions on their powers to tackle corruption or through tight government control over appointments, transferrals and removal from office of senior staff. Through politically motivated appointments to key positions within these institutions, governments are often found to assert strong influence on the outcomes of key decisions, which may affect their effectiveness and credibility. These worrying trends run counter to the spirit of a number of international agreements such as the Jakarta Principles,<sup>1</sup> the Marrakesh Declaration<sup>2</sup> and the UN's Basic Principles on the Independence of the Judiciary.<sup>3</sup>

## Building a culture of accountability in South Asia

Experience from the region shows that, in instances where governments have demonstrated strong political will to implement reforms, they have had a transformative impact on the fight against corruption. The Indian Supreme Court's judgment obliging the country's Election Commission to make criminal records of election candidates available to the public and the uncovering of massive financial fraud by Pakistan's anti-corruption agency in 2007 are two examples of affirmative action by strong watchdog bodies in the region.

Fostering this kind of political will requires, above all, strong and sustained pressure from below. That is why it is critical that non-state actors, including civil society, the media and political parties, play an active role in building a strong culture of accountability throughout society. On the one hand, civil society and the media must be given the necessary space and protection to ensure that their voices are heard without fear of retribution. At the same time, political parties must ensure that they are responsive to the citizens they represent and are able to effectively channel the will of the people through the democratic process. Without this kind of genuine and sustained political commitment, levels of corruption in South Asia will only continue to increase, jeopardizing the hard earned but fragile advances in economic growth and democratic consolidation which the region has witnessed in recent years.

## KEY RECOMMENDATIONS

### 1. Make the right to information a reality

- **Sri Lanka** and **Pakistan** must pass strong right to information laws as a matter of urgency while any attempts to weaken existing laws in other countries must be fiercely challenged.
- **All governments in the region** must actively promote the right to know by investing more in their own capacity to provide information and by educating the public on how to effectively use this fundamental right.

### 2. Ensure protection of whistleblowers

- **Maldives, Nepal, Pakistan** and **Sri Lanka** must develop comprehensive whistleblower protection legislation.
- **Bangladesh** and **India** must ensure that their existing whistleblower laws are actively promoted and effectively implemented.

### 3. Strengthen the independence of anti-corruption agencies and the judiciary

- **Maldives** and **Sri Lanka** must ensure that their anti-corruption agencies are granted the powers to instigate corruption investigations and prosecutions on their own initiative without prior government approval.
- **All governments in the region** must ensure that decisions on appointing, transferring and removing key personnel from anti-corruption agencies and the judiciary are made by an independent body and are transparent, objective and inclusive to ensure these critical watchdog agencies are not unduly influenced by the institutions they are supposed to oversee.

# INTRODUCTION

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South Asia has experienced sustained economic growth and declining poverty rates over the past twenty years.<sup>4</sup> But increasing levels of corruption in the region are putting this progress at risk. According to Transparency International's *Global Corruption Barometer 2013*, citizens in South Asia consider corruption in the public sector to be a serious problem and two-thirds of people in the region think that corruption had increased in their country in the past two years.<sup>5</sup>

In a context where corruption is seen to be getting worse, it is of particular concern that people do not think that their governments are doing enough to tackle the problem. Only 20 per cent of people in the region now feel that their government's actions in the fight against corruption are effective,<sup>6</sup> down from 39 per cent in 2011.<sup>7</sup> Indeed, as this report shows, those in positions of power appear to be part of the problem, not the solution.

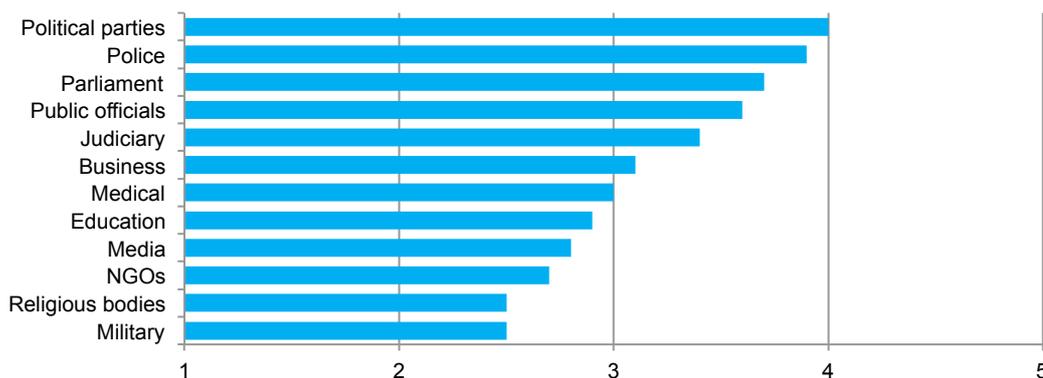
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Two-thirds of people in the South Asia region think that corruption has increased in their country in the past two years.

