



EVALUATING THE EFFICACY & CHALLENGES OF THE PREVENTION OF CORRUPTION ACT, 1988 IN COMBATING PUBLIC SECTOR CORRUPTION IN INDIA

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ABSTRACT

Corruption poses a significant threat to the integrity and efficiency of public institutions worldwide. The prevention of corruption act enacted in 1988 stands as a seminal piece of legislation aimed at combating corruption within the Indian public sector. This paper provides a thorough evaluation of efficacy and challenges of the PCA, 1988 in addressing public sector corruption in India. The paper starts with introduction to the historical context and need for legislation, examining the pervasive nature of corruption in India before 1988 and suggestion's put forth by the Santhanam Committee. It provides an overview of the prevention of corruption Act, 1988 tracing its evolution and delineating its key objectives and provisions. Analysis of this act will focus on the definitions along with the various types of punishments for those found guilty. It will also include difficulties regarding prosecution and presumptions clauses in the Act. Furthermore, the paper conducts a comparative analysis with international anti-corruption laws, drawing lessons from successful initiatives in other countries. It also identifies inherent challenges and limitations in implementing anti-corruption measures and critiques of the Prevention of Corruption Act, 1988. The impact of the Act is assessed through case studies illustrating successful prosecutions and remedial actions. Building upon these findings, the paper offers suggestions for improvement and future directions, advocating for reforms and amendments to strengthen the Act and enhance institutional capacities for anti-corruption efforts. In conclusion, the paper synthesizes the key findings and recommendations, providing insights into the current state of anti-corruption efforts in India and offering a roadmap for advancing integrity and accountability with the public sector. This comprehensive analysis underscores the importance of robust anti-corruption legislation and effective enforcement mechanisms in promoting good governance and combating corruption worldwide.

Keywords: *Corruption in India, Enforcement mechanisms, Challenges and limitations, Impact assessment and International anti-corruption laws.*

INTRODUCTION

India has been rooted with corruption from decades which has been deeply long-established and had a shade of multifaceted along with historical concepts, socio-economic factors and the political roots. The history of India has been combating with various forms of corruption like taking of petty bribery under the table to high-level of growth of corruption. For understanding the concept of corruption in depth one need to requires its inspection with the colonial legacy. Along with the various challenges faced by the post-independence era. When the British East India Company authenticated its dominance of authority over the whole India in the 18th century, the origin of corruption can clearly be traced back in the colonial era. All the deceitful means has been practiced by the various established companies in India inclusive of petty bribery, extortion of money, conspiracy along with the community or local elites performing of all these activities is a terrific addition for systematic corruption in every civilized field. Under colonial structure the chief executives hierarchize wholly

their interest on the corruption over the well-being of the Indian populace.¹ In 1947 India gained the independence despite this, it continued to struggle with the problem of corruption as its metamorphosis into a democratic republic. Independence of the early years saw the arrival of power of appointment networks and the seeking of rent way of behaving surrounded by political elite. The concatenation between politicians, bureaucrats, and business undivided attention keeps in existence of the corruption everywhere including various sectors of society.² The scenery of socio-economic factors in India makes distinctive through worldwide poverty, inequality on every basis and the consumption of large informal economy has become a huge contribution to the augmentation of corruption. Due to the lack of availability of basic services and golden opportunities, it has created productive ground for corruption practices, as independents frequently resort to petty bribery to plot a route for bureaucratic hurdles.³ Political parties and leaders have a great impact on the prevalence of corruption which cannot be exaggerated. India's electoral scenery usually includes the buying of votes from the innocent voters, embezzlement of public funds and cronyism. The linkage between money and power keeps alive a culture of corruption where all the politicians can prioritize their personal interest over welfare⁴ of the public sector. The established institution of India suffering from weaknesses including law enforcement agencies, the judiciary and the regulatory bodies, have intensify the huge problem of corruption. Lack of answerability and transparency in the above-mentioned institutions have allowed corruption problem to thrive uncontrolled. In addition, the regulatory gaps and red tape of bureaucratic have created opportunities for corruption to propagate.⁵ The organizations in a civilized society and media on the other hand plays a major role in exposing and combating the problem of corruption in India. The various movements in a civil society such as the anti-corruption protests which had been headed by Anna Hazare. Another India Against Corruption movement, have muster the opinion of public at large and side by side also put a great pressure on the government to enact anti-corruption measurements. Analytical journalism had a vital role in exposing corruption scandals and holding powerful authority accountable.⁶ Through its colonial legacy to modern challenges, the corruption remains same problem that erode democracy, public sector trust and obstruct socio-economic development. To address the problem of corruption requires a multi-pronged approach including reforms, strengthening of institution and various efforts from civil society and the media.⁷

