

# Combating Dishonesty

A look into the various states of corruption and bribery across the world



## Introduction

For decades, the Foreign Corrupt Practices Act of 1977 (FCPA) was an afterthought for the U.S. Department of Justice (DOJ) and SEC enforcers. Stemming from the effects of the Watergate scandal, the statute for most of its history has sat collecting dust. From its inception in 1977 to the year 2000, the DOJ and SEC only brought in a total of 52 enforcement actions<sup>1</sup> against corporations. However, recent times show a different focus in the lenses of the DOJ and SEC. In 2019 alone, the two groups were involved in 54 enforcement actions<sup>2</sup>. The growth in FCPA enforcement has correlated with the dependence on international trade and business for many U.S. and foreign companies. Considering this, many developing countries looking to attract business from large multinationals must have a strong anti-corruption policy of their own.

Even though the DOJ and SEC have done an effective job in enforcing anti-corruption and influencing policies across the world, the FCPA still has its critics. In a 2012 interview with CNBC, former President Donald Trump stated that the FCPA was a “horrible law and it should be changed” and called the U.S. the “policeman for the world”<sup>3</sup>. Trump and many other opposers to the law believe it is too strict and is forcing corporations and countries to eliminate any kind of bribery or influence. The straightforward response to these critics is that corruption is unethical, and thus should be illegal. Additionally, the second arm of the act, the FCPA accounting provisions, promotes and enforces proactive controls for all corporations. These provisions serve as requirements for accurate and complete books and records. It’s important for corporations, even if they already have proper internal compliance controls in place, to be aligned with the government in case of potential investigations. The accounting provisions in the FCPA are rather uncommon in anti-corruption legislature, as comparable statutes such as the UK Bribery Act of 2010 focus entirely on the act of bribery and not the accounting controls of corporations.

While the history of the FCPA is an interesting study on its own, the primary focus of this article will be on four different countries on three different continents. China will be the first, looking at its history with corruption and how recent leadership changes have improved the country’s view on it. The other three countries, Brazil, Canada, and India all recently passed legislation because of recent bribery and corruption cases. The aim for these countries is to analyze how these cases, along with the respective countries’ preexisting views toward bribery impacted the current day legislation. The last step will be evaluating how effective each policy or leader has been at mitigating corruption activity as well as comparing among countries.



## China

Poorly defined and lackluster enforcement of policies, on top of the government control over the nation's media have plagued China with widespread corruption for decades. While the other countries outlined in this article have an identifiable timeline in its efforts to combat corruption, China's efforts have been ubiquitous.

China's main anti-corruption policy is the Anti-Unfair Competition Law, or "AUCL" for short. The law came into effect in 1993 and has since seen further amendments in 2017 and 2019. The AUCL outlaws commercial bribery and kickbacks under Article 7; however, it also states that discounts and commissions are allowed such that both parties properly record the transaction for accounting purposes<sup>4</sup>. Contradicting policies like these applicable to the private sector have helped foster corruption for years. In the public sector, there is little to no oversight over the many state-run organizations which allows corruption to flourish.

Michael Johnston, professor at Colgate University and author of *Corruption in China: Old Ways, New Realities and a Troubled Future* outlined the various systemic issues within the country and the government's poor receptiveness<sup>5</sup>. He explains the holes within CCP law allow for corruption, with weak property rights and no clear definition for legitimate business practices contributing to this behavior<sup>6</sup>. Tax policies, the banking industry, and the power of the People's Liberation Army in China all create opportunities for corruption, with Johnston stating:

**“China’s corruption problems have attracted nearly as much attention over the past generation as the economic reforms and rapid growth with which they have become linked.”**

Mr. Johnston's article was written in January 2001, almost 25 years ago. So how has China done since then? In 2009, it was reported that 106,000 officials were found guilty of corruption that year, a 2.5% increase from the year prior<sup>8</sup>. The Chinese government insists that this figure is a result of good policy enforcement, not because of systemic disfunctions that allow for the number to surpass the six-figure mark. This number, and almost every number relating to corruption comes directly from the CCP with little to no oversight from outside parties. Additionally, since many government agencies work under secrecy like the Central Commission for Discipline, it's unclear to an outsider how the investigative, judicial, and disciplinary process goes for someone who has engaged in corruptive practices.

