

HOW EFFECTIVE IS THE LAW ON CORRUPTION?

A Study of Legal Disposal of Cases

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Poor sentencing in the case of the federal law curbing corruption is startling, according to data provided by the National Crime Records Bureau (NCRB) for the year 2016. Sample this: At the all-India level, the conviction rate of IPC (Indian Penal Code) and SLL (Special and Local Laws) cases is nearly 65 percent, compared to 37 percent conviction rate of cases under Prevention of Corruption Act, 1988, (PCA).

The picture turns more dismal hereafter. Among the states for which data is available, there were zero convictions under PCA in four states and UTs in the year 2016.

Undoubtedly, the grim rate of conviction under PCA is an

indicator of something more sinister. It inspires the perception that corruption is a static Indian reality and the response of the prosecution machinery is lax while dealing with graft cases. Although a mass movement led by Gandhian social activist Anna Hazare aspired to be a bulwark against corruption, resulting in the clarion call for a Jan Lokpal (or people's ombudsman), the sentiment around integrity remains dubious on the ground.

Obviously, the most potent tools to counter corruption are legal statutes. One such law, the Prevention of Corruption Act, 1988, came in the wake of the inability of the existing legal infrastructure to curb and control corruption, together with the growing public resentment

against rampant financial mismanagement. Since then, several amendments have been made in the statute, the most recent being in July 2018. In this article, we study the working of this legislation by looking at data provided by the NCRB on the police and court disposal of Anti-Corruption, Vigilance and Lokayukta cases under the Prevention of Corruption Act, 1988 and other relevant IPC provisions.

One thing is clear from the data mined from NCRB - the disposal of cases under the PCA by the police, as measured by the pendency percentage (provided by NCRB) is much poorer for cases under the PCA and related IPC sections than for the overall IPC and SLL cases. Similarly, conviction rates are also much lower for PCA cases than the overall conviction rate.

Brief History of Legislations Around Corruption in India

The corruption regulation landscape goes back a long way. One of the earliest legal attempts is a pre-independence ordinance issued during the Second World War called the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No. XXXVIII of 1944). Enacted under the

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Government of India Act, 1935, it was promulgated to prevent concealment and/or disposal of property procured through means which come under scheduled offences.¹

The enduring legacy of this document was such that it is one of the few permanent ordinances attaining the status of a law in the post-independence period. Its contents were later on incorporated in the Prevention of Corruption Act, 1988.² However, in the interim period there was a need for new legislative measures to combat a bevy of post war corrupt practices such as numerous construction schemes, termination of contracts and disposal of surplus governmental stores.

The existent ordinance and the provisions within the IPC had proven to be inadequate to control corrupt government officials and thus the Prevention of Corruption Act, 1947 was passed in an effort to strengthen the law against corruption. The 1947 Act sought to incorporate the modified version of the provisions previously included in the 1944 ordinance.

An interesting feature of this legislation was that it reversed the traditional rules on presumption of criminal liability. It presumed mens rea (the intention/ knowledge of committing the crime) on part of the public servant if the actus reus (the physical act of committing the crime itself)

was proved. However, there continued to be problems with the legislation as it did not give separate definition of the public servant or make improvements with respect to certain sections.

After the Santhanam Committee recommended stringent measures to combat rampant corruption, the Act was amended in 1964. Despite the amendments, the legislation was found to be ineffective against the scourge of corruption which was being perpetrated through a nexus between elected politicians and government officials.

The 1947 Act was ultimately repealed and a new legislation was introduced in 1988. It not only sought to replace the preceding legislation but also provided a separate statutory basis for offences codified within Section 161-165A of the IPC. Some of the features of this legislation included a widened scope for the definition of a public servant, an increase in the severity of penalties imposed as well as an emphasis on speedy trials.

Effectiveness of the Law

Major criticisms of the Indian criminal justice system are its low conviction rate and failure to dispose of cases in a timely manner. While this is true for most categories of criminal cases, in cases of corruption, one can hypothesise that the phenomenon would be further exacerbated due to the justice

“***The Prevention of Corruption Act, 1988, came in the wake of the inability of the existing legal infrastructure to curb corruption.***”

system’s complicity, whether explicit or implicit, in the corrupt acts of the accused, who are often placed high up in the pecking order. To understand whether such a discrepancy exists, for reasons of complicity or otherwise, we look at the data on police and court disposal of cases registered under PCA and other related IPC Sections, provided in the Crime in India report of NCRB.

Police Disposal of Cases Registered Under PCA

Police disposal here has been measured by two variables. The first one is the chargesheeting rate, or the number of cases in which police filed chargesheets in a year as a percentage of



the total number of cases for investigation by the police in that year. The second variable is the pendency percentage of police, or the number of cases pending investigation by the police as a percentage of the total number of cases for investigation in that year.

When we look at the data provided by NCRB for 2016, we notice that the chargesheeting rate for cases under PCA and of all other IPC and SLL are not very different at the all India level. To put it in numbers, 81 percent of all cases for investigation by the police were chargesheeted, while the number of cases chargesheeted under PCA was slightly higher at 83 percent.

