

PARLIAMENT OF INDIA RAJYA SABHA

REPORT OF THE SELECT COMMITTEE OF RAJYA SABHA ON THE PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2013

(PRESENTED TO THE RAJYA SABHA ON 12th AUGUST, 2016)



**RAJYA SABHA SECRETARIAT
NEW DELHI
AUGUST, 2016 / SHRAVANA, 1938 (SAKA)**

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* To be appended at printing stage.

COMPOSITION OF THE COMMITTEE

(As constituted on 11th December, 2015)

1. *Shri Bhupender Yadav - Chairman
2. Shri Shantaram Naik
3. Shri Bhubaneswar Kalita
4. Shri Naresh Agrawal
5. Shri Sukhendu Sekhar Roy
6. Shri Anubhav Mohanty
7. Shri Devender Goud T.
8. Mir Mohammad Fayaz
9. Shri A. Navaneethakrishnan
10. Shri Praful Patel
11. Shri D. Raja
12. Shri Hishey Lachungpa
13. Shri Rajeev Chandrasekhar
14. #Shri Tiruchi Siva
15. Shri Naresh Gujral
16. Shri Satish Chandra Misra
17. Shri Sanjay Raut
18. @Shri C.P. Narayanan
19. **Shri Dilipbhai Pandya
20. ##Shri Shamsheer Singh Manhas
21. §Shri Pramod Tiwari
22. §§Shri Harivansh
23. ^^Shri Swapan Dasgupta

* Appointed as Chairman w.e.f. 12th July, 2016 consequent upon the retirement of Shri Anil Madhav Dave from Rajya Sabha..

Appointed in lieu of Smt. Kanimozhi on 22nd December, 2015

@ Appointed as Member with effect from 27th April, 2016 consequent upon retirement of Shri K.N. Balagopal on 21st March, 2016 from Rajya Sabha.

** Appointed as Member with effect from 19th July, 2016 consequent upon retirement of Shri Anil Madhav Dave on 29th June, 2016 from Rajya Sabha.

Appointed as Member with effect from 19th July, 2016 consequent upon retirement of Dr. Chandan Mitra on 29th June, 2016 from Rajya Sabha

§ Appointed as Member with effect from 19th July, 2016 consequent upon retirement of Shri Avinash Pande from Rajya Sabha on 4th July, 2016 who was appointed upon retirement of Shri Mani Shankar Ayyar on 21st March, 2016 from Rajya Sabha.

§§ Appointed as Member with effect from 19th July, 2016 consequent upon retirement from Rajya Sabha of Shri K.C. Tyagi on 7th July, 2016 from Rajya Sabha.

^^ Appointed as Member with effect from 19th July, 2016 consequent upon appointment of Shri Ramdas Athawale to the Union Council of Ministers with effect from 5th of July, 2016.

SECRETARIAT

1. Dr. D. B. Singh, Secretary
2. Shri K. P. Singh, Joint Secretary
3. Shri Ashok K. Sahoo, Joint Director
4. Smt. Niangkhanem Guite, Assistant Director

REPRESENTATIVES OF THE MINISTRIES

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS

(DEPARTMENT OF PERSONNEL & TRAINING)

1. Shri Bhanu Pratap Sharma, Secretary;
2. Shri Jishnu Barua, Joint Secretary; and
3. Shri Rakesh Kumar, Director.

MINISTRY OF LAW AND JUSTICE

(I) LEGISLATIVE DEPARTMENT

1. Dr. G. Narayana Raju, Secretary;
2. Dr. (Ms.) Reeta Vasishta, Additional Secretary; and
3. Shri R.L. Sreenivas, Additional Legislative Counsel.

(II) DEPARTMENT OF LEGAL AFFAIRS

1. Shri S.R. Mishra, Joint Secretary & LA;
2. Shri Ramayan Yadav, Joint Secretary & LA;
3. Shri R.S. Verma, Deputy Legal Advisor; and
4. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor.

INTRODUCTION

As the Chairman of the Select Committee of Rajya Sabha on the Prevention of Corruption (Amendment) Bill, 2013 and having been authorized by the Committee to submit the Report on its behalf, I present this Report on the Bill.

2. The Prevention of Corruption (Amendment) Bill, 2013 was introduced in the Rajya Sabha on the 19th August, 2013. The Bill was referred to the Department-related Standing Committee on Personnel, Public Grievances, Law and Justice which presented its Sixty-ninth Report on the Bill to the Parliament on 6th February, 2014. The Ministry had also sought the views of the Law Commission on the amendments and the Law Commission made several recommendations in its Two Hundred and Fifty Fourth Report in 2015. In the light of the recommendations made in those Reports, the Government proposed as many as thirty-one official amendments to the Bill in 2015, which were substantive in nature and had far reaching impact on the Bill. The Select Committee of Rajya Sabha on the Prevention of Corruption (Amendment) Bill, 2013 was constituted on 11th December, 2015 to examine the Bill and the amendments proposed by the Government and the Members and report to the Rajya Sabha by the last day of the first week of the Two Hundred and Thirty Eighth Session of the House.