The lack of action to tackle corruption is symptomatic of an environment in which politicians are largely unaccountable to the citizens they claim to represent. Across the region, for example, there is very little trust in political parties, which tend to be dominated by populist leaders whose main ambition is to secure power and wealth for themselves.<sup>8</sup> The political system is also perceived to be rife with corruption. According to Transparency International's *Global Corruption Barometer 2013*, political parties are seen by citizens as the most corrupt sector in the region on average, ahead of the police and national parliaments<sup>9</sup> (see Figure 1).

## Figure 1: Extent of corruption, by institution

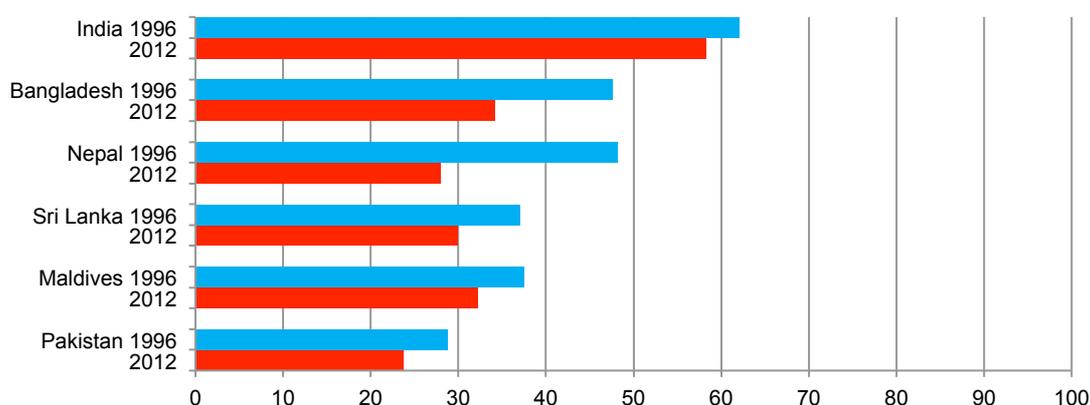
On a scale of 1-5, where 1 means not at all corrupt and 5 means extremely corrupt, to what extent do citizens see the following categories to be affected by corruption in South Asia?<sup>10</sup> (Source: Transparency International's *Global Corruption Barometer 2013*)



At the same time 60 per cent of citizens believe that their country's government is run by a few big entities acting in their own best interests.<sup>11</sup> The fact that the political systems in the region represent a small minority of interests means that ordinary citizens do not have a voice in the matters that are important to them. According to the World Bank's *Worldwide Governance Indicators*, the level of "voice and accountability" (the extent to which a country's citizens are able to participate in the democratic process and are free to express themselves) has declined in all six countries since 1996.<sup>12</sup>

**Figure 2: Level of voice and accountability (1996 versus 2012)**

On a scale of 0-100, to what extent are a country's citizens able to participate in selecting their government, and to what extent is there freedom of expression, freedom of association, and a free media? (Source: World Bank's *Worldwide Governance Indicators*)



Crucially, civil society and the media in the region enjoy increasingly less freedom to call out wrongdoing and injustice where they witness it. According to Freedom House, the extent to which civil liberties are respected has declined in all countries in the region since 2010, with the exception of India.<sup>13</sup> This shrinking space for civil society is illustrated by numerous events over the past years including systematic personal attacks on civil society activists by government owned media in Sri Lanka,<sup>14</sup> killings of human rights activists in India and Pakistan<sup>15</sup> and physical attacks and death threats in Bangladesh, India, Nepal, Pakistan and Sri Lanka.<sup>16</sup> In the case of the media, four out of the six countries in the region (India, Nepal, Pakistan and Sri Lanka) feature in the top 15 countries on the Committee to Project Journalists' *2012 Impunity Index*, which measures unpunished violence against the press.<sup>17</sup>

Thus the region is characterised by a vicious cycle in which a highly elitist and unaccountable political culture remains largely unchallenged because the very actors who can bring those in power to task are being systematically silenced. As demonstrated in this report, this scenario presents serious challenges for the fight against corruption in South Asia. By highlighting common challenges across countries, the report presents governments in the region with a clear set of urgent priorities which need to be addressed in order to translate their anti-corruption rhetoric into concrete action and break the cycle of impunity that prevails.

Only 20 per cent of people in the region feel that their government's actions in the fight against corruption are effective.

# THE NATIONAL INTEGRITY SYSTEM METHODOLOGY

This report is based on the findings of five National Integrity System assessments implemented by Transparency International chapters across South Asia between 2013-2014. The assessments were carried out in Bangladesh, Maldives, Nepal, Pakistan and Sri Lanka with the financial support of the Australian Department of Foreign Affairs and Trade. The report also draws on background research on India commissioned by Transparency International which borrowed from the National Integrity System assessment approach,<sup>18</sup> as well as additional secondary sources.

The National Integrity System assessment approach provides a framework to analyse the robustness and effectiveness of a country's institutions in preventing and fighting corruption. When the institutions and sectors that make up the National Integrity System work together effectively, they allow the anti-corruption system to run smoothly. When one or more of the institutions is particularly weak, cracks appear, allowing corruption to seep into the system.