A look at the state-wise differences between chargesheeting rate of total IPC and SLL cases vis-à-vis chargesheeting rate of PCA cases tells us that for most states and Union Territories (19), the latter is as much or higher than the former. That is, chargesheeting for PCA cases is happening at the same rate or at a higher rate than the overall IPC and SLL cases.

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For some states, however, the difference is highly pronounced where the chargesheeting rate for PCA cases is significantly lower than that of overall cases. For instance, in Kerala, the overall chargesheeting rate is 98 percent compared to 47 percent for PCA cases. Similarly, in Arunachal Pradesh the overall chargesheeting rate is 61 percent against 20 percent for PCA cases. Other states with similar trends are Manipur, Telangana, Tamil Nadu, Puducherry, Nagaland, Tripura, Himachal Pradesh and Karnataka. The thing to note here is that this list features states such as Himachal Pradesh, Kerala and Telangana which are often ranked highly on police performance indicators.

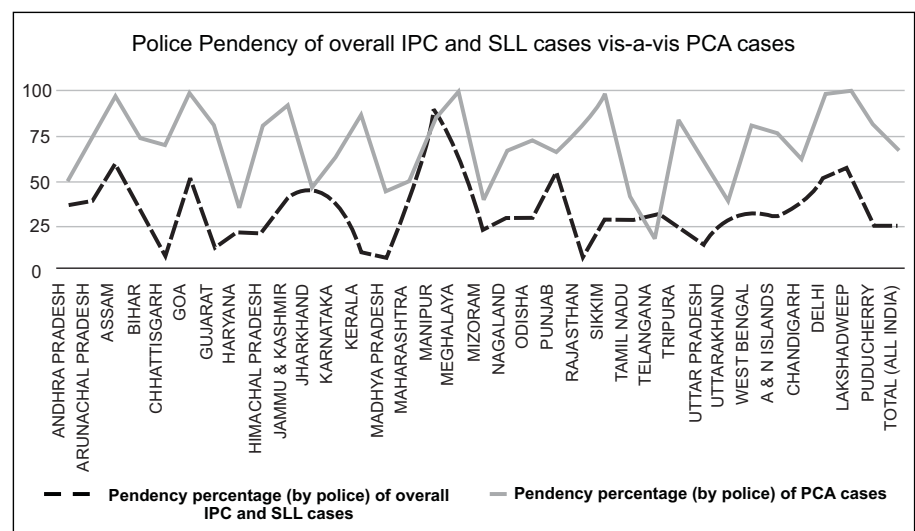
The pendency of cases of crimes under PCA in the police, on the other hand, is uniformly more than the police pendency percentage of total cases in all states except Manipur and Telangana in 2016. The difference is as stark as 9 percent

pendency for total cases against 86 percent pendency in PCA cases in Kerala and 5 percent overall pendency in Rajasthan against 79 percent pendency of cases under PCA. The below graph clearly illustrates the higher pendency rates of PCA cases in most Indian states.

Court Disposal of Cases Registered Under PCA

For assessing the court disposal of cases, both overall and those under PCA, two variables have been used. The first one is the conviction rate, or the number of cases in which convictions were made as a percentage of the total number of cases tried in the court in that year. The second variable is the pendency percentage of cases by the court, or the number of cases pending trial at the end of the year as a percentage of the total number of cases for trial during the year.

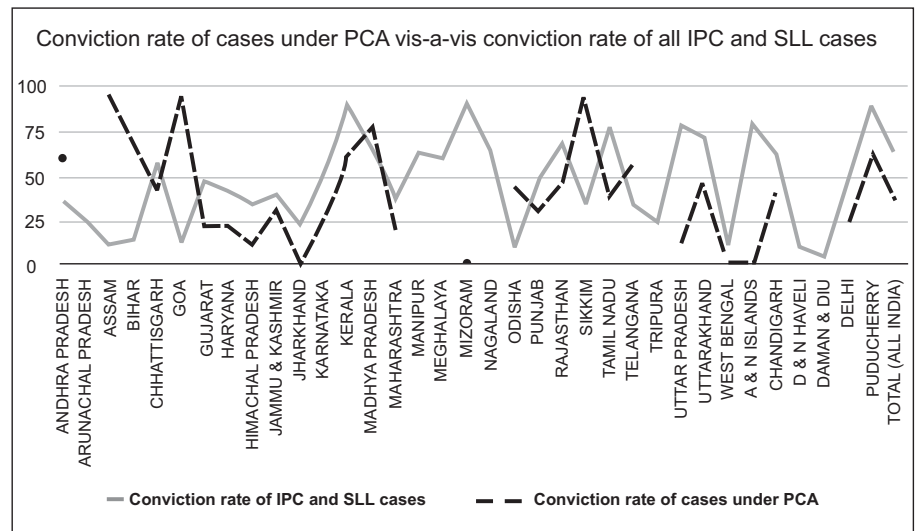
When we examine the conviction rate of overall IPC



