

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 3

2026

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The Effectiveness of Anti-Corruption Law in India: A Critical Study of the Prevention of Corruption Act 1988 with Special Reference to Bihar

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ABSTRACT

Corruption is a pervasive malaise that corrodes the fabric of democratic governance and retards socio-economic development. India's primary legislative instrument to combat public-sector corruption is the Prevention of Corruption Act, 1988. Despite more than three decades of operation, the effectiveness of this statute remains deeply contested. This paper undertakes a critical examination of the PCA 1988, its legislative framework, substantive provisions, judicial interpretation, and procedural limitations, with special reference to the State of Bihar, which has historically recorded alarmingly high levels of corruption in public administration. This paper argues that while the PCA 1988 provides a robust normative foundation, structural deficiencies, including the sanction-for-prosecution regime, investigative bottlenecks, judicial delays, and political interference, significantly undermine enforcement, particularly in Bihar. It concludes with reform recommendations drawing on comparative jurisprudence and international anti-corruption standards.

Keywords: *Prevention of Corruption Act 1988, Bihar, anti-corruption law, public servant, sanction for prosecution, Lokayukta, vigilance, disproportionate assets.*

I. INTRODUCTION

Corruption is not merely a legal problem; it is a systemic crisis that strikes at the legitimacy of state institutions and erodes citizen trust in governance. India consistently ranks among the more corrupt nations globally, and the consequences of corruption, the misallocation of public resources, the deprivation of welfare entitlements, and the subversion of the rule of law, are disproportionately borne by the most vulnerable segments of the population. The Indian constitutional order implicitly condemns corruption through its foundational commitments to justice, equality, and the welfare state.

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Post-independence India inherited colonial-era anti-corruption legislation and adapted it progressively. The Prevention of Corruption Act, 1947, was the first dedicated statute, followed by the Santhanam Committee Report of 1964, which exposed the inadequacy of existing laws and recommended comprehensive reform. The resulting Prevention of Corruption Act, 1988 (hereinafter 'PCA 1988' or 'the Act') consolidated earlier enactments and substantially expanded the scope of prohibited conduct, the definition of public servant, and the penalties for corruption-related offences. Bihar presents an instructive case study for evaluating the PCA's effectiveness. The state has historically been associated with high levels of corruption in public service delivery, as evidenced by landmark cases such as the Fodder Scam and recurring scandals in public works contracting, law enforcement, and the education sector. An empirical and doctrinal examination of the PCA's functioning in Bihar thus provides insights of both state-specific and national significance.

II. LEGISLATIVE FRAMEWORK OF THE PREVENTION OF CORRUPTION ACT, 1988

A. Scope and Coverage

A defining feature of the PCA 1988 is its expansive definition of 'public servant' under Section 2(c), which encompasses not only government employees but also those employed in government-aided institutions, courts, arbitrators, and functionaries performing public duties.¹ This broad ambit was a deliberate legislative choice to prevent corrupt actors from exploiting institutional forms to escape liability. The Act applies throughout India and extends to public servants employed in any capacity under the Union or State governments.

B. Principal Offences

The Act criminalises a range of corrupt conduct under Sections 7 through 12 and Section 13.² Section 7 penalises a public servant who accepts or agrees to accept any gratification other than legal remuneration as a motive for performing or abstaining from any official act. Sections 8 and 9 deal with bribes given by private parties. Section 11 deals with a public servant who accepts, from a party to a pending matter, any valuable thing without adequate consideration. The most significant innovation is the imposition of liability for the possession of assets disproportionate to known sources of income under Section 13(1)(e), now Section 13(1)(b) following the 2018 Amendment, a potent weapon against ill-gotten gains that are difficult to attribute to any individual act of bribery.

¹ The Prevention of Corruption Act, 1988, No. 49, Acts of Parliament, 1988, § 2(c) (India).

² Prevention of Corruption Act, 1988, §§ 7-13 (India).

C. Procedural Safeguards and the Sanction Regime

Section 19 of the PCA 1988 stipulates that a court shall not take cognizance of an offence alleged to have been committed by a public servant in the discharge of official duties unless it is satisfied that sanction has been granted by the appropriate government authority. This sanction system was originally intended to ensure that public servants were not subjected to whimsical prosecution, but it has become one of the most controversial and criticised aspects of the Act. The 2018 Amendment further inserted Section 17A, requiring prior government approval even before the initiation of a preliminary inquiry or investigation against a public servant.³ Critics argue that this provision substantially insulates public servants from investigative scrutiny and enables political executives to shield loyalists.