HISTORICAL CONTEXT AND NEED FOR LEGISLATION

The requirement of anti-corruption law in the country of India became far more important for the repercussions of independence, as the problem of corruption carry on with plague various sectors of society. The Prevention of Corruption Act, 1988 replaced the earlier Prevention of Corruption Act, 1947, the goals of which to achieve modernization and strengthen anti-corruption measures in line with contemporary challenges. Comprehensive framework has been provided by the act for the prevention, investigation, and prosecution of corruption offenses, circumscribe petty bribery, abuse or misuse of official positions and possession of disproportionate assets.⁸ The Prevention of Corruption Act, 1988 introduced several key provisions to combat corruption within the public sector effectively. Irrespective of the comprehensive legal framework that has been provided by Prevention of Corruption Act, 1988 its execution has been marred by various challenges. The primary challenge is the absence of effective enforcement mechanisms and examine capacities by the agencies of law enforcement. The cases of corruption often languish for years in the judicial system leading to impunity among corrupt officials. Besides, the worldwide commonness of the problem of corruption incorporated with bureaucratic inactiveness and due to the intercession of the various political powers subvert the effectiveness of anti-corruption efforts.⁹ In the year of 1962, the Indian government decorated a responsible committee undergoing the chairmanship of K. Santhanam so that it can eradicate the problem of corruption and in addition endorse various measures for combating with corruption effectively. The Santhanam Committee Report, in other words also known as the Committee on Prevention of Corruption, had its finding and defined recommendations in 1964. The focus of attention of this above report was on the permeating nature of corruption in India and recognize systematic structure of enfeeblement in the existing framework of anti-corruption in India. The various range of measures were taken through this committee to strengthen anti-

¹ S. Bose, *A Hundred Horizons: The Indian Ocean in the Age of Global Empire* (Harvard Univ. Press 2010).

² D. Gupta, *Corruption in India: An Overview*, 40(47) *Econ. & Pol. Wkly.* 4988 (2005).

³ J. Dreze & A. Sen, *An Uncertain Glory: India and its Contradictions* (Princeton Univ. Press 2013).

⁴ P. Bardhan, *Corruption and Development: A Review of Issues*, 35(3) *J. Econ. Literature* 1320 (1997).

⁵ Transparency Int'l India, *India Corruption Study 2019* (2019).

⁶ A. Roy, *The Anti-Corruption Movement in India: A Critique*, 47(10) *Econ. & Pol. Wkly.* 41 (2012).

⁷ A. Jain, *Combating Corruption in India: The Role of Civil Society* (Sage Publ'ns 2017).

⁸ *Prevention of Corruption Act, 1988, India.*

⁹ Transparency Int'l India, *India Corruption Study 2019* (2019).