Source: Crime in India 2016, National Crime Records Bureau

and SLL cases and those under PCA and other relevant IPC Sections, the numbers reveal that the latter is significantly lower than the former. So, the conviction rate under PCA and other related sections is much lower than that of overall IPC and SLL cases. Among the states for which data is available,³ only eight states have conviction rate under corruption cases higher than the overall rate, while in the remaining 20 states the opposite is true. In these 20 states the conviction rates of corruption cases are lower than the overall rates. In four of these states and Union Territories (UT), in fact, there were zero convictions under PCA in 2016.⁴ At the all-India level, the conviction rate of IPC and SLL cases is nearly 65 percent, compared to 37 percent in cases under PCA. Some states and UTs in which the difference is the highest are Mizoram (overall conviction rate of 94 percent and 0 convictions of cases under PCA), the Andaman and Nicobar Islands (overall conviction rate of 83 percent but 0 conviction of cases under PCA) and Uttar Pradesh (overall conviction rate of 81 percent against a conviction rate of 13 percent of cases under PCA). The graph in this page illustrates the difference in conviction rates across the states and UTs.

In terms of the differences in the pendency percentages by the court of overall cases pertaining to IPC and SLL compared to PCA, again, pendencies are much higher in cases of



Source: Crime in India 2016, National Crime Records Bureau

corruption as compared to the overall cases. However, the differences are not as substantial in the court as in the police. Ten states have an opposing trend wherein the pendency percentage of cases under PCA are lower than the overall pendency percentage, but all remaining states conform to the larger pattern of higher pendencies in corruption cases. In states like Tamil Nadu, Nagaland and Andhra Pradesh, for instance, the difference is of more than 30 points.⁵ In Nagaland, in fact, no cases under PCA were disposed of by the court in the year 2016 and the pendency percentage was 100 percent.

A caveat that needs to be added here, however, is that pendency percentage of cases by either the police or the courts is not indicative of delays in police investigation and court trial. Delays are rather measured by mapping the duration of

investigation and trial period of a case over a number of years, whereas pendency percentage only looks at the overall case disposal ability of the police and court in that year. Therefore, the two concepts should not be confused. However, in the absence of data relating to delays in court of cases under PCA, we have referred to pendency percentages to measure the efficacy of the police and court in the disposal of cases, and not as a measure of delay.

Overall Analysis

The data presented above gives a bird's eye view of the landscape of investigation and prosecution of corruption cases, when stacked up against the disposal of other types of cases. It is evident that cases under PCA are less likely to be disposed at the same rate as other cases and convictions under PCA are lower than the overall conviction rate in the country as of 2016. Apart from chargesheeting rate

by the police, at all other levels — whether pendency by the police or court, or conviction rates of the court — cases under PCA appear to be poorly located in most states. This is true even in some of the better developed states such as Kerala and Tamil Nadu. Whether this is due to any explicit or implicit collusion between the system and the accused under the Act or for reasons completely extraneous to the players is a topic that requires further probing. However, the facts, as they stand, give genuine cause for concern and point fingers at the institutional framework for investigation and prosecution.

The above data is merely scratching the surface of institutional wherewithal and brings to light the need for a more exhaustive perusal of criminal justice system's poor performance in PCA cases. Over the last five years, from 2012 to 2016, the number of cases for trial under PCA has gone up significantly. From 19684 cases in 2012, the number has surged to 25582 in 2016, which

is a 30 percent increase. The number of officers involved has kept pace with the swelling numbers. The conviction rate, on the other hand, has remained constant, but much lower than the overall rate, indicating lack of improvement in the state of affairs. All of these issues, when seen cumulatively, point towards a systemic apathy of the justice system in efficiently dealing with corruption cases.

Conclusion

It appears to be clear that some of the fundamental errors of our justice system continue to stymie prosecution of those alleged to have committed offences under the PCA. In many cases the ambiguity of the legislation has placed honest and scrupulous government officials under the scanner. At other times, a system geared to serve those running it has been hand in glove to frustrate efforts of prosecuting them.

(Endnotes)

1. Law Commission of India Report 254, The Prevention of Corruption (Amendment) Bill, 2013 (2015)

2. Debroy, Bibek (2015, January 9), 'Permanent Ordinances': Repeal these archaic 1940s war-time laws. *Economic Times Blog*, Retrieved on June 14, 2019 from <https://bit.ly/2JqTjVz>
3. Data on conviction rate of anti-corruption, vigilance and Lokayukta cases under Prevention of Corruption Act, 1988 and related sections of IPC not available for the following states in the year 2016: Arunachal Pradesh, Manipur, Meghalaya, Nagaland, Tripura, D&N Haveli and Daman & Diu.
4. In the states of Jharkhand (number of cases for trial under PCA- 287), Mizoram (number of cases for trial under PCA- 44), West Bengal (number of cases for trial under PCA- 44) and Andaman and Nicobar Islands (number of cases for trial under PCA- 43).
5. Tamil Nadu: pendency percentage of IPC and SLL cases by court is 55, against 89 percent pendency of cases by court under PCA; Nagaland: pendency percentage of IPC and SLL cases in court is 63, and a 100 percent pendency in court of PCA cases; Andhra Pradesh: 62 percent pendency in court of overall IPC and SLL cases, compared to 93 percent pendency in court of cases under PCA.