
ANTI-CORRUPTION LEGISLATION IN INDIA: EFFECTIVE OR INEFFECTIVE?

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ABSTRACT

This article offers a fresh perspective on the effectiveness of anti-corruption legislation in India. Scholars seeking to evaluate the effectiveness of the judiciary and the executive in implementing the anti-corruption law should compare the number of people who have engaged in corruption relative to the number of people who have been convicted for the same as well as the number of corruption-related cases that have been registered versus the number of cases that have been tried. To gauge the effectiveness of anti-corruption legislation in India, I introduce a new measurement called the Corruption Trial Index (CTI). Using this index, this article first illustrates the complex problem of corruption and its implications on our democracy and economy. Second, it goes over the national legislation in place to counter corruption followed by an evaluation of its effectiveness employing the CTI.

Introduction

Corruption is a multi-faceted issue that undermines democratic institutions, erodes economies, and contributes to political instability. Corruption encompasses a spectrum of offenses including but not limited to bribery, embezzlement, abuse of power, money laundering, fraud, etc.¹

Where corruption is rampant, underground economies flourish because corruption creates fiscal distortions, imbalances in wealth distribution prevails and SME's begin to cripple which augments income inequality, Innovation, and technological advancements are throttled because potential entrepreneurs do not trust the legal system to defend their intellectual property and big corporations are dissuaded to play by rules that are not enforced.

Corruption has a net negative social, political, and economic effect which serves as a motivation for lawmakers to penalize this offense. This paper will go over the anti-corruption legislation in India, its enforcement and an introduction to the CTI model.

India

India made it on the top of an international list in 2020. However, it's not one that its population would be proud of. India was ranked the most corrupt nation in Asia by the Global Corruption Barometer. 39 % of Indians have engaged in bribery and 46 % have used personal connections to access public services. Furthermore, nearly 50 % of those who paid bribes were asked to, while 32 % of those who used personal connections said they would not receive the service otherwise. Having said that, 63 % believe that the government is doing a good job in tackling corruption.² Let's take a closer look at the legal provisions offered in India to fight corruption.

Anti-corruption legislation in India

1. Prevention of Corruption Act, 1988

The anti-corruption act of paramount importance in India is the Prevention of Corruption Act, 1988. The PCA criminalizes the act of receiving any undue advantages such as money, gifts, entertainment, promotion and job offers, etc. PCA also extends to (a) penalizing criminal

¹ Corruption and Integrity, unodc.org, <https://www.unodc.org/e4j/en/secondary/corruption-integrity-ethics.html>

² India most corrupt country in Asia, tribune.com, (November 25, 2020), <https://tribune.com.pk/story/2273544/india-most-corrupt-country-in-asia>

misconduct of a public servant such as the possession of disproportionate assets; (b) penalizing intermediaries who facilitate corruption i.e. bribery. Any public servant or intermediary charged with corruption under the PCA will have to serve a prison sentence of 6 months to 10 years depending on the severity of the crime accompanied by a heavy fine.³

2. Foreign Contribution Regulation Act, 2010

The acceptance of hospitality or concessions from foreign entities such as foreign citizens, MNCs, companies or trusts by government servants, legal servants, and employees of government-owned entities are restricted by the Foreign Contribution Regulation Act. However, the FCRA makes an exception towards the acceptance of gifts valued up to INR 25,000. An infringement of the FCRA can result in 5 years of imprisonment accompanied by a heavy fine.⁴

3. Central Vigilance Commission Act 2003

The Central Vigilance Commission Act empowers the CVC commissions to surveil the activity of the government and any offenses it may have committed infringing the clauses of the PCA statute. The CVC is an independent body i.e. free from executive control.

4. Lokpal and Lokayuktas Act 2013

The Lokpal and Lokayuktas Act requires the setting up of corruption watchdogs at the central and state level. These ombudsmen are called 'Lokpal' at the central level and 'Lok Ayuktas' at the state level. The ombudsmen have the authority to launch investigations on any public functionary who is alleged to have violated the PCA statute.

5. Right to Information Act, 2005

The RTI empowers citizens to request information about the workings and decisions made by the government. This check and balances system provided by the RTI increases transparency and decreases the likelihood of the government getting away with corruption.

6. Companies Act, 2013

³ Eshaan Jacques, Anti-Corruption Law in India: Issues and Challenges, [legalserviceindia.com, http://www.legalserviceindia.com/legal/article-5791-anti-corruption-law-in-india-issues-and-challenges.html](http://www.legalserviceindia.com/legal/article-5791-anti-corruption-law-in-india-issues-and-challenges.html)

⁴ Aditya Bhat, Prerak Ved, et al., The Anti-Bribery and Anti-Corruption Review: India, (November 30, 2020), <https://thelawreviews.co.uk/title/the-anti-bribery-and-anti-corruption-review/india>

The companies act is at the epicenter of company-related legislation in India. The companies act stipulates that auditors and accountants must mandatorily report any suspected corporate fraud such as private or public bribery to the central government. Violation of this clause may result in imprisonment for 6 months to 10 years accompanied by a heavy fine. The Serious Fraud Investigation Office which is responsible for the prosecution of white color criminals was set up under the jurisdiction of the companies act.

7. Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act criminalizes any activity connected with the proceeds of crime including its concealment, possession, acquisition, or use i.e. money laundering. Violation of this clause may result in imprisonment for 3 to 7 years accompanied by a heavy fine. However, amendments to the PMLA have made all offenses non-bailable and cognizable i.e. accused offenders can be arrested without a judicial warrant.

8. Fugitive Economic Offenders Act, 2018

The Fugitive Economic Offenders Act prevents offenders accused of financial crimes from evading prosecution within India. The FEOA targets fugitive economic offenders against whom an arrest warrant has been issued for economic offenses involving INR 100 crores. It is within the FEOA's prerogative to confiscate all properties and freeze the assets of the absconder.

Evaluating the enforcement of anti-corruption legislation in India

India has witnessed a steady growth in cases filed for corruption-related offenses. The movement against corruption gained momentum after a large number of convictions of wealthy businessmen who disturbed the equilibrium of the economy and prominent bureaucrats who showed contempt for the law. In order to shed the skin of a 'corrupt India' lawmakers appointed the first national ombudsmen called the Lokpal under the Lokpal and Lokayukta Act of 2013. Additionally, the government introduced the Fugitive Economic Offenders Act, 2018 in response to an increasing number of financial criminals absconding the nation. The government also increased efforts to charge all criminals under provisions of the PCA, PMLA, and the Black Money and Imposition of Tax Act, 2015. Despite the increased efforts of enforcing legislation, trial and subsequent prosecution rates are still shockingly low pointing towards the

inefficiency of the anti-corruption legislation in India.⁵ This will be further illustrated through a state-wise breakdown using the CTI model.

Research Design

The main goal of this article is to create the Corruption Trial Index CTI, which measures the ratio of corruption cases filed and corruption cases tried. The data used in this article was collected in several steps. First, I consulted credible national affairs reporting websites such as thewire.in and transparencyindia.org for India. Second, the data on the number of corruption-related cases filed, tried and the number of criminals prosecuted in 14 states of India was aggregated from these websites. Third, the two versions of the CTI were constructed one involving the ratio of corruption cases filed and corruption cases tried and another involving the ratio of the population admitting to corruption and those prosecuted. The purpose of the second ratio is to illustrate the discrepancy between the number of people guilty of corruption and the number of people convicted for corruption as per international reports.

1) CTI-1

The CTI-1 measures the ratio of corruption cases filed and corruption cases tried. The CTI-1 was applied to 14 states of India namely- Uttar Pradesh, Bihar, Kerala, Harayana, Himachal Pradesh, Chhattisgarh, Jharkhand, West Bengal, Goa, Mizoram, Arunachal Pradesh, Tripura, Meghalaya, and Manipur. A scale was set- (A) 90-100% being good, (B) 75-90% being satisfactory, and (C) below 75% being poor meaning, meaning, a state which has tried 90-100% of the registered cases has an efficient judiciary (state courts) and an effective execution of anti-corruption legislation (law enforcement and state courts), a state which has tried 75-90% of the registered cases has a satisfactory judiciary and satisfactory execution of anti-corruption legislation and a state which has tried below 75% of the registered cases has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For example, the CTI-1 of UP is 484:147 meaning only 1 in every 3 registered cases are tried in UP. Since only 30% of cases filed are tried, UP falls under category (C) i.e. UP has an inefficient judiciary and an ineffective execution of anti-corruption legislation.

2) CTI-2

⁵ Gaurav Bhatnagar, Six Indian States Have Not Convicted Anyone for Corruption in 15 Years, Says Report, (December 20, 2016), <https://thewire.in/politics/corruption-india-conviction>

The CTI-2 measures the ratio of the population admitting to corruption and those prosecuted. The CTI-2 was applied to 4 states of India namely- Uttar Pradesh, Bihar, Kerala, and Jharkhand. After the application of the ratio, the results were converted into the likelihood of one being arrested for engaging in corruption. For example, 75% of Uttar Pradesh's population admits to partaking in corruption however only 119 people have been prosecuted for the same. The CTI-2 ratio would compare 75% of UP's population to 119 and convert it to the likelihood of any person being arrested for engaging in corruption.

