



**International  
Lawyers  
Project**

**INDIA**

**VICTIMS OF CORRUPTION:  
DAMAGE REPARATION  
AND LEGAL STANDING**

**INTERNATIONAL  
DATABASE  
2022**

**SOURCE: INTERNATIONAL LAWYERS  
PROJECT**

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**VICTIMS OF CORRUPTION WORKING GROUP**

**UNCA** CIVIL **Coalition**  
SOCIETY

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# INDIA<sup>1</sup>

**SOURCE: International Lawyers Project**

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<sup>1</sup> Note, we are only qualified to advise on US and UK law, and as such are not qualified in this jurisdiction.

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# 1. Legal Standing

## 1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases

Civil society organisations and individuals have legal standing in corruption-related cases.

## 1.2 Type of Cases

- Criminal (for individual citizens)
- Civil
- Administrative
- Constitutional protection

## 1.3 Legal basis under which citizens have legal standing

A private citizen is able to bring a criminal prosecution in India.<sup>2</sup> With the permission of a magistrate, a private citizen may also conduct the prosecution of a case already started by the state (though it appears this is rarely done in practice).<sup>3</sup> These standing principles, set out in s.301-302 of the Code of Criminal Procedure, have been affirmed by the Supreme Court of India.<sup>4</sup>

The Constitution of India also grants the right for litigation to be brought in the public interest.<sup>5</sup> India has a liberal standing regime that permits both CSOs and individuals to bring claims in the public interest.<sup>6</sup> There is no requirement that the claimant demonstrate “injury” should the public interest be deemed to be served by the claim. However, the remedy of punitive damages may only be obtained by parties against whom the defendant acted with malice.<sup>7</sup> The Courts have discretion to appoint an amicus curiae to prosecute the public interest case on

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<sup>2</sup> Code of Criminal Procedure [1973], s.301(2)

<sup>3</sup> Code of Criminal Procedure [1973], s.302

<sup>4</sup> *Dhariwal Industries Ltd. v. Kishore Wadhvani & Ors* (2012) 5 Mah LJ 252

<sup>5</sup> Constitution of India, Art. 32(1)

<sup>6</sup> Arghua Sengupta, *Anti-Corruption Litigation in the Supreme Court of India: A national case study*, March 2016

<sup>7</sup> *Common Cause v Union of India*, A.I.R. 1982 S.C. 149

behalf of the public which, if done, prevents any other person from prosecuting the case themselves.<sup>8</sup>

#### **1.4 Citizens and/or civil society's intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)**

Private citizens are able to submit written arguments to the court in support of criminal cases after closure of evidence provided the court gives permission.<sup>9</sup> When involved in criminal prosecutions, a private citizen may either do so directly or appoint a "pleader".

#### **1.5 State's entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens**

The Courts have discretion to appoint an amicus curiae to prosecute the public interest case on behalf of the public which, if done, prevents any other person from prosecuting the case themselves.<sup>10</sup> There is a permanent list of Senior Advocates, Advocates-on-Record and Non-Advocates-on-Record from whom an Amicus Curiae can be selected. This list is updated every two years.

#### **1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf of this country's citizens**

No foreign government or foreign-based non-governmental institution has legal standing to bring corruption cases on behalf of this country's citizens

## **2. Cases**

### **2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists, or citizens.**

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<sup>8</sup> *Narain v Union of India* (1988), 1 S.C.C. 226.

<sup>9</sup> Code of Criminal Procedure [1973], s.301(2)

<sup>10</sup> *Narain v Union of India* (1988), 1 S.C.C. 226.

There are corruption-related cases brought to Court by civil society organisations, journalists, or citizens. For instance:

Narain v. Union of India<sup>11</sup>: In a case regarding the historic Hawala scandal in India, which concerned a number of bribery payments to high-ranking politicians in India, the Court held that Vineet Narain, a prominent journalist and anti-corruption activist, had standing to bring a claim on behalf of the general public and, for the first time, an amicus curiae was appointed to represent him/the public. Part of the scandal was the failure of the Central Bureau of Investigation (“CBI”) to investigate certain high-ranking individuals. The case resulted in structural relief with the CBI being placed under the control of the Central Vigilance Commission (“CVC”), designed to be an independent commission free from executive control and interference. This removed the CBI from the supervision of the central government.<sup>12</sup>

Samudaya v. State of Karnataka<sup>13</sup>: Here, a civil society organisation, Samaj Parivartana Samudaya, was permitted to file a petition with the Supreme Court to investigate the Karnataka state government as well as its Lokayukta, or parliamentary ombudsman, regarding alleged mining irregularities that were having a dramatic environmental impact. The case resulted in a temporary ban on mining within the Bellary, Tumkur, and Chitadurga regions and the subsequent classification of mines into three categories that took into account environmental impact beyond their boundaries as a factor for determining their legality.