3. The Committee held fifteen sittings in all.

4. The Committee, in its first sitting held on 21st December, 2015, had a general discussion on the issues involved in the Bill and deliberated upon the course of action and the procedure for examination of the Bill. As is the practice, the Committee decided to have wider consultations with stakeholders and to invite views and suggestions from interested individuals / organizations / stakeholders/experts by issuing a Press Release in the form of an advertisement in English, Hindi and other vernacular languages in major leading national and regional newspapers. The Committee also decided to hear the views of the State Governments, Chamber of Commerce and Industries, Public Sector Undertakings, Public Sector Banks, Employees Associations of State Government, Legal luminaries and Members of Civil Society by undertaking study-visits to Bengaluru, Mumbai and Kolkata. Accordingly, a press communiqué was issued to solicit the views of the public at large. In response to the Press Release issued seeking suggestions/ views on the Bill, 128 memoranda were received and out of these, 12 were treated as substantive. Comments of the Department of Personnel and Training on the main suggestions/comments contained therein were sought for the consideration of the Committee.

5. In its second sitting held on the 12th January, 2016, the Committee heard the views of Central Vigilance Commission (CVC); Central Bureau of Investigation (CBI) and Central Board of Excise and Customs (CBEC) on the provisions of the Bill.

6. In its third sitting held on the 13th January, 2016, the Committee heard the Department of Personnel and Training(DoPT), Central Board of Direct Taxes (CBDT), Enforcement Directorate (ED) and Comptroller and Auditor General of India (C&AG) on the Bill and sought clarifications on the complex legal issues.

7. The Committee also undertook study-visits to Bengaluru, Mumbai and Kolkata in the month of February, 2016. During the study-visits, the Committee held interactions with State Governments of Karnataka; Tamil Nadu; Maharashtra; West Bengal; Bihar; Odisha; and Gujarat; UT Administrations of Daman and Diu and Dadra and Nagar Haveli; Andaman and Nicobar Islands; Bar Council of Karnataka; Federation of Karnataka Chamber of Commerce & Industries; Indian Bank's Association (IBA); Bombay Chamber of Commerce and Industry; Institute of Cost Accountants of India; Bengal Chamber of Commerce and Industry; Bharat Chamber of Commerce; Namma Bengaluru Foundation, Bengaluru; Lok Satta, Hyderabad; Janagraha, Bengaluru; Avantika Foundation, Bengaluru; Centre for Budget and Policy Studies, Bengaluru; Civic Bangalore, Bengaluru; Coalition Against Corruption; Karnataka State Government Employees' Association; Association of Women Entrepreneurs of Karnataka; Karnataka Small Scale Industries Association; All India Bank Employees' Association; All India Bank Officers Confederation and various Public Sector Undertakings/ Banks. The Committee also interacted with Justice Santosh Hegde, (Retd.) Judge of Supreme Court & Former Lokayukta, Karnataka; and Shri V. Balasubramanian, Former Additional Chief Secretary, Government of Karnataka & Chairman, Transparency International, India – Karnataka during its study-visit to Bengaluru. Justice B. Subhashan Reddy, Lokayukta for Andhra Pradesh & Telangana (Former Chief Justice of Tamil Nadu and Kerala and Former Chairperson, A.P. State Human Rights Commission) has concurred with the amendments to the Prevention of Corruption Act, 1988 brought by the Prevention of Corruption (Amendment) Bill, 2013 and official amendments thereto for effective eradication of corrupt activities in the society while protecting the harassment of the honest among the public servants. A list of Stakeholders who submitted their views to the Committee is at **Annexure II**.

8. As the Committee required more time for wider consultations, it was not possible for it to present its Report to the House within the period stipulated in the Motion for appointment of the Committee. In its fourth sitting held on the 23rd February, 2016, the Committee decided to seek extension of time to present the Report on the Bill from the House upto 29th April, 2016. The House granted, on a motion moved to that effect on 25th February, 2016, an extension of time upto 29th April, 2016 for presentation of the Report.

9. In its fifth sitting held on the 9th March, 2016, the Committee heard the views of the State Governments of National Capital Territory of Delhi, Haryana, Himachal Pradesh, Uttarakhand, Chattisgarh and Madhya Pradesh.

10. In its sixth sitting held on the 10th March, 2016, the Committee heard the views of State Governments of Mizoram, Sikkim, Manipur, Assam, Tripura and Nagaland.

11. In its seventh sitting held on the 1st April, 2016, the Committee heard the views of Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce & Industry (FICCI), PHD Chamber of Commerce and Industry, PRS Legislative Research, Institute of Company Secretaries of India (ICSI), Institute of Chartered Accountants of India (ICAI), National Campaign for People's Right to Information (NCPRI), Indian Civil and Administrative Service (Central) Association, Confederation of Central Government Gazetted Officers' Organisations and Confederation of Civil Service Associations.