The National Integrity System is generally considered to comprise the following institutions: legislature, executive, judiciary, public sector, law enforcement agencies, electoral management body, ombudsman, supreme audit institution, anti-corruption agencies, political parties, media, civil society and business. These particular institutions may not constitute the entire integrity system in every country however. The National Integrity System methodology can therefore be adapted to local circumstances.

Each of the institutions and sectors included in the National Integrity System is assessed along three dimensions that are essential to its ability to prevent corruption:

- Its overall capacity in terms of resources and independence.
- Its internal governance regulations and practices, focusing on whether the institution is transparent, accountable and acts with integrity.
- The extent to which the institution fulfils its assigned role in the anti-corruption system, such as providing effective oversight of the government (for the judiciary) or preventing and investigating corruption (for anti-corruption agencies).

The assessment examines both the legal framework and the actual institutional practice, thereby highlighting discrepancies between the formal provisions and reality on the ground. The assessment is primarily qualitative using a combination of primary and secondary data, including national legislation, secondary reports and research, and interviews with key experts.

National Integrity Systems assessments have been conducted in over 70 countries to date, providing Transparency International chapters with strong evidence to push for much needed reforms to strengthen the anti-corruption systems in their countries. Since the assessment exercise seeks to involve the wider anti-corruption community in its process, strong local ownership and buy-in help ensure an effective uptake of the emerging recommendations into advocacy and policy reform initiatives.

# 1. FIGHTING CORRUPTION IN SOUTH ASIA: TIME TO WALK THE TALK

There have been some positive developments with regards to the strengthening of legal frameworks to counter corruption in South Asia over the last 10 years. Most significantly, all six countries in this study have ratified the UN Convention against Corruption, with India and Nepal being the latest to do so in 2011.<sup>19</sup> Nevertheless, there are still some important gaps in legislation and limited implementation even where key legislation has existed for some time. This is of particular concern in two areas; firstly in the continued challenges which citizens still face in realising their right to information, and secondly, in the absence of any comprehensive whistleblower protection laws in the region, with the exception of Bangladesh and most recently India.

## THE RIGHT TO INFORMATION: A LONG WAY TO GO

“Corruption flourishes in darkness and so any progress towards opening governments ... to public scrutiny is likely to advance anti-corruption efforts.”<sup>20</sup> When citizens’ right to know is denied, they are less able to hold decision makers to account for their actions and cannot participate meaningfully in shaping the decisions that affect their daily lives.

Five out of six countries in South Asia have Right to Information (RTI) laws. Legislation is in place in Bangladesh, India, Nepal and Pakistan and has recently been passed in Maldives (2014), but it is non-existent in Sri Lanka. While on the face of it, this may seem like an encouraging sign, there are significant weaknesses in some of the laws themselves and even where they are considered strong, they are not always working effectively.

**Figure 3: How strong is the right to information in South Asia?**

(Source: Author’s elaboration based on National Integrity System Assessments and Mitra, 2014)

	IS THERE AN RTI LAW?	YEAR	STRENGTH OF THE LAW	CAPACITY TO IMPLEMENT THE LAW	CITIZEN AWARENESS OF THE LAW
BANGLADESH	Yes	2008	Strong	Weak	Weak
INDIA	Yes	2005	Strong	Moderate	Moderate
MALDIVES	Yes	2014	Moderate	Weak	Weak
NEPAL	Yes	2007	Strong	Weak	Weak
PAKISTAN	Yes	2002	Weak	Weak	Moderate
SRI LANKA	No	-	-	-	-

Undoubtedly, the straggler in the region when it comes to the right to information is Sri Lanka. The most recent attempt to introduce a Right to Information Bill to parliament in 2011 was blocked by the ruling party on the grounds of national security concerns,<sup>21</sup> prompting media rights organisations in the country to submit a joint letter accusing the government of “trotting out lame excuses and ‘red herrings’.”<sup>22</sup>

In Pakistan, meanwhile, despite recent amendments to the constitution in 2010 acknowledging citizens’ fundamental right to information, and while being the first country in the region to have introduced a national law of right to information, the said law is weak. The Freedom of Information Ordinance is seen as ineffective and falls short of international standards.<sup>23</sup> The new Right to Information Bill currently being developed to succeed the ordinance, meanwhile, has been described as “as bad as [the law] it seeks to repeal, if not worse.”<sup>24</sup>

While at the federal level there is a long way to go, two recent developments at state level offer some hope. The recently enacted Khyber Pakhtunkhwa Right to Information Ordinance 2013 is considered to meet international standards. The new legislation in Khyber Pakhtunkhwa was closely followed by the passing of the Punjab Transparency and Right to Information Act on 12 November 2013.<sup>25</sup>