corruption mechanisms including reforms, administrative changes and institutional safeguards.¹⁰ To enhance transparency, accountability, and integrity among the public sector several exhortations have been made by the Santhanam Committee, from which one of the key directions was the enactment of comprehensive legislation to replace the outdated and all the laws which are non-effective then in force. The Santhanam Committee put forward setting up of specialized anti-corruption agencies along with the authority for the investigation and prosecution of corruption cases independently. It also draws attention to the importance of various measures of prevention, such as asset pronouncement by the authorized public officials and the formation of codes of conduct. While the various recommendations made by the Santhanam Committee worked as a blueprint for anti-corruption reforms in the country of India, all its applications have been gradually and often ineffective. Notwithstanding the establishment of various legislative reforms, such as the enactment of the Prevention of Corruption Act, 1988, the problem of corruption remains pervasive within the public sector. The insufficiency of political tendency, bureaucratic resistance, and institutional feebleness have impeded all the efforts for effective execution of anti-corruption measures. Furthermore, the absence of stringent accountability mechanisms and political right of appointment for widespread presence worsen the problem of corruption in India.¹¹ In recent years, there have been renewed efforts to give strength to anti-corruption measures in India, driven by public outcry and civil society activism. Establishment of digital technology and e-governance initiatives holds the promise of enhancing transparency and reducing opportunities for active corruption. To address the root cause of various problems of corruption there is a need for a holistic approach that looks after socio-economic disparities, strengthens institutional capacities, along with fostering cultural integrity and responsibilities. Implementation of anti-corruption laws with effectiveness such as the Prevention of Corruption Act of 1988, make necessary jointly planned efforts from all stakeholders, including the government, judiciary, civil society and the private sector.¹² The Prevention of Corruption Act, 1988 plays a significant legislative milestone in India's fight against problem of corruption, particularly within sector filled by the public at large. However, the efficacy of the Prevention of Corruption Act, 1988 in combating corruption remains constrained by various challenges, including weak enforcement mechanisms, bureaucratic inertia, and political interference. The recommendations made by the Santhanam Committee underscore the need for comprehensive reforms to strengthen anti-corruption measures along with the promptness of integrity within the public sector. Processing, concerted efforts are required to address the systematic root causes of corruption and foster a culture of transparency, accountability and ethical governance in India.¹³

INVESTIGATION AND PROSECUTION

The Prevention of Corruption Act authorizes the enforcement by the law agencies to investigate and prosecute corruption offenses effectively. Special Judges and Public prosecutors are often being appointed via this Act to handle the cases of corruption throughout the country and provide justice for the same to innocent human beings to ensure impartiality and fairness in the judicial process in India. It also allows for the attachment and confiscation of property acquired through means of corruption, dispossessing corrupt officials for proceeding with the illegal activities. Supplementary, the Prevention of Corruption Act of year 1988 mandates for the establishing of special courts to uphold all cases related to the practices of corruption, accelerate the judicial process and ensues the timely justice to the suffered victims of corruption. The Act also imposes various penalties, including imprisonment and fines, for those who are found guilty of offenses, ensuring accountability and deterrence. Section 7 of the Act criminalizes the act of taking gratification or influence public servants, while Section 8 prohibits the acceptance of gratification by public servants. Moreover, Section 13 delineates offenses related to criminal misconduct by public servants, including abuse of power, misuse of office, and possession of assets disproportionate to know source of income. Public servants if found guilty of corruption can imprisoned for up to 7 years along with other penalties like forfeiture of property. Investigative agencies play an important role in uncovering the covered and prosecuting cases of corruption. The Central Bureau of Investigation is the premier investigative agency that investigates corruption cases which involve central government employees and same as this agency, State Anti-corruption Bureau's handle cases involving state government employees and to check vigilance activities there is Central Vigilance Commission which give advice to control or eradicate control. There are many challenges in Investigation like various constraints, inadequate staffing and old technology which hampers efficiency of these agencies. Other two major factors like money laundering and shell companies become roadblocks for these agencies. Once investigation completes, prosecution begins, special court ensure that faster trial is done. The CrPc, 1973, which is

¹⁰ Gov't of India, Report of the Committee on Prevention of Corruption (1964).

¹¹ D. Gupta, Corruption in India: An Overview, 40(47) Econ. & Pol. Wkly. 4988 (2005).

¹² S. Mishra, Globalization and Corruption: A Complex Relationship, 62(1) Int'l Stud. Q. 131 (2018).