## 3. Collective Damage

### 3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field (

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<sup>11</sup>*Narain v Union of India* (1988), 1 S.C.C. 226 (available at <http://www.indiankanoon.org/doc/1203995>)

<sup>12</sup>A useful summary of the case can be found at <https://www.escri-net.org/caselaw/2015/vineet-narain-others-vs-union-india-another-1-scc-226>

<sup>13</sup>*Samudaya v. State of Karnataka* (2012) 7 SCC 407 (available at <http://indiankanoon.org/doc/37541448>)

## **environmental damages, human rights, corruption, among others)**

Collective redress is possible via the collective actions listed below. In addition, the Supreme Court has (as outlined in the cases above) previously implemented remedies in the public interest, such as preventing continued illegal mining or changing the supervision of government agencies. However, it should be noted that only those towards whom the parties have acted with malice can seek punitive damages as a remedy.<sup>14</sup> Consequently, a public interest litigant, whether CSO or private individual, cannot seek punitive damages without representing someone directly impacted by the acts being challenged.

### **3.2 Procedures for advancing class-actions**

The Code of Civil Procedure provides for representative actions in India where more than one person in the suit has a common interest under Order 1 Rule 8. Class action lawsuits are also possible under s.245 of the amended Companies Act 2013 and under the Consumer Protection Act. In, It has been held that the primary pre-requisite for bringing any such action is that the represented parties have a common interest.<sup>15</sup> However, issues of standing have typically been disregarded by Indian courts when dealing with Public Interest Litigation (“PIL”)—that is, where an issue of substantial public interest is at issue, principles of legal standing have been interpreted expansively by the court in order to allow the case to proceed. As a result, there is often no need to bring a PIL as a collective action on behalf of third parties.

## **4. The Role of the victims of corruption**

### **4.1 Definition of victims of corruption or common definition used by the courts in this country**

There is no definition of victims of corruption.

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<sup>14</sup> *Common Cause v. Union of India* (1999).

<sup>15</sup> *Chairman, Tamil Nadu Housing Board, Madras v. TN Ganapathy* (1990) 1 SCC 608



## **4.2 Cases that recognize the role of victims**

There are no cases that recognize the role of victims.

## **4.3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense**

See above.

## **4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases**

In *Vineet Narain v. Union of India*<sup>16</sup>, the Supreme Court of India interpreted its power under Article 32(2) of the Constitution of India to issue writs to enforce the constitution as empowering it to monitor and supervise the conduct of criminal investigations into corruption. The Court reasoned that the proper execution of these investigations is a matter of public interest, and that the potential for executive interference in criminal investigations could subvert their efficacy. Court supervision of corruption investigations has now become common-place in India with the ability of a private citizen or CSO to intervene in such situations being recognized by the courts as a key means by which prosecuting bodies can be held to account.

# **5. Available Information**

## **5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions**

There is information published by the enforcement authorities. Type of information:

- The initiation of investigations

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<sup>16</sup> *Vineet Narain v. Union of India* (1988), 1 S.C.C. 226

- The conclusion of investigations whether the investigated person has been acquitted or not
- The enactment of sanctions
- Initiation of settlement negotiations
- Settlements
- The grounds for sanctioning or acquitting (the case)

## **5.2 Feasible access to information on ongoing or concluded cases**

Access appears generally feasible via press releases by the CBI and the public release of case reports via [www.indiankanoon.org](http://www.indiankanoon.org).

## **5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed.**

See above.

# **6. Supplementary information**

## **6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases.**

In practice, the only key barrier to bringing such a claim appears to be the appointment of an amicus curiae by the courts for the same cause of action.

## **6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption.**

N/A