## INDIA RTI LAW: A RAY OF LIGHT

India’s RTI Act is regarded as a revolutionary piece of legislation in the country and continues to be a reference point to others in the region and around the world. The law is rated second on the global *RTI Ratings 2013* because it features clear procedures for information seekers, an acceptable set of exemptions and has effective oversight bodies.<sup>26</sup>

Under the act, all Indian citizens have a right to ask for information from central and state governments and public authorities. The act also covers all bodies and non-government organisations substantially financed by the government. Citizens can request to inspect or copy information, and can even make an application to inspect public works and take samples. Although the act includes a list of exemptions, these may be overridden if the public interest in disclosure outweighs the potential for harm. Appeals can be made to Information Commissions which have investigative powers and can make binding decisions, order compensation and impose penalties. The act also requires the government to monitor and promote the law.<sup>27</sup>

By international standards, India’s Right to Information Act (2005) is regarded as one of the strongest in the world (see above). However, recent moves have been made by the government to whittle down the RTI Act by bringing in amendments that restrict disclosure. The most controversial amendment concerned the exemption of the Central Bureau of Investigation, India’s premier anti-corruption agency, from responding to the majority of information requests.<sup>28</sup> As a result, the Bureau rejected almost half of the information requests it handled during the year 2011-12.<sup>29</sup> The removal of this critical anti-corruption watchdog from public scrutiny is particularly worrying given the tight control it experiences from the Indian Government, one of the very institutions it is supposed to monitor (see page 15).

## Limited capacity to provide information

An important challenge to realising the right to information in South Asia is the limited capacity of public authorities to respond to citizen requests for information. In India, the government has made substantial efforts to strengthen the RTI infrastructure, often in consultation with civil society.<sup>30</sup> However, recently the role of the Information Commission, a dedicated agency established to oversee the implementation of the RTI Act, has been brought into question. The commission is accused of failing to impose meaningful penalties or disciplinary proceedings on those who fail to release required information.<sup>31</sup>

As in India, the Right to Information Act of Bangladesh is considered strong and is supported by an Information Commission to ensure compliance with the law. The act also requires public agencies to employ dedicated information officers to handle requests for information.<sup>32</sup> Despite some weaknesses, the law is regarded as a significant achievement in a country where administration is steeped in secrecy.<sup>33</sup> Nevertheless, five years after coming into force, the act is far from achieving its objectives. According to a survey conducted in the second year of the implementation of the RTI Act, 88 per cent of requesters reported having to visit the information provider's office numerous times, 29 per cent reported facing harassment, 26 per cent reported facing difficulties finding the responsible information officer and eight per cent reported having to pay additional money to get the information they were looking for.<sup>34</sup> Crucially, awareness of the law remains low among public officials. According to the Information Commission of Bangladesh, by 2012, only one-third of government offices and NGOs had submitted the names of their designated information officers.<sup>35</sup>

A similar picture emerges in Nepal, where the Right to Information Act is regarded as a relatively robust law. Uniquely in the region, it also covers both political parties and all non-governmental organisations.<sup>36</sup> Nevertheless, implementation of the act is considered weak. Many public agencies have not appointed dedicated information officers and much of the information subject to proactive disclosure under the law remains unpublished.<sup>37</sup>

The most recent country in the region to join the community of nations with a dedicated Right to Information law is Maldives, becoming the 99<sup>th</sup> country in the world to implement such a law in January 2014.<sup>38</sup> As with its neighbours, Maldivian law requires the government to appoint an Information Commissioner and all government agencies to appoint information officers.<sup>39</sup> While it is too early to tell whether the law will be effective, there have already been concerns raised over the government's preparedness to implement the law.<sup>40</sup>

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The new Right to Information Bill currently being developed in Pakistan has been described as “as bad as [the law] it seeks to repeal, if not worse.”

## Citizens not making use of their right to information

While the strength of some right to information laws and the capacity to implement them remain a matter of concern across the region, perhaps most worrying of all is the fact that citizens are not making use of their newly acquired rights, or are not even aware of them. In Bangladesh, for example, in the first two-and-a-half years of its operation, the Information Commission heard only 44 complaints out of around 100 received. These are paltry numbers for a country with a population of over 150 million and compares to over 27,000 in India for the same period.<sup>41</sup> What is more, two years after the implementation of the act, 44 per cent of people did not even know about the law.<sup>42</sup> This may partly be due to the fact that the government, the media and NGOs are not making a concerted effort to raise awareness of the right to information among citizens.<sup>43</sup>

In both Pakistan and Nepal, the number of requests from both civil society groups and the general public has also been low. In Pakistan limited public awareness of the law has been attributed to the top-down manner in which it was developed leading to a perception among citizens that it is not relevant to them.<sup>44</sup> In Nepal it stems from a combination of factors including illiteracy and limited public outreach.<sup>45</sup> In Maldives, although the new law has only just been passed, there are concerns about the level of citizens' awareness of their rights,<sup>46</sup> an issue which will need to be addressed as a matter of urgency.