Results

1. CTI-1

The CTI-1 results reinstated the inadequacies of the judicial system and anti-corruption legislation in India. For Uttar Pradesh the CTI-1 is 484:147 meaning only 1 in every 3 registered cases is tried in UP. Since only 30% of cases filed are tried, UP falls under category (C) i.e. UP has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For Bihar the CTI-1 is 1179:104 meaning only 1 in every 11 registered cases is tried in Bihar. Since only 8.8% of cases filed are tried, Bihar falls in the lower end of the category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For Kerala, the CTI-1 is 2464:953. Since only 38.6% of cases filed are tried, Kerala falls under category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For Haryana, the CTI-1 is 1223:1053. Since 86% of cases filed are tried, Haryana falls under category (B) i.e. has a satisfactory judiciary and satisfactory execution of anti-corruption legislation. For Himachal Pradesh, the CTI-1 is 90:61. Since 67.7% of cases filed are tried, Himachal Pradesh falls under category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For Chhattisgarh the CTI-1 is 70:37. Since 52.8% of cases filed are tried, Chhattisgarh falls under category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For Jharkhand the CTI-1 is 509:27 meaning only 1 in every 19 registered cases is tried in Jharkhand. Since only 5.3% of cases filed are tried, Jharkhand falls in the lower end of the category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For West Bengal the CTI-1 is 3:1 meaning only 1 in every 3 registered cases is tried in West Bengal. Since only 33.3% of cases filed are tried, West Bengal falls under category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For Goa the CTI-1 is 17:2 meaning only 1 in every 8 registered cases is tried in Goa. Since only 11.6% of cases filed are tried, Goa

falls in the lower end of the category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For Mizoram the CTI-1 is 75:11 meaning only 1 in every 7 registered cases is tried in Mizoram. Since only 14.6% of cases filed are tried, Mizoram falls in the lower end of the category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For Arunachal Pradesh 0% of cases filed are tried, thus, Arunachal Pradesh falls under category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For Tripura the CTI-1 is 28:5 meaning only 1 in every 6 registered cases is tried in Tripura. Since only 17.8% of cases filed are tried, Tripura falls in the lower end of the category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For Meghalaya 0% of cases filed are tried, thus, Meghalaya falls under category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. For Manipur the CTI-1 is 32:3 meaning only 1 in every 11 registered cases is tried in Tripura. Since only 9.3% of cases filed are tried, Manipur falls in the lower end of the category (C) i.e. has an inefficient judiciary and an ineffective execution of anti-corruption legislation. 13 out of the 14 states on which the CPI-1 was applied ranked in category (C) with Haryana ranking in category (B). The results from the CTI-1 test establishes the ineffectiveness of the anti-corruption legislation and judiciary in India.

2. CTI-2

The CTI-2 results clearly outline the discrepancy between the number of people guilty of corruption and the number of people convicted for corruption as per international reports. Firstly, for Uttar Pradesh, 75% of the population admits to partaking in corruption however only 119 people have been prosecuted for the same. The CTI-2 for UP is 1531000:119 meaning for every person convicted for corruption 12,865 criminals walk free. Secondly, for Bihar, 74% of the population admits to partaking in corruption however only 70 people have been prosecuted for the same. The CTI-2 for Bihar is 70200:7 meaning for every person convicted for corruption 10,028 criminals walk free. Thirdly, for Kerala, only 10% of the population admits to partaking in corruption and 600 people have been prosecuted for the same. The CTI-2 for Kerala is 170:3 meaning for every person convicted for corruption only 56 criminals walk free which is relatively good. Lastly, for Jharkhand, 74% of the population admits to partaking in corruption however only 27 people have been prosecuted for the same. The CTI-2 for Jharkhand is 47200:3 meaning for every person convicted for corruption 15,733 criminals walk free. The number of people convicted for corruption versus the number of people who have

committed corruption is significantly low. This discrepancy is further evidence of the ineffectiveness and inefficiency of our comprehensive anti-corruption policies.

The CTI-1 and CTI-2 tests have made the ineffectiveness of the anti-corruption laws evident. The current trends in trial and prosecution rates demand an improvement in anti-corruption laws and their execution.

Conclusion

By introducing the CTI, this article contributes to the budding literature on corruption legislation in three ways. First, it provides a better measurement for the ineffectiveness of anti-corruption laws by the state in India. Second, it compares four quantities namely- (a) registered corruption cases; (b) trials conducted; (c) the number of convicts, and (d) concessions of committing corruption to streamline the results. More practically, these findings shed new light on the ability of the population to evade the law and disrupt the national economy and democracy and the urgent need to address this problem. Corruption is a battle that our nation hasn't won yet. There are inadequacies and cracks in the system, however, with a clean mindset and fair politicians we can overcome this hurdle.