When Xi Jinping took control of China in 2012, he assured the Chinese population that corruption and disciplining public officials was at the top of his priorities. Along with sending out enforcement teams to various provinces, Xi went after established and higher-ups of the CCP. Zhou Yongkang, part of the Politburo Standing, which is a smaller group of elite individuals from the Communist Party, was amongst those being investigated over accusations of corruption and his abuse of power in the oil and security industries<sup>9</sup>. Zhou, as well as members of his family, had been found to have taken almost \$19 million USD worth of bribes, and was given a life sentence in 2015<sup>10</sup>. Various other individuals were subsequently prosecuted, showing signs that Xi would be cracking down on corruption during his time in office.

In 2012 when Xi took office, China ranked 80th out of 178 on Transparency International's Corruption Perception Index (CPI) Rating with a score of 39 (100 being the highest)<sup>11</sup>. In 2023, the same index rated China at a 42, ranking them 76th overall.

Despite Xi's efforts to curb corruption among top leaders and provincial officials, the socialist structure of China will always create opportunities for such behaviors, which is why the level of corruption has mostly remained stagnant since Xi was elected. Each industry in China is led by a high-ranking government official, with some leaders taking on multiple industries. Because of this, each official can take autonomy over the corruption culture and economy in their governing areas, either by taking bribes themselves or allowing corruption to happen without reprimand below them to spur economic growth. While Xi Jinping has been policing corruption among the top rungs of the CCP, it has not traditionally been the focus of the Paramount leader, which is why his prosecution of Yongkang and other leaders has gotten so much attention from the Chinese and international spotlight.

While China's legal and economic growth may be reliant on bribery and corruption, the widespread nature and international perception of corruption in China may be shifting the tables in favor for a cleaner China.



## Brazil

Brazil has one of the largest economies in the world and is the largest country by population in South America, rich with its natural resources and production capacity. Unfortunately, Brazil's history of corruption with public officials and track record with bribery have steered many countries away from doing business there. In 2012, Brazil ranked 69th out of 178 on the CPI index<sup>12</sup>. Prior to 2013, Brazil did not have a comprehensive act that outlawed corruption and bribery for both individuals and entities. Corruption was prosecuted under Brazil's penal codes until 2000, when they adopted the OECD's Convention on Combating Bribery and ratified it in 2002. However, from 2002 to 2012, authorities had only initiated one case and two investigations related to international bribery<sup>13</sup>.

The lack of investigations may sound like adherence to effective policy, but really, it's the other way around. Vote-buying, bribery of police, and invoice-padding are all widespread in Brazil. One of the most memorable cases in terms of corruption was the Mensalão scandal, which occurred in the mid-2000s. Between 2003 and 2005, politicians used government funds to buy votes for the re-election of President Luiz Inacio Lula da Silva, more widely known as Lula<sup>14</sup>.

**The treasurer of the Workers' Party had been making monthly payments of R\$30,000 to Congress members to sway their voting lines in favor of the party. As a result, 10 officials were sentenced within the first 23 sessions, and the treasurer of the Workers' Party received jail time<sup>15</sup>.**

The public outcry from the Mensalão case prompted the Brazilian government to make a proactive effort toward combatting corruption<sup>16</sup>. On Aug. 1, 2013, the Brazilian government enacted the Brazil Anti-Corruption Act, more widely known as the Clean Company Act, to combat corruption against both domestic and foreign corporations looking to do business in the country. It was the first of its kind in Latin America and imposes more serious punishments for both individuals and entities than the FCPA<sup>17</sup>. The act incorporated penalties for entities, whereas previously everything would be handled at the individual level. Individuals can be charged criminally, while related entities found guilty under the act will be subject to substantial leniency agreements, which are payments back to the government<sup>18</sup>. These leniency agreements are exclusive to corporations and are different from a plea agreement. The act also does not allow for facilitating payments, which are payments made to public officials for the purpose of expediting or influencing an administrative process. The Clean Company Act considers them to be bribes<sup>19</sup>.

Unfortunately, the culture of bribery persisted in the coming years with some of the largest international corruption cases occurring shortly after the passing of the act. Operation Car Wash involved state-run organizations, such as the oil company Petrobras, taking bribes from private companies looking to secure government contracts. These bribes were used to fund political campaigns and for personal gain, and Petrobras in 2015 had \$2.1 billion in bribes and nearly \$17 billion tied to overvalued assets on their audited financial statements<sup>20</sup>. Other scandals involved the healthcare giants Siemens, Johnson & Johnson, GE, and Philips. They were engaging in bribery of public officials to secure government purchases for medical devices<sup>21</sup>. These activities persisted for over two decades and were a part of the worldwide Siemens corruption activity that resulted in numerous FCPA charges against the German conglomerate.