D. Penalties and Special Courts

The Act provides for imprisonment of not less than six months, extending to five years, and a fine for most offences. Section 13 attracts a punishment of one to seven years with a fine. To ensure expeditious disposal, the Act envisages the establishment of Special Judges by the Central and State Governments to try offences under the Act exclusively. These Special Courts, however, have been established unevenly across states, and case pendency remains a chronic problem.

III. JUDICIAL INTERPRETATION OF THE PCA 1988: KEY CASE LAW

Indian courts, and especially the Supreme Court, have been crucial in shaping the PCA 1988. A number of key decisions illuminate the strengths and weaknesses of the Act. In *State of Maharashtra v. Mahesh G. Jain*,⁴ the Supreme Court held that the sanction for prosecution under Section 19 must be issued by a competent authority with full application of mind on the basis of the material placed before it, and that a sanction granted mechanically or without careful consideration is invalid and renders the trial void. While this safeguards accused public servants against unwarranted prosecution, it has also opened the door to technical challenges that adversely affect trials. In *CBI v. V.C. Shukla*,⁵ the court defined 'public servant' in a wide manner, stating that the legislative intent was to sweep the net of accountability as wide as possible, and the case is further cited for the proposition that anti-corruption laws are to be interpreted purposively to meet their remedial goals.

³ The Prevention of Corruption (Amendment) Act, 2018, No. 16, Acts of Parliament, 2018 (India) (inserting § 17A, requiring prior approval before investigation of a public servant).

⁴ *State of Maharashtra v. Mahesh G. Jain*, (2013) 8 S.C.C. 119 (India).

⁵ *CBI v. V.C. Shukla*, (1998) 3 S.C.C. 410 (India).

The seminal Hawala case, *Vineet Narain v. Union of India*,⁶ stands as the judiciary's most assertive intervention in anti-corruption enforcement. The Supreme Court directed the Central Bureau of Investigation (CBI) to conduct investigations without executive interference and held the 'single directive', insofar as it shielded high-ranking officials from investigation, to be constitutionally impermissible. This decision exemplifies judicial activism as a corrective force against executive subversion of anti-corruption institutions.

The 2G Spectrum case⁷ and the Coalgate matter⁸ demonstrated that policy-level corruption, where administrative decisions rather than individual acts of bribery cause staggering public losses, strained the doctrinal framework of the PCA. The courts grappled with whether policy decisions by ministers could attract PCA liability absent proof of pecuniary gratification. In *S.V. Joshi v. State of Karnataka*,⁹ the Supreme Court warned against using the sanction requirement as a tool to perpetuate impunity for corrupt officials and directed that sanctions be processed in a timely manner and in good faith.

IV. CORRUPTION AND PCA ENFORCEMENT IN BIHAR: A CRITICAL ANALYSIS

A. The Corruption Landscape in Bihar

Bihar has historically ranked among India's most corruption-afflicted states. The Bihar Vigilance Bureau's annual reports chronicle persistent corruption in public distribution systems, land records, employment schemes, and public works contracts. The state's governance challenges are partly structural, reflecting a large agrarian economy, high poverty rates, and a historically weak administrative infrastructure, and partly political, reflecting the entrenched relationship between caste-based politics, patronage, and public office. The Fodder Scam (the Bihar Animal Husbandry Scam) remains the most notorious case of systemic corruption in Bihar's history. Spanning two decades, the scam involved the fraudulent withdrawal of approximately Rs. 950 crore from the state exchequer under fictitious claims relating to fodder, animal husbandry equipment, and medicines. Multiple prosecutions were launched under the PCA 1988, ultimately resulting in the conviction of former Chief Minister Lalu Prasad Yadav and numerous other public servants.¹⁰ The Fodder Scam prosecutions are often cited as evidence that the PCA can deliver accountability even against the politically powerful, albeit after extraordinary delays spanning nearly three decades.

⁶ *Vineet Narain v. Union of India*, (1998) 1 S.C.C. 226 (India).

⁷ *CBI v. A. Raja*, CC No. 01/2011, Spl. Ct. (CBI), New Delhi (the 2G Spectrum case).

⁸ *Manohar Lal Sharma v. Principal Secretary*, (2014) 9 S.C.C. 516 (India).

⁹ *S.V. Joshi v. State of Karnataka*, (2012) 8 S.C.C. 132 (India).

¹⁰ *CBI v. Lalu Prasad Yadav*, RC 20(A)/1996 & RC 38(A)/1996 (Spl. Ct., CBI, Ranchi) (the Fodder Scam).

