

## The Prevention of Corruption Act, 1988: Comparison of the 2013 Bill with the 2015 amendments

Currently, the Prevention of Corruption Act, 1988 regulates matters related to corrupt practices of public officials. The Prevention of Corruption (Amendment) Bill, 2013 was introduced in Rajya Sabha on August 19, 2013.<sup>1</sup> The Bill makes the giving of a bribe an offence under the Act, enlarges the definition of taking a bribe and covers commercial organisations. The Standing Committee of Law and Justice that examined the Bill submitted its report on February 6, 2014. The Bill is currently pending in Rajya Sabha.

Certain amendments to the Prevention of Corruption (Amendment) Bill, 2013 were circulated in Rajya Sabha on May 5, 2015.<sup>2</sup> These amendments were not moved in the House. On November 27, 2015, the government circulated the same amendments again.<sup>3</sup>

The Table below compares the provisions of the 1988 Act with the 2013 Bill and the proposed 2015 amendments.

**Table 1: Comparison of the provisions of the Prevention of Corruption (Amendment) Bill, 2013 with that of the 2015 proposed amendments**

Prevention of Corruption Act, 1988	Prevention of Corruption (Amendment) Bill, 2013	Official amendments- November 2015
<b>Definition of undue advantage</b>		
No provision	<ul style="list-style-type: none"> <li>▪ No provision.</li> <li>▪ Term used to define bribery related offences include “financial or other advantage”.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Replaces the term “financial or other advantage” with “undue advantage” throughout the Bill.</li> <li>▪ Undue advantage is defined as any gratification other than legal remuneration.</li> </ul>
<b>Taking of a bribe</b>		
<p><b>Sections 7- 9:</b> A public servant is said to have taken a bribe if he:</p> <ul style="list-style-type: none"> <li>i) Accepts or attempts to obtain any reward, other than a salary. This reward must be for doing or intending to do any official act.</li> <li>ii) Accepts a reward for official acts that favour or disfavour any person.</li> <li>iii) Accepts a reward from another person to exercise personal influence over a public servant</li> </ul>	<p>Replaces provision in the Act with the following:</p> <ul style="list-style-type: none"> <li>▪ A public servant is said to have taken a bribe if he:                             <ul style="list-style-type: none"> <li>i) Requests or accepts or attempts to obtain any financial or other advantage for performing a public function in an improper manner.</li> <li>ii) Requests or accepts or attempts to obtain any financial or other advantage and such request in itself would constitute improper performance of public function.</li> </ul> </li> </ul>	<p>Replaces provision in the 2013 Bill to state that:</p> <ul style="list-style-type: none"> <li>▪ A public servant is said to have taken a bribe if he:                             <ul style="list-style-type: none"> <li>i) Obtains or agrees to receive or accepts or attempts to obtain, an undue advantage from any person.</li> <li>ii)                                     <ul style="list-style-type: none"> <li>a) Obtains or agrees to receive or accepts or attempts to obtain, an undue advantage, intending that in consequence a public function would be performed improperly;</li> <li>b) Obtains or agrees to receive or accepts or</li> </ul> </li> </ul> </li> </ul>

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<ul style="list-style-type: none"> <li>▪ Punishment: 3 to 7 years and fine.</li> </ul>	<p>iii) Induces another public servant to perform his public function in an improper manner, in exchange for a financial or other advantage.</p> <p><u>Public function</u> is defined as one that is: i) of public nature, ii) in the course of employment, iii) to be performed impartially and in good faith.</p> <p><u>Improper performance</u> includes: i) breach of a relevant expectation, ii) failure to perform a function that is a breach of an expectation.</p> <p><u>Relevant expectation</u> is defined as i) a function performed in good faith, or ii) in a position of trust.</p> <ul style="list-style-type: none"> <li>▪ Punishment: 3 to 7 years and a fine.</li> </ul>	<p>attempts to obtain, an undue advantage, as a reward for the improper performance of a public function;</p> <p>c) Performs a public function improperly either in consequence or in anticipation of an undue advantage.</p> <ul style="list-style-type: none"> <li>▪ However, if a person does not perform a public function dishonestly, it would not constitute the offence of taking of a bribe.</li> <li>▪ Punishment: 3 to 7 years and a fine.</li> </ul>
<b>Giving of a bribe</b>		
<ul style="list-style-type: none"> <li>▪ The Act does not have a specific provision.</li> <li>▪ It is covered under the provision of abetment.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The offence of giving of a bribe includes: <ul style="list-style-type: none"> <li>(i) Offering or promising or giving a financial or other advantage to another person, intending to: <ul style="list-style-type: none"> <li>(a) induce the public servant to perform his public function improperly; or</li> <li>(b) reward the public official to perform his public duty improperly; or</li> </ul> </li> <li>(ii) Offering a financial or other advantage to a public official, knowing that such acceptance would qualify as performing his public duty improperly.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Includes a provision to state that a person would not be said to have given a bribe if he did so after informing a law enforcement authority or investigating agency in order to provide assistance to such body in its investigation of the offence against a public servant.</li> <li>▪ Provides illustrations to clarify the types of bribe giving that would be covered. This includes bribes given willingly (license for a bid), and those given to obtain routine entitlements (ration card application).</li> </ul>
<b>Giving of a bribe by a commercial organisation</b>		
<ul style="list-style-type: none"> <li>▪ No specific provision.</li> <li>▪ Covered under the provision of abetment.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Offering a reward in return of obtaining or retaining any advantage in business.</li> <li>▪ The organisation and its head will not be held liable if it is proven that the organisation took adequate precautions, and the head had no knowledge of the act.</li> </ul>	<p>Includes a provision to mandate the central government to prescribe guidelines about adequate procedures that commercial organisations must put in place to prevent persons associated with them from bribing a public servant.</p>
<b>Person in charge of commercial organisation to be guilty</b>		
<p><b>Section 18(2):</b> If an offence has been committed with the consent of, or is attributable, such officer shall also be considered to be guilty of that offence.</p>	<ul style="list-style-type: none"> <li>▪ If a commercial organisation is held guilty of giving a bribe, the person acting for the organisation and the head of the organisation are also deemed to be guilty.</li> </ul>	<p>Replaces this provision to state that:</p> <p>If a commercial organisation is held guilty of giving a bribe, it must be proved by the prosecuting authorities that it was</p>