In Bangladesh 88 per cent of information requesters reported having to visit the information provider's office numerous times, 29 per cent reported facing harassment, 26 per cent reported facing difficulties finding the responsible information officer and eight per cent reported having to pay additional money to get the information they were looking for.

## WHISTLEBLOWERS LEFT OUT IN THE COLD

While the right to information allows citizens to find out what is going on in government, whistleblower protection legislation allows those on the *inside* to expose corruption and fraud. By disclosing information about such misdeeds, whistleblowers have helped save billions of dollars in public funds, while preventing emerging scandals and disasters from worsening.<sup>47</sup> The absence of effective protection can therefore pose a dilemma for whistleblowers: they are often expected to report corruption and other crimes, but doing so can expose them to retaliation.<sup>48</sup>

Article 33 of the UN Convention against Corruption states that:

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.<sup>49</sup>

Yet despite all countries in the region being signatories to the convention, only two out of six have passed a dedicated whistleblower protection law: Bangladesh and more recently, India.

### Figure 4: How strong is whistleblower protection in South Asia?

(Source: Author's elaboration based on National Integrity System Assessments and Mitra, 2014)

	IS THERE A WHISTLEBLOWER LAW?	YEAR	STRENGTH OF THE LAW	CAPACITY TO IMPLEMENT THE LAW
BANGLADESH	Yes	2011	Moderate	Weak
INDIA	Yes	2014	Weak	Weak
MALDIVES	No	-	-	-
NEPAL	No	-	-	-
PAKISTAN	No	-	-	-
SRI LANKA	No	-	-	-

The Bangladeshi Public Interest Related Information Disclosure (Protection) Act was enacted by the Government in 2011. The law empowers a person to disclose information on government offices as well as non-government organisations, but does not cover the private sector. It ensures that authorities can reward a whistleblower if their information is proved correct, that no criminal, civil or administrative proceedings can be brought against whistleblowers, and that their identities cannot be revealed without their consent.<sup>50</sup> However, the threat of imprisonment for up to five years for knowingly presenting false information may deter public officials from blowing the whistle in practice.<sup>51</sup>

While the introduction of this critical piece of anti-corruption legislation is a good start, no progress so far has been made to operationalise the act, no focal point has been designated to ensure its implementation and no awareness programmes among potential users have been undertaken.<sup>52</sup> According to an eminent lawyer in the country, in the year in which the act was passed, only 10 per cent of mid-ranking civil servants knew that there was such legal protection available for whistleblowers.<sup>53</sup>

The Indian Parliament, meanwhile, passed the Whistle Blowers Protection Act on 21 February 2014, replacing the previous Public Interest Disclosure and Protection of Informer Resolution 2004. Under the new act, a complaint may be made about an act of corruption, wilful misuse of power, or discretion.<sup>54</sup> While the act is undoubtedly an important additional building block in the Indian anti-corruption architecture, it falls short of international standards. For example, anonymous complaints are not permitted, there is no appeal process for anyone accused of false complaints, penalties for “victimisation” of complainants are not defined, and no time limit is laid down for completing enquiries into whistleblower complaints.<sup>55</sup>

Moreover, the designated agency for implementing the act, the Central Vigilance Commission, lacks adequate investigating and penal powers and is largely a recommendatory body. The commission has had a poor record of enquiring into complaints, imposing penalties on government offices and protecting whistleblowers under the previous legislation. Given that the procedures and resources are largely the same as before, little improvement in its performance is expected.<sup>56</sup>

In neighbouring countries, whistleblowing protection laws are absent. Nevertheless, other legislation does in some cases cover elements of whistleblower protection, including articles under the Right to Information Acts in Maldives<sup>57</sup> and Nepal<sup>58</sup> and The Khyber Pakhtunkhwa Right to Information Ordinance in Pakistan.<sup>59</sup>

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Only 10 per cent of mid-ranking civil servants in Bangladesh knew there was legal protection for whistleblowers.

## 2. ANTI-CORRUPTION WATCHDOGS: TIED UP AND TOOTHLESS

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As the previous chapter has demonstrated, key laws to ensure that both citizens and public servants can hold their governments to account are either missing or, where they exist, largely ineffective in the region. To compound the problem, the vital watchdog institutions of the judiciary and anti-corruption agencies are unable to keep a check on government abuse and either fail to prosecute those in positions of power or do so only selectively. The effectiveness of these supposedly independent accountability bodies is seriously undermined by systematic political interference and manipulation.

### SELECTIVE INVESTIGATIONS AND PROSECUTIONS

Anti-corruption agencies and the judiciary in South Asia do not always effectively and impartially investigate and try corruption cases.