Brazil's long-standing history with bribery and similar customs have inhibited the effectiveness of the Clean Company Act, which the international community perceived as one of the most advanced and comprehensive anti-corruption laws in the world<sup>22</sup>. On the previously mentioned CPI ranking, Brazil scored a 36 in 2023, placing them at 104th, a substantial fall from where they were a decade ago<sup>23</sup>.

There is still time to see how the act and its punishments discourage illegal activity, but for now, it has certainly not hindered the culture of corruption in Brazil.



## Canada

Unlike Brazil, Canada is perceived as a clean country when it comes to its bribery and corruption. Canada has consistently scored high on the CPI and sits at 12th with a score of 76 in 2023<sup>24</sup>. The Corruption of Foreign Public Officials Act (CFPOA) came into effect in 1999, and has been amended numerous times since, with the addition of facilitating payments and a Remediation Agreement into the pool of potential corporate consequences in 2017<sup>25</sup>. The CFPOA also punishes individuals that maintain improper books and records for the purpose of covering up bribery of public officials<sup>26</sup>. Individuals found guilty under the act are punishable to no more than 14 years of imprisonment<sup>27</sup>.

Prior to the CFPOA, the largest bribery scandal in Canada was the Airbus case. In 1988, Airbus won a contract with Air Canada (at the time a state-owned enterprise) over Boeing for the purchase of dozens of aircrafts<sup>28</sup>. Then Prime Minister Brian Mulroney was accused of accepting bribes from businessman Karlheinz Schreiber. Despite settling a 1997 civil suit against the Canadian government for false allegations, it was later determined that these payments had in fact occurred<sup>29</sup>.

**As of August 2022, there have been eight convictions under the CFPOA<sup>30</sup>, one of which has since been overturned<sup>31</sup>.**

The largest case fine wise of these convictions was the SNC-Lavalin settlement of C\$280 million, which in combination with a three-year probation term alleviated the charges from the company and allowed them to continue bidding on international contracts<sup>32</sup>. From 2001 to 2011, the construction company had bribed Libyan public officials to secure business in the North African nation, nearly \$50 million of which went to Saadi Gaddafi, the son of dictator Muammar Gaddafi<sup>33</sup>. According to federal prosecutor Richard Roy, the C\$280 million fine paid out by SNC-Lavalin “has been rarely given in Canadian history”<sup>34</sup>. Many of the other corruption convictions since the CFPOA being signed involved the bribery of foreign officials in African countries<sup>35</sup>.

Corruption in Canada, while not nearly as bad as some other countries, still exists even with the addition of the CFPOA. Even in the most advanced countries corruption can still occur at very lucrative levels, as seen in the SNC-Lavalin bribery and subsequent settlement.



## India

The 2023 CPI scored India as a 39, ranking them at 93rd out of the 180 nations ranked<sup>36</sup>. While that is medial for ranking, a score of 39 is very low, and concerning for a nation India's size and industrial presence. In 2010, American-Indian entrepreneur CK Prahalad estimated the annual cost of corruption in India to be around \$55 billion due to political and corporate bribery<sup>37</sup>. Additionally, many government plans meant to improve the welfare of the country fall victim to corruption. Programs such as the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), which aims to guarantee the "right to work" to all citizens, have been subject to siphoning from middlemen and bribery of related parties, and government audits identified at least Rs 935 crore, the equivalent of about \$110 million USD, being misappropriated from 2017-2021<sup>38</sup>. Putting these two forms of corruption together, roughly 85% of government funds are misappropriated<sup>39</sup>. The levels of corruption in India have had a significant and direct impact on the poverty and wealth disparities the country has had through its entire modern history.