	<ul style="list-style-type: none"> <li>The heads of the commercial organisation must prove that the offence was committed without his knowledge or that he had exercised due diligence.</li> </ul>	committed with the consent or connivance of any director, manager, secretary or other officer of the commercial organisation.
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#### Abetment

<ul style="list-style-type: none"> <li>A <u>public servant</u> abetting an offence related to influencing another public servant is covered.</li> <li><u>Any person</u> abetting offences related to i) taking a bribe and ii) obtaining a valuable thing from a person engaged with in a business transaction is covered.</li> </ul>	Covers abetment by any person for all offences under the Act.	Removes the offence of attempting to commit offences related to criminal misconduct from the ambit.
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#### Criminal Misconduct

<p><b>Section 13:</b> Includes:</p> <ul style="list-style-type: none"> <li>i) Habitually taking a bribe or a valuable thing for free.</li> <li>ii) Fraudulent misappropriation of property in his control.</li> <li>iii) Obtaining a valuable thing or reward by illegal means.</li> <li>iv) Abuse of position to obtain a valuable thing or monetary reward.</li> <li>v) Obtaining valuable thing or monetary reward without public interest.</li> <li>vi) Possession of monetary resources or property disproportionate to known sources of income.</li> </ul>	Replaces the provisions of the Act to include: <ul style="list-style-type: none"> <li>i) Fraudulent misappropriation of property entrusted to a public servant.</li> <li>ii) Intentional enrichment by illicit means during the period of his office and being in possession of property or resources disproportionate to known sources of income.</li> </ul>	<ul style="list-style-type: none"> <li>Replaces the provision related to intentional enrichment to define it as Intentional enrichment by illicit means during the period of office.</li> <li>An explanation to the provision states that it shall be presumed that the person intentionally enriched himself.</li> <li>This would involve amassing resources or property disproportionate to one's known sources of income.</li> <li>'Known sources of income' is defined as income derived from lawful sources.</li> </ul>
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#### Habitual offender

<b>Section 14:</b> Punishment: Five to 10 years and fine.	Punishment: Three to 10 years and a fine.	Punishment: Five to 10 years and a fine.
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#### Prior approval for investigation

No provision.	No provision.	<ul style="list-style-type: none"> <li>Before a police officer can conduct any investigation in relation to an offence said to have been committed by a public official in the performance of his official duty, prior approval of an appropriate authority, as provided for in the Lokpal and Lokayuktas Act, 2013, must be taken.</li> <li>Such approval would not be necessary in certain cases which involves the arrest of a person on the spot on the</li> </ul>
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		charge of taking a bribe, either for himself or another.
<b>Attachment of property</b>		
No provision	<ul style="list-style-type: none"> <li>▪ Introduces new chapter in this regard.</li> <li>▪ If an authorised investigating police officer believes that a public official has committed an offence, he may approach Special Judge for attachment of the property.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The provisions of the Criminal Law Amendment Ordinance, 1944 would apply to the attachment of property and execution of orders in this regard.</li> <li>▪ In place of a District Judge (as specified in the Ordinance), cases will be referred to a Special Judge.</li> </ul>
<b>Time period for trial of cases</b>		
<b>Section 4:</b> No time period mentioned.	No time period mentioned.	<ul style="list-style-type: none"> <li>▪ Trial by the special judge is to be completed within two years.</li> <li>▪ If it is not completed within such period, reasons for the delay must be recorded, and an extension of six months would be provided. This process must be followed for every period of delay, beyond the two year period.</li> <li>▪ However, the total period for completion of trial must not exceed four years.</li> </ul>
<b>Power to make rules</b>		
No provision.	No provision.	<ul style="list-style-type: none"> <li>▪ Includes provision to delegate the power to make rules, to the central government.</li> <li>▪ This would include prescribing guidelines for commercial organisations in relation adequate safeguards to prevent bribery by its employees.</li> </ul>

Note: The Bill makes other consequential changes in relation to the numbering of certain provisions in the parent Act, to reflect the amendments proposed. The table reflects the amendments made to the Prevention of Corruption Act, 1988 by the Lokpal and Lokayuktas Act, 2013 in December 2013.

Sources: The Prevention of Corruption Act, 1988, The Prevention of Corruption (Amendment) Bill, 2013; Notice of Amendments in Rajya Sabha, May 5, 2015 and November 27, 2015; PRS.

1. The Prevention of Corruption (Amendment) Bill, 2013, <http://www.prsindia.org/administrator/uploads/general/1376983957~~PCA%20Bill%202013.pdf>.

2. Notice of amendments to the Prevention of Corruption (Amendment) Bill, 2013, Rajya Sabha, May 5, 2015, <http://www.prsindia.org/uploads/media/Corruption/PCA-%20Notice%20of%20Amendments.pdf>;

3. Notice of amendments to the Prevention of Corruption (Amendment) Bill, 2013, Rajya Sabha, November 27, 2015; <http://www.prsindia.org/uploads/media/Corruption/List%20of%20Amendments-%20PCA%20November.pdf>.

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