The Commission for Investigation of Abuse of Authority in Nepal<sup>60</sup> and the Central Bureau of Investigation in India<sup>61</sup> stand accused of allowing political agendas to influence critical decisions. In India, for example, in the high profile case of the Sant Singh Chatwal Bank fraud allegations, two directors of the Commission refused to file an appeal against Chatwal's acquittal, against the advice of their own investigators.<sup>62</sup> A request for information regarding the reasoning behind this decision was subsequently rejected by the Bureau, prompting the Information Commission to impose a fine on the Bureau's public information officer.<sup>63</sup>

In Sri Lanka, meanwhile, media allegations have suggested that two investigations into suspect procurement deals pending against a former inspector general of police at the Commission to Investigate into Allegations of Bribery or Corruption were being suppressed "due to undue influence exerted through powerful persons in the ruling regime."<sup>64</sup>

The Anti-Corruption Commission in Bangladesh, for its part, is considered largely ineffective in both investigating and preventing corruption. Whilst the Anti-Corruption Commission Act clearly states that "[c]orruption shall be the subject matter of investigation by the commission alone,"<sup>65</sup> actual cases are rare. During 2012, for example, the commission submitted charge sheets in 588 cases but only around 57 cases resulted in successful prosecutions in that year.<sup>66</sup>

Moreover, those cases which are brought forward are often of a political nature. In 2009, the Government of Bangladesh set up a committee to investigate politically motivated cases filed against politicians and others. By March 2011, the committee had withdrawn 4,687 cases, most of which involved members of the ruling party. The committee also dropped twelve corruption cases against the prime minister as well as other cases filed against senior party leaders, known party

supporters, and their relatives. Conversely, the committee has been reluctant to drop criminal charges filed against opposition party leaders and has refused to withdraw charges against journalists and human rights activists.<sup>67</sup>

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In Sri Lanka, two investigations into suspect procurement deals pending against the former inspector general of police were being suppressed “due to undue influence exerted through powerful persons in the ruling regime”.

## POWERLESS OVERSIGHT BODIES

Why are these supposedly independent oversight bodies operating in such an ineffective and partisan manner? The reality is that in many cases they are being deliberately weakened and disempowered by vested political interests. The most obvious manifestation of such political interference is the limitation of the powers of these institutions to perform their anti-corruption role.

In two out of the six South Asian countries anti-corruption agencies do not have the power to begin both investigations and prosecutions against government officials without the consent of government. In Sri Lanka, the Commission to Investigate into Allegations of Bribery or Corruption has a limited mandate and does not have the power to instigate investigations on its own initiative.<sup>68</sup> In Maldives, the Anti-Corruption Commission can initiate investigations, but not prosecutions, and must instead forward cases to the Prosecutor General for any further action to be taken.<sup>69</sup>

In two other countries, similar restrictions have recently been overturned. In Bangladesh, the requirement for the Anti-Corruption Commission to obtain permission from the government before filing a corruption case against a judge, magistrate or public servant was recently struck down by the High Court.<sup>70</sup> In India, a similar provision requiring the Central Bureau of Investigation to get prior government approval before conducting an investigation or launching a prosecution against a senior public officer was deemed unconstitutional by the Supreme Court.<sup>71</sup>

In Pakistan, the government introduced a new National Accountability Commission Bill in the National Assembly, in an attempt to replace the existing National Accountability Bureau with a new commission with more limited scope and jurisdiction,<sup>72</sup> although to no avail.

## QUESTIONABLE APPOINTMENTS, TRANSFERRALS AND REMOVAL FROM OFFICE

More subtle forms of political manipulation of accountability institutions are also evident across the region, through government control over appointments, transferrals and removal from office, often with questionable results. Through politically motivated appointments to key positions within these institutions, governments are often found to assert strong influence on the outcomes of key decisions, which may affect their effectiveness and credibility.

In some cases, control of appointments to these institutions does not necessarily represent a breach of existing laws. In India, for example, the government maintains the power to control appointments to the Central Bureau of Investigation and the authority to determine career progression, personal appraisals and discipline, making bureau officers vulnerable to external pressure.<sup>73</sup>

In other cases, the laws themselves are amended to allow for greater government control. This is the case in Sri Lanka, where the constitutional changes of 2010 brought in a new directive whereby the members of the Commission to Investigate into Allegations of Bribery or Corruption are appointed directly by the president.<sup>74</sup> The effects of the amendment to the constitution have also been felt in the judiciary, granting the president unrestricted power to appoint the chief justice and the Supreme Court judges and moving the Attorney General's office from the purview of the Ministry of Justice directly under the authority of the president.<sup>75</sup>

However, as often as not, government control of key personnel does happen in blatant contravention of the laws of the country. In Sri Lanka, the Commission to Investigate into Allegations of Bribery or Corruption has for a long time been plagued by severe political interference. In November 2007, for example, an officer in charge of the Asset Division of the commission was transferred without any consultation with the commission itself.<sup>76</sup> Later, in 2008, the director general of the commission was removed by the president without explanation, drawing strong criticism from the Asian Human Rights Commission.<sup>77</sup> Much the same can be said of the judiciary where a history of executive interference culminated in 2013 in the impeachment of Shirani Bandaranayake, the 43<sup>rd</sup> and the first female Chief Justice of Sri Lanka, reportedly "in defiance of the judgements of the highest courts in Sri Lanka."<sup>78</sup>