¹³ Transparency Int'l India, National Integrity Survey 2020 (2020).

procedural law gives the safeguards for fair trials, various alternative dispute resolution mechanisms are there which help in expediting cases sooner. There are two relevant and famous case studies related to prosecution and trial process:

2G Spectrum Scam Case: This case was one of the biggest corruption cases in India, in which 2G spectrum licenses were allegedly irregular in allocation in 2008 which led to loss of billions of dollars to the high-profile politicians, bureaucrats and executives. The trial for this started in 2011 before CBI in New Delhi. Prosecution presented various evidence including phone calls, financial transactions and witnesses to establish the accused's involvement in this scam, so there were complexities arguments and in 2017 special CBI court acquitted accused, but this was challenged by CBI and ED in Delhi High Court which started retrial but Delhi High Court upheld the acquittal of all accused because lack of evidence and irregularities in the investigation.¹⁴

Coal Allocation Scam Case: It is also known as Coalgate, it also included irregularities in the allocation of coal blocks by the government between 2004 and 2011. This scam was alleged favoritism, nepotism and financial losses to the exchequer amounting to billions of dollars. The trial commenced before a special court and the prosecution presented their arguments with extensive evidence, the trial included cross-examination of witnesses and other evidence. In 2019 a special court convicted accused including various politicians.¹⁵ Reforms are needed to strengthen investigation and prosecution mechanisms which include enhancing the capacity of investigative agencies. Streamlining legal procedures and fostering greater transparency and accountability in the judicial process.

DEFINITIONS, OFFENSES, AND PENALTIES UNDER THE PREVENTION OF CORRUPTION ACT, 1988:¹⁶

Section 2(c): This section defines 'Public Servant' as any person who holds an office by virtue of which they are authorized to perform public duty. This will include people which are employed in various capacities within the government like civil servants, and government-owned corporations.

Section 7: It defines 'Gratification' which includes monetary or non-monetary advantage, pecuniary or otherwise obtained or received by a public sector as a motive or reward for performing or refraining from performing any official act. This includes bribes, kickbacks, gifts or favors received by public servants in exchange for using their official position to benefit the giver of the gratification. This provision prohibits and penalizes the acceptance of bribes or undue influence by public servants.

Section 7- Section 14: These sections provide various offences committed by public servants like acceptance of gratification other than legal remuneration by a public servant, taking gratification to influence public servants by corrupt or illegal means, abetment by public servants, obtaining valuable things without consideration from persons concerned in proceedings and criminal misconduct by a public servant.

Section 15: It deals with the punishment for attempts to commit offenses punishable under the act, even attempt is made will be punishable because it acts as deterrent against corrupt behavior and reinforces the principle of zero tolerance for corruption. **Enforcement Mechanisms and Challenges:** Prevention of Corruption Act, 1988 serves as a primary legislative tool to combat corruption among public servants and explores the enforcement mechanisms in this act and challenges encountered in prosecuting corruption cases. Sanction for prosecution (Section 19 read with Section 197 of Code of Criminal Procedure, 1973), Section 19 mandates prior sanction from the appropriate authority to prosecute and Section 197 provides additional safeguards for public servants acting in their official capacity. This also leads to delays and administrative hurdles in initiating legal proceedings against corrupt public servants. According to one study, the requirement of prior sanction often leads to delays in prosecution process and may serve as a barrier to holding corrupt public servants accountable.¹⁷ Section 20 of Prevention of Corruption Act, 1988 also establishes a legal presumption regarding the acceptance of gratification by public servants, it also simplifies burden of proof in corruption cases and strengthens the prosecution's case. There are two cases where judicial interpretations will provide valuable insights into the practical challenges of enforcing anti-corruption laws;

State vs Singh (2017): In this case Supreme Court of India upheld the rule of law in combating corruption. This case involved allegation of corruption against a high-ranking government official who was accused of accepting bribes in Exchange for granting undue Favours. The court also talked about the need for robust investigative procedures and adherence to due process principles to ensure accountability and fairness in corruption cases.

¹⁴ The Hindu, 2G Spectrum Scam Verdict.

¹⁵ The Indian Express, Coal Allocation Scam Verdict

¹⁶ Prevention of Corruption Act, 1988.