The 1988 Prevention of Corruption Act (POCA) established much of the anti-bribery legal framework for India, and an Amendment Act in 2018 attempted to align the policy with the United Nations Convention against Corruption. The 2018 amendment replaces the principal act's usage of the term "valuable thing" with "undue advantage" and increases the scope under which corporations and individuals can be liable<sup>40</sup>. The structure of the act is very similar to the UK Bribery Act, outlining specific scenarios and the punishments applicable to each party. Additionally, facilitating payments are not exempt and are considered illegal under the act. The POCA does not establish accounting controls like the FCPA, but chapter IX of the Companies Act of 2013 thoroughly lays out the accounting requirements for Indian corporations similar to the accounting provisions of the FCPA<sup>41</sup>. Objectively, the current anti-corruption legislature in India provides appropriate guidance for both public and private officials, and is similar, if not more incisive, than the other acts outlined in this article. However, the culture of bribery and existing regulatory measures have made corruption unavoidable.

KPMG conducted a Bribery and Corruption Survey of Indian executives in 2011 to assess the levels of corruption in India and the effectiveness of legislature, namely the POCA. The number of convictions under the act to this point had been considered "abysmally low" and an overwhelming

**... 84% of participants believed that India's government had done a "poor" job of enforcing the law with 0% believing their enforcement was "good"**<sup>42</sup>.

Among the reasons as to why there's been such poor enforcement are "political interference" (20%) and "delayed justice" (18%). These two reasons, along with 50% of the remaining responses had no relation to the content of the POCA itself – signaling that the problem may not lie in the legislature, but rather the legal culture and the disinterest of eradicating corruption practices by the Indian government and private parties alike.

The slow nature of the justice system and complex tax and legal regulations, many of which citizens do not understand, gives immense power to authorities. They're able to seek out bribes by threatening prosecution under complicated or completely fabricated statutes against individuals who don't have the time or resources to go through the lengthy defense process. Perhaps the most visible example of this is in the trucking industry. According to Indian trucking operators, harassment, theft, and bribes from police and transport workers against truckers stem from "real or imaginary traffic violations, overloaded trucks, parking at no-parking zones, and entering a 'no-entry' zone"<sup>43</sup>. It has even gotten to the point that the police force implemented a separate currency system in partnership with businesses along highway routes to systemize bribery<sup>44</sup>. These practices are not limited to any one industry or level of government, and significantly slow down the development and production of India's economy.



A rare bright spot in India's effort to curb corruption is the 2005 Right to Information Act, which allows citizens the right to request and have access to public authority information at the central and state level of government. Additionally, a ruling in 2008 stated that private organizations involved in public duties are subject to the act and can be considered as "public authorities"<sup>45</sup>. The RTI Act is a powerful tool that has been very successful at empowering citizens to speak up and to hold government officials accountable<sup>46</sup>.