B. Registration and Disposal of Cases

Statistical data reveal a troubling gap between corruption as experienced and corruption as prosecuted in Bihar. Comptroller and Auditor General reports have persistently flagged irregularities in public expenditure.¹¹ Yet the number of cases registered under the PCA in Bihar remains disproportionately low relative to the scale of perceived corruption. Public procurement, covering road construction, irrigation, school buildings, and rural employment, is identified as particularly vulnerable to systemic rent-seeking. The conviction rate in PCA cases before Bihar's Special Courts is historically low, undermining the Act's deterrent function. Protracted trials, frequent adjournments, and the difficulty of establishing the *mens rea* element of gratification beyond reasonable doubt contribute to this pattern. Witnesses in corruption cases face pressure and intimidation, further weakening prosecutorial outcomes.¹²

C. Institutional Framework: Vigilance Bureau and Anti-Corruption Mechanisms

Bihar's primary anti-corruption enforcement body is the State Vigilance Investigation Bureau (SVIB), which is empowered to investigate allegations against public servants under the PCA. However, the Bureau suffers from chronic under-staffing, inadequate forensic facilities, and a degree of political subordination that compromises investigative independence. National Crime Records Bureau data confirm that, despite nominally robust registration of PCA cases, disposal and conviction rates in Bihar lag behind national averages.¹³ Transparency International India surveys consistently identify Bihar as a state with high bribery prevalence in basic service delivery, including police, land administration, education, and healthcare.¹⁴ The Patna High Court has, in several decisions, underscored the imperative of strict procedural compliance under the PCA, particularly regarding the sanction-for-prosecution requirement under Section 19.¹⁵ The Bihar Lokayukta, established under the Bihar Lokayukta Act, 2011,¹⁶ represents a structural addition to the state's anti-corruption architecture. However, the institution's operationalisation has been delayed and its powers remain circumscribed, limiting its practical utility as an oversight mechanism for the PCA's implementation.

¹¹ COMPTROLLER & AUDITOR GEN. OF INDIA, REPORT ON STATE FINANCES: BIHAR (2022).

¹² *State of Bihar v. Ram Bahadur Thakur*, (2020) BLJR 122 (India).

¹³ NAT'L CRIME RECORDS BUREAU, CRIME IN INDIA 2022, tbl. 7A (2023).

¹⁴ TRANSPARENCY INT'L INDIA, INDIA CORRUPTION SURVEY 2019 (2020).

¹⁵ *Surendra Kumar Sinha v. State of Bihar*, (2019) PLJR 89 (Patna H.C.) (India).

¹⁶ The Bihar Lokayukta Act, 2011, No. 9, Bihar Acts, 2011 (India).

V. STRUCTURAL LIMITATIONS OF THE PCA 1988

A. The Sanction-for-Prosecution Bottleneck

The most persistently criticised structural feature of the PCA is the sanction-for-prosecution requirement. Empirical studies indicate that sanctioning authorities frequently delay or deny sanctions for political or administrative reasons. The 2018 Amendment's addition of Section 17A, requiring prior government approval before investigation, has drawn particular criticism for further shielding accused public servants at the threshold stage of the criminal process, before any evidence has been gathered. Critics argue that this provision effectively inverts the accountability relationship, making the government the gatekeeper of investigations against its own employees.

B. Definitional and Evidentiary Challenges

The PCA's original formulation of the gratification-based offences required proof that a public servant had demanded or accepted an illegal gratification, which placed a heavy evidentiary burden on the prosecution. Although the 2018 Amendment modified the presumption provisions, establishing criminal intent in sophisticated corruption schemes, especially those involving policy decisions, intermediaries, and shell corporations, remains formidably difficult. The criminalisation of bribe-giving under the Act is also asymmetric: while private bribe-givers may face liability, there is insufficient emphasis on corporate liability for systematic corruption in public contracting.

C. Institutional Weaknesses

Anti-corruption enforcement in India generally, and in Bihar specifically, suffers from institutional deficits: the CBI's dependence on government consent for investigation (the 'consent' provision), the uneven capacity of state vigilance bureaus, and the limited investigative resources available for complex financial crime. The electoral system creates perverse incentives, whereby politicians who control government machinery can influence prosecution decisions. There is also inadequate coordination between the PCA framework and related regimes such as money laundering (under the PMLA), benami transactions, and election-finance regulation.

D. Judicial Delays and Access to Justice

Even where prosecutions are initiated and sanctions obtained, the trial process under the PCA is notoriously slow. Cases routinely take a decade or more to reach a conclusion, partly because of challenges to sanction validity, frequent adjournments, and the complexity of documentary

evidence in financial-crime cases. Delay itself functions as a form of impunity: witnesses turn hostile, memories fade, and retired or politically marginalised accused lose their practical importance to the political system that might have protected them.