¹⁷ R. Sharma & A. Singh, Challenges in Prosecuting Public Servants under the Prevention of Corruption Act, 1988: A Legal Analysis, Journal of Legal Studies (2018).

Satyam Scam Case: In this case it involved accounting irregularities and financial misstatements by the management of Satyam Computer Services Limited, a prominent IT company. This case came into limelight when the company's founder confessed to inflating company financial figures to conceal losses. This case leads to reforms in corporate governance practices and regulatory frameworks including enactment of Companies Act, 2013 to ensure transparency and accountability in corporate affairs.

Adarsh Housing Society Scam Case: This case involved allegations of corruption and irregularities in the allocation of apartments meant for war widows and veterans in Mumbai. This scam exposed collusion between politicians and bureaucrats in securing prime real estate for personal gain. This case led to public outrage and calls for accountability and transparency in land allocation and housing projects, leading to inquiries and legal proceedings against the accused.

Comparative Analysis of India's Anti-Corruption Laws with Global Policies: Corruption is an issue which affects societies worldwide, undermining trust in institutions, impeding economic development and eroding social cohesion. In response, countries have implemented various anti-corruption measures, including different legislative frameworks, enforcement mechanisms and international cooperation efforts. This analysis examines India's act with international anti-corruption policies. Mostly countries enacted different legislative frameworks and enforcement mechanisms:¹⁸

Comprehensive anti-corruption laws; To eradicate dangerous problems like corruption. Those countries criminalize bribery, embezzlement, abuse of power, and other forms of corruption involving public officials and private individuals.¹⁹

Whistleblower Protection laws; These laws aim to encourage individuals to report instances of corruption and misconduct without fear of retaliation. These laws act as a safeguard for individuals, so that accused cannot harass individuals. It also leads to early detection of corruption.

Transparency and access to information laws; It requires governments and institutions to disclose information about their working. These also promote accountability and citizen participation with government for nation's safety and development.

Specialized Anti-corruption Agencies; These agencies investigate, prosecutes and prevents corruption. It works independently to ensure impartiality and efficiency in its decisions and mechanisms. Examples of country having these organizations like Anti-corruption Commission in Bangladesh, The independent Commission against Corruption in Hong Kong.

Law Enforcement and Judicial Cooperation: Corporation between law enforcement agencies, prosecutors and the criminal justice system. Specialized units are also there to find the accused. Judiciary corporation helps in fair trial and unbiased decisions and convictions against the accused.

Asset Recovery Mechanisms: It enables government or authorities to confiscate and recover proceeds of corruption and assets acquired through corrupt practices. This mechanism involves the procedure to freeze bank accounts, seize properties and repatriate stolen funds.

There are two milestones at international level anti-corruption frameworks:

United Nations Convention against corruption (UNCAC):²⁰

This is adopted in 2003, an international treaty aimed at preventing, detecting and prosecuting corruption. It makes principles and standards for anti-corruption efforts including preventive measures, criminalization of corruption offenses and asset recovery provisions. India ratified the UNCAC in 2011, for committing to align domestic laws with international standards.

Organization for Economic Co-operation, adopted in 1997; It criminalizes the bribery of foreign public officials in international business transactions. It establishes legal obligations for signatory countries to enforce anti-bribery laws and prosecute offenders. India became a signatory to the convention in 2011, enhancing its anti-corruption framework and signaling its willingness to combat transnational corruption.²¹

India's also has penalties and punishment like imprisonment, fines, et cetera for corruption offense to deter corrupt practices. There are agencies such CBI and ACBs to investigate and prosecute corruption cases. India's Prevention of corruption Act shares similarity with international anti-corruption laws but critics argue that PCA lacks corporate liability and whistleblower protection, areas addressed by more robust anti-corruption laws in foreign countries. While India has different agencies to handle and eradicate this issue, but many challenges are there like lack of accountability, effectiveness and autonomy, et cetera. Also, cross-border investigations, hinderance in extradition proceedings.²²

¹⁸ "Comparative Analysis of Anti-Corruption Laws".