In Bangladesh meanwhile, there is concern that politically motivated judicial appointments have increased in recent years. For example, the ruling government has appointed a total of 48 judges to the Supreme Court since 2009, most of whom have been allegedly selected for their pro-government bias.<sup>79</sup> Political considerations are also evident in forced retirement of judges without consultation with the Supreme Court as is required by law. Consequently, judges often avoid decisions that may embarrass the government, "weighed down by fears of political persecution."<sup>80</sup>

Perhaps the most blatant example of disregard for the separation of powers comes from Nepal where, following a long period with no sitting parliament, the chief justice was appointed Head of Government (Council of Ministers) in March 2013. While recognised as an interim measure, the move was strongly criticised for "obliterat(ing) the line between the executive and the judiciary."<sup>81</sup> Immediately following the elections in Nepal in early 2014, the chief justice resigned from his post.<sup>82</sup>

## WATCHDOGS BITING BACK

While the issue of political interference is clearly not a phenomenon isolated to one or two countries in the region, there are some examples of accountability bodies fighting to maintain their independence. These examples clearly demonstrate that when such bodies are given the freedom to manage their own affairs, they can make an important contribution to the fight against corruption.

Pakistan's anti-corruption agency, the National Accountability Bureau, has powers to seize, freeze or transfer assets and places the burden of proof on the accused. It also has a retroactive remit dating back to 1985 and wide financial autonomy. While not immune from political interference – in 2012, for example, the sitting chairman withstood strong pressure to resign – <sup>83</sup> the bureau has had some important victories. Among others, the bureau was largely responsible for exposing the so-called “Double Shah Scam” in 2007, the biggest financial fraud in the history of Pakistan.<sup>84</sup>

The judiciary in India, meanwhile, has proved itself to be largely effective in checking the power of the government and strengthening anti-corruption safeguards in the country, despite the attempted (but failed) introduction of a controversial Judicial Appointments Commission Bill which would have opened up the potential for political manipulation.<sup>85</sup> For example, the Supreme Court ordered the creation of special corruption courts which do not unilaterally require government approval for prosecution.<sup>86</sup> The court also passed a judgment requiring the Election Commission of India to make criminal records of candidates available to the public along with details of the candidates' educational qualifications, assets and liabilities.<sup>87</sup>

Finally, the case of the judiciary in Pakistan shows that where there is political will to learn from past mistakes, the effects can be transformative. Historically, the courts in Pakistan have been subject to periods of severe political interference, including forced removal and unconstitutional appointments based on nepotism, political patronage and favouritism.<sup>88</sup> However constitutional changes in 2010 created an independent Judicial Commission to nominate senior judges.<sup>89</sup> As a result of greater independence, the courts took up 6,000 human rights cases the following year<sup>90</sup> and declared the controversial National Reconciliation Ordinance, which had granted amnesty to politicians and bureaucrats accused of corruption between 1986 and 1999, to be unconstitutional.<sup>91</sup>

While much of this action is commendable, there have also been concerns that the Supreme Court of Pakistan has in fact been making too frequent use of its powers.<sup>92</sup> This cautionary tale raises an important question about the need to balance independence of oversight bodies with accountability: too much of either can ultimately lead to similar results. In Maldives, for example, the problem of limited judicial accountability has resulted in excessive use of powers over the other two branches of government. The introduction of a new law has allowed the Supreme Court to “essentially act as prosecutor, judge and jury during trial.”<sup>93</sup> This is most starkly illustrated by the Maldives Supreme Court's decision to sentence the president of the Election Commission to six months in prison for contempt of court following the recent elections in 2014, drawing strong criticism from the UN Secretary-General<sup>94</sup> as well as the EU High Representative who described the move as “a serious setback in the democratic transition of the country.”<sup>95</sup>

# CONCLUSIONS AND RECOMMENDATIONS

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A serious lack of accountability on the part of the political elite in the region means that government action to fight corruption is largely ineffective. Citizens find themselves unable to access key information on how their governments are performing in order to hold them to account, while the lack of any meaningful protection for whistleblowers means that any detection of wrongdoing by those in positions of power is not being systematically reported. Meanwhile widespread political interference in the critical work of key accountability institutions is stopping them from effectively keeping a check on government.

Nevertheless, as some of the positive examples from this report show, where governments from the region have demonstrated strong political will to implement reforms, they have had a transformative impact on the fight against corruption. Fostering this kind of political will requires non-state actors such as civil society, the media and political parties to apply strong and sustained pressure on governments. On the one hand, civil society and the media must be given the necessary space and protection to ensure that their voice is heard without fear of retribution. At the same time political parties must ensure that they are responsive to the citizens they represent and are able to effectively channel the will of the people through the democratic process. Without this kind of genuine and sustained political commitment, levels of corruption in South Asia will only continue to increase, jeopardizing the hard earned but fragile advances which the region has witnessed in recent years.