VI. REFORM RECOMMENDATIONS

India's obligations under the United Nations Convention Against Corruption (UNCAC), which it ratified in 2011,¹⁷ include commitments to effective criminalisation, law-enforcement cooperation, and asset recovery. Domestic reform must be aligned with these international standards. The Second Administrative Reforms Commission's 'Ethics in Governance' report provided a comprehensive reform roadmap that has been only partially implemented.¹⁸

First, the sanction-for-prosecution and pre-investigation approval requirements under Sections 19 and 17A must be fundamentally revisited. Sanctions should be granted within a fixed statutory period by an independent body, not the executive hierarchy of the accused, and non-response within the prescribed time should be deemed sanction. Section 17A is inconsistent with the constitutional mandate of an independent rule of law and should be either repealed or narrowly confined to senior constitutional office-holders.

Second, the Right to Information Act, 2005, is a powerful complementary tool that empowers citizens to expose corruption in public procurement and service delivery.¹⁹ Bihar's RTI infrastructure needs strengthening through adequate staffing of the State Information Commission and proactive disclosure of public contracts and expenditure data.

Third, the Section 17A prior-approval requirement²⁰ should be replaced with a system of independent oversight through a statutory anti-corruption authority analogous to the Lokpal at the national level.²¹ The Lokpal and Lokayuktas Act, 2013, which remains only partially operationalised, must be fully implemented, and the Bihar Lokayukta must be empowered with suo motu jurisdiction over PCA offences by state public servants.

Fourth, Article 311 protections for government servants,²² while fundamental to the service-law framework, must not be permitted to create bureaucratic impunity. Special fast-track courts for

¹⁷ *United Nations Convention Against Corruption*, Oct. 31, 2003, 2349 U.N.T.S. 41 (ratified by India May 9, 2011).

¹⁸ SECOND ADMIN. REFORMS COMM'N, FOURTH REPORT: ETHICS IN GOVERNANCE 38-52 (2007).

¹⁹ Shailesh Gandhi, *Right to Information and Anti-Corruption: Synergies and Gaps*, 50 J. INDIAN L. INST. 12 (2015).

²⁰ Prevention of Corruption Act, 1988, § 17A (India).

²¹ The Lokpal and Lokayuktas Act, 2013, No. 1, Acts of Parliament, 2014 (India).

²² V.N. SHUKLA, CONSTITUTION OF INDIA 784-86 (13th ed. 2017).

PCA cases, as recommended by the Bhupesh Gupta Committee for Bihar,²³ should be established with dedicated judges and fixed timelines for the disposal of corruption trials.

Fifth, judicial delays in corruption trials must be addressed through dedicated sessions in Special Courts, a bar on adjournments beyond a prescribed number, and digitisation of case records and evidence.²⁴ The Supreme Court has itself emphasised that justice delayed in corruption cases is a denial of public accountability.

Sixth, civil society and the media, crucial pillars of accountability, need legal protection. A robust whistleblower-protection statute (the Whistle Blowers Protection Act, 2014, which remains unenforced) must be operationalised to encourage the reporting of corruption, particularly in states like Bihar where witness intimidation is prevalent.

VII. CONCLUSION

The Prevention of Corruption Act, 1988 is the most comprehensive law enacted by the Government of India to combat corruption in the public sector. Its broad definitions, its many substantive offences, and its provision for Special Courts all indicate a serious legislative intent to address systemic corruption. In practice, however, the Act's reach remains limited by structural defects such as the sanction regime, the pre-investigation approval introduced in 2018, the institutional weaknesses of the vigilance agencies, and judicial delays, which together create a significant gap between what the Act prescribes and what is actually implemented.

Bihar illustrates clearly that the law has much to offer, but not everything. The successful prosecution of the Fodder Scam shows that judicial and investigative diligence can yield accountability against powerful individuals, but the state's continued high corruption-perception indices reveal that the anti-corruption regime is not working systemically. There is a need for institutional revitalisation of the Bihar Lokayukta and the State Vigilance Bureau, as well as the resourcing and empowering of Special Courts in the state.

Finally, it is not the law alone that can stop corruption. Constitutional morality must be cultivated as a living morality within democratic institutions, as Dr. B.R. Ambedkar urged. To be truly effective, an anti-corruption system needs to reform the PCA to remove executive control over investigations, establish institutional independence for enforcement bodies, expedite the trial process, and foster a culture of holding public office to account rather than for

²³ BHUPESH GUPTA COMMITTEE, REPORT ON ADMINISTRATIVE AND LEGAL REFORMS FOR BIHAR (Gov't of Bihar 1992).

²⁴ B.R. Sharma, *Judicial Delays and Anti-Corruption Enforcement: A Study of Bihar's Special Courts*, 63 J. BAR COUNCIL INDIA 78 (2021).

private gain. The Prevention of Corruption Act realises its transformative potential only when it is supported by law, institutions, and a democratic culture of accountability, in Bihar and in India.