¹⁹ "Comparative Study of Anti-Corruption Laws"

²⁰ [JSTOR](<https://www.jstor.org/>)

²¹ Organization for Economic Co-operation and Development (OECD) Anti-Corruption Network (ACN):** - [OECD ACN Reports](<https://www.oecd.org/corruption/acn/>)

²² "Analysis of Global Anti-Corruption Policies"

CHALLENGES AND IMPACT ASSESSMENT:

Implementing anti-corruption mechanisms India faces several challenges and limitations, becoming a roadblock in increasing effectiveness of existing laws and enforcement mechanisms.

1. Weak Organizations:²³

Studies and reports often say weak organizations are a big problem for fighting corruption in India. Groups that should investigate and punish corruption, like the Central Bureau of Investigation (CBI) and state Anti-Corruption Bureaus (ACBs), don't have enough resources, enough workers, and get involved in politics. This makes it hard for them to do good and fair investigations.

2. No Protection for Whistleblowers:²⁴

There are no strong laws to protect people who report corruption, which makes it harder to find and fix corruption. Whistleblowers often get punished, bothered, and threatened, which makes them not want to report corruption. Without proper rules, it's even harder for them and other people to come forward with important information.

3. Politics Getting in the Way:²⁵

Politics and influence make it hard to fight corruption, and it stops the groups that investigate crimes from working independently. Political pressure can make some people not follow the anti-corruption laws, which protects important people from getting in trouble and makes people not trust the system.

CONCLUSION

Corruption is a noteworthy challenge that each and every country is facing in the high and low levels. The issue of corruption in India had a great impact on the population of society and on their economy. The government executes or implemented various recognized measures like anti-corruption law and along with this several agencies were setup but still the effectiveness of all these measures are in questionable form. Many solutions can be implemented to combat the problem of corruption in India effectively. Strengthening of agencies enforcement policy's, encouragement of transparency, promoting whistleblowers, demonstrating political will, spreading of awareness by creating booth campus, simplifying of various regulation and procedures, usage of technology, empowerment of civil society, strengthening the public procurement, and the implementation of ethical codes of conduct. The Prevention and Corruption Act, 1988 has a great contribution To the India's fight against the problem petty corruption. It defines the diverse provisions in a form of legal structure along with this it also defines stringent punishment in addition with penalties and compensation. The major goal of the Act is to punish the corrupt individuals and groups who are not held accountable for their offenses. Act is an instrument in eradicating the causes and reasons of corruption in diverse society but the challenges still persist. Coordination in a better way is required among the government officials, various agencies, trials must not be delayed, and the issues of political interference must be address before hand in the corruption cases. Furthermore, efforts in a continuous manner is required for addressing the challenges related to this Act implementation and more strong measures are to enacted for the smooth working of the Act to eradicate the problem of corruption in India. Cultural integrity should be promote without any restrictions and transparency to complement legal measures and also to foster a corruption free society so that the country should be go in the successful direction for achieving its of developed nation. For the smooth running of government system and civilized society the need for eradication of corruption from the root is badly required process.

SUGGESTIONS

In my opine corruption is an illegitimate activity which give rise to darkness in the eyes of laymen irrespective of literate and illiterate. Corruption is not the new thing in today's world it had its roots from ancient period only. Despite of various measures and anti-corruption laws in India is still facing the problem of corruption preciously. It is because of an undue interference of politician are spoiling the implementation of various laws established by the Constitution of India. Corruption weakened the weaker sections of society and on the other hand makes more and more powerful sections of society like a venom for the whole nation. Victimizing is easier on the unaware individual in the system of corruption. There is a grave need for constituting new anti-corruption agency in India to eradicate the evil of corruption.

²³ Indian Journal of Public Administration titled "Challenges of Institutional Capacity in Combating Corruption in India"

²⁴ Transparency International India, Whistleblower Protection in India: Challenges and Recommendations (Report).

²⁵ Centre for the Study of Developing Societies (CSDS), Political Interference in Anti-Corruption Efforts: A Case Study of India (Analysis)