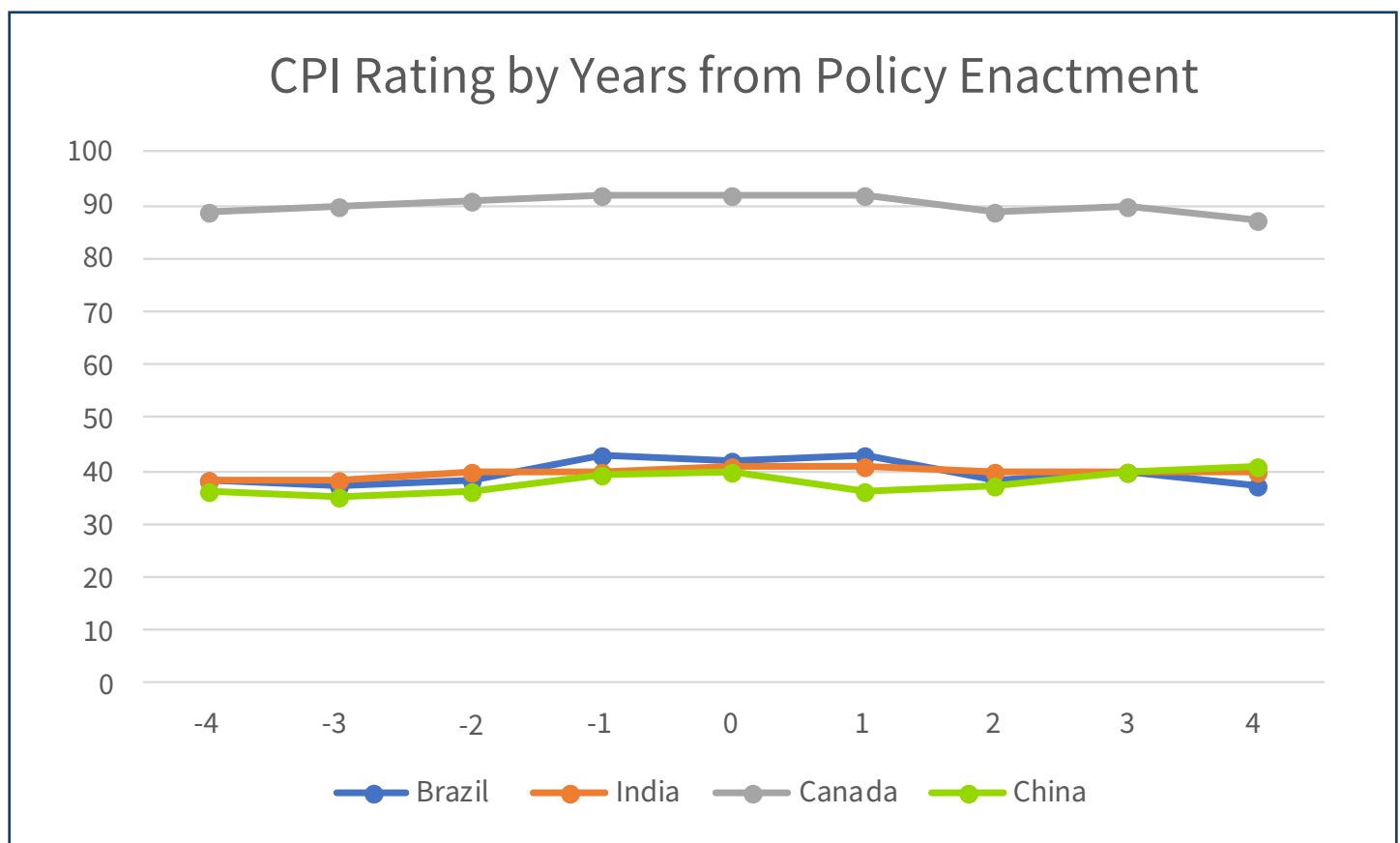
While the opinions and progress toward an anti-corrupt India may be a mixed bag, the international consensus will remain the same until further progress occurs. While some industries may be thriving due to outsourcing savings, many verticals are limited to foreign direct investment due to the corruption risk companies face when doing business in India.



## Comparison & Analysis

All four countries have their own corruption history, levels, and prevention efforts. China is in a league of its own when it comes to its history of corruption. Unlike the other three countries, the level of corruption has been a substantial factor when analyzing the country's economic growth over time. However, the last decade has shown signs of a shift in the treatment of corruption with Xi Jinping's campaign to crack down on corruption in the country. In Brazil, corruption had historically occurred in the form of politicians and government officials receiving payments from outside corporations or other politicians for contracts and votes. Because of this, much of the scope of anti-corruption policy focused on individuals rather than entities. However, the Clean Company Act of 2013 incorporated corporations into legislature, leading to the uncovering of the Petrobras and Siemens scandals. While the policy may not have been effective in preventing corruption, it has provided a safety net for international corporations, and was the first to enact such measures in the region. On the other hand, Canada, a country with minimal corruption activity, has still been both the receiver and facilitator of bribe payments. Their policy incorporates accounting controls and procedures, something that the other two countries do not include in theirs. However, like Brazil, it's unclear if Canada's policy has been successful at stopping corruption as multiple large scandals have still happened. Lastly, India has been the worst of the three in terms of eliminating corruption. They've taken a lot policy-wise from the U.S. and UK legislature and developed very thorough acts and amendments, but the long-standing bribery and corruption culture across industries has made it difficult to properly enforce the entire statute all at once. Enacting policies with a slower buildup may have been more effective, as seen with the success of the RTI, which is a smaller piece of the puzzle.

In terms of corruption metrics, all four countries maintained similar ratings of CPI in the four years prior and following their landmark policies or leadership change in China's case. See chart below<sup>47</sup>:



## Conclusion

After looking at four different countries with different circumstances, the effectiveness of corruption policies has a large dependency on preexisting culture, both on a quantitative and anecdotal level. However, the long-term impacts of legislation will have positive outcomes for countries that properly enforce their anti-corruption laws. Additionally, ensuring that industries are compliant with the policies in place increases a country's potential for foreign investment, while a lack of that could be detrimental like India's current situation.

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