The following set of urgent priorities for the governments of Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka need to be addressed in order for them to translate their anti-corruption rhetoric into concrete action. More detailed country-specific recommendations can be found in the National Integrity System assessments of the respective countries.

## MAKING THE RIGHT TO INFORMATION A REALITY

With the notable exceptions of Pakistan, and in particular Sri Lanka where no law exists, Right to Information Laws in the region are considered relatively strong by international standards. Nevertheless, implementation of the laws is not living up to expectations. The capacity of the public sector in South Asian countries to meet their responsibilities is weak. At the same time awareness of the law is limited among both public officials and citizens. The result is an environment in which government and the public sector remain veiled in secrecy. Ultimately a well-informed population strengthens democracy and leads to a more prosperous society. The key steps which need to be taken in order to make the right to information a reality in South Asia are as follows:

- **Sri Lanka** must pass a Right to Information law as a matter of urgency to enable citizens to realise their fundamental right to information as guaranteed in the country's constitution. The law should draw on the strong legislation developed in neighbouring countries, in particular India and Bangladesh.
- **Pakistan** must substantially strengthen the Right to Information Bill currently under discussion in order to meet international standards, also drawing on the strong legislation developed in India and Bangladesh.
- **India** must halt any further attempts to weaken its exemplary Right to Information Act. In particular, the recent exemption of the Central Bureau of Investigation from many critical aspects of the act should be reviewed as a matter of urgency.
- **All countries in the region** must invest in setting up strong right to information infrastructure to ensure that public authorities are able to provide comprehensive and accurate information to citizens in a timely manner as required by law. All public agencies must appoint and train public information officers so that they are aware of their responsibilities under the law and are empowered to provide information when requested to do so.
- **All countries in the region** must invest in public education campaigns throughout their territories to raise awareness among citizens of their fundamental right to information, and of how to use it to hold their governments to account.

## ENSURING PROTECTION OF WHISTLEBLOWERS

Despite the fact that all six countries have signed the UN Convention against Corruption, which explicitly requires them to consider adopting whistleblower protection legislation, only Bangladesh and India to date have done so. Even in these countries, however, the legislation is either weak or not being applied effectively. Without adequate and functioning whistleblower protection laws which allow public officials to safely report corruption and other crimes, those who abuse their positions of power for their own personal gain will continue to get away with it at the expense of the public purse. The key steps which need to be taken in order to protect whistleblowers in the region are as follows:

- **Maldives, Nepal, Pakistan and Sri Lanka** must develop comprehensive whistleblower protection legislation with a broad scope which covers both the public and private sectors based on Transparency International's *International Principles for Whistleblower Legislation*.<sup>96</sup>
- **India** must review its recently introduced Whistle Blowers Protection Act as soon as possible with a view to broadening its scope and ensuring that the guarantee of protection for whistleblowers is watertight. Anonymous complaints should be permitted, an appeal process should be established for anyone accused of false complaints and penalties for "victimisation" of complainants should be defined.
- **Bangladesh** must implement awareness raising programmes for public sector officials at all levels so that they are familiar with the whistleblowing procedure.

## STRENGTHENING THE INDEPENDENCE OF ANTI-CORRUPTION AGENCIES AND THE JUDICIARY

The Marrakech Declaration adopted by the International Association of Anti-Corruption Authorities (2011) pledges to ensure that “anti-corruption authorities [...] are able to function with the necessary independence, secure and stable funding and specialised staff with professional training, in order to operate effectively and free from any undue influence, in accordance with articles 6 and 36 of the UNCAC.”<sup>97</sup> Meanwhile the Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1985) requires that “the independence of the judiciary shall be guaranteed by the State and enshrined in the constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”<sup>98</sup>

Yet despite such universal agreements, political interference in the operation of these two vital watchdog institutions remains a widespread problem in South Asia. In many cases, they are being deliberately weakened and disempowered by vested political interests which place restrictions on their authority and mandate to meaningfully tackle corruption. More subtle forms of political manipulation occur through government control over appointments, transferrals and removal from office. The result is that these institutions are unable to keep a check on government abuse and either fail to prosecute those in positions of power or do so only selectively. The key steps which need to be taken in order to strengthen the independence and hence effectiveness of anti-corruption agencies and the judiciary in South Asia are as follows:

- **Maldives and Sri Lanka** must ensure that their anti-corruption agencies are granted “suo motto” powers to instigate both corruption investigations and prosecutions on their own initiative without prior government approval.
- **Pakistan** must halt any further attempts to replace the National Accountability Bureau with a new commission with more limited scope and jurisdiction.
- **All governments in the region** must ensure that appointments, transferral and removals of heads and senior staff of anti-corruption agencies and the judiciary are conducted transparently, on the basis of clear, objective and fair criteria and with the participation of a range of stakeholders, including members of the institutions themselves. Appointments should be made by a body acting independently of the executive and the legislature, whose members have been appointed through an objective and transparent process. Such critical decisions must not be made by the government or the president alone.

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