12. In its eighth and ninth sittings held on the 12th and 13th April, 2016, the Committee held thread bare discussion on the Clauses of the Bill on the basis of response on the feedbacks received from various stakeholders.

13. As the Committee decided to hold a few more meetings to finalise its views and adopt the Report, it decided to seek further time upto the last day of the first week of the monsoon session. The House granted, on a motion moved to that effect on 29th April, 2016, an extension of time upto day of the first week of the Monsoon Session for presentation of the Report.

14. In its tenth sitting held on the 26th April, 2016, the Committee held internal deliberations on the Bill to be reported by the Select Committee.

15. In its eleventh meeting held on the 7th June, 2016, the Committee held discussions with unofficial witnesses.

16. In its twelfth meeting held on 21st July, 2016, the Committee heard the views of Dr. Subramanian Swamy, MP (Rajya Sabha) on the provisions of the Bill. The Committee also decided to seek further time upto the last day of the first week of the Winter Session. The House granted, on a motion moved to that effect on 22nd July, 2016, an extension of time upto day of the first week of the Winter Session for presentation of the Report.

17. In its thirteenth meeting held on 2nd August, 2016, the Committee held discussions with Department of Personnel and Training, Legislative Department and Department of Legal Affairs on the provisions of the Bill.

18. In its fourteenth meeting held on the 8th August, 2016, the Committee held clause-by-clause consideration of the Bill.

19. The Committee considered and adopted its draft Report on the Bill and modified Bill to be reported by the Committee at its sitting held on the 11th August, 2016

20. The Committee also received suggestions/ amendments from some of its Members in the course of consideration of the Bill. The suggestions/amendments so received are placed at **Annexure-I**.

21. While considering the Subject, the Committee took note of the following documents/information placed before it:-

- (i) Background note on the Subject submitted by the Department of Personnel Training (DoPT);
- (ii) United Nations Convention Against Corruption (UNCAC);
- (iii) Bribery Act, 2010 of the United Kingdom;
- (iv) Two Hundred and Fifty Fourth Report of the Law Commission of India on Prevention of Corruption (Amendment) Bill, 2013 (2015);
- (v) Sixty-ninth Report of the Department Related Standing Committee on the Personnel, Public Grievances, Law and Justice presented to the Parliament on 6th February, 2014;
- (vi) Written views of Central Vigilance Commission (CVC) on the Bill;

- (vii) Written views of Central Bureau of Investigation (CBI) on the Bill;
- (viii) Written views of Central Board of Direct Taxes (CBDT) on the Bill;
- (ix) Written views of Central Board of Customs and Excise (CBEC) on the Bill;
- (x) Written views of Comptroller and Auditor General of India (C&AG) on the Bill;
- (xi) Written amendments proposed by the Government to the Bill in 2015 and 2016;
- (xii) Submissions of various State Governments and Union Territory Administrations and Comments of DoPT thereon;
- (xiii) Submissions of Public Sector Undertakings/ Public Sector Banks and Comments of DoPT thereon;
- (xiv) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts and Comments of DoPT thereon;
- (xv) Replies of Department of Personnel & Training (DoPT) to the queries raised by the Members during the meetings of the Committee; and
- (xvi) Comments of DoPT on the replies of stake holders to the questionnaire of the Secretariat on the provisions of the Bill.

22. The Committee wishes to place on record its gratitude to the representatives of the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training), Central Vigilance Commission, Central Bureau of Investigation, Central Board of Direct Taxes, Central Board of Excise and Customs, Comptroller and Auditor General of India, Enforcement Directorate and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) for furnishing necessary inputs and rendering valuable assistance to the Committee in its deliberations. The Committee also wishes to express its gratitude to all the State Governments, Public Sector Enterprises, Public Sector Banks, Civil Societies and the distinguished persons who appeared before the Committee and placed their valuable views on the Bill and furnished written notes and information in connection with the examination of the Bill.

New Delhi,
11th August, 2016

BHUPENDER YADAV
Chairman,
Select Committee of Rajya Sabha on
the Prevention of Corruption (Amendment) Bill, 2013

REPORT

The Prevention of Corruption (Amendment) Bill, 2013 seeks to amend the Prevention of Corruption Act, 1988(hereafter referred to as Principal Act) to bring the domestic anti-corruption legal framework in conformity with current international practices laid down by the United Nations Convention Against Corruption (UNCAC) which has since been ratified by our country. Furthermore, certain amendments have been necessitated in view of several judicial pronouncements on the Prevention of Corruption Act, 1988.

2. Salient Features of the Bill

- Definition of “undue advantage” – *Section 2(d) inserted through official amendments.*
- Laying down time line for speedy trials of corruption cases – *Section 4(5) inserted through official amendments.*
- Restructuring all provisions of acceptance of bribe by a public servant under single Section – *Section 7 substituted by official amendments.*
- Criminalization of the act of giving of bribe – *Section 8 substituted by official amendments.*
- Criminal liability for commercial organisations for bribing public servant. – *Section 9 [Rule making power provided under new Section 32] substituted by official amendments.*
- Liability of senior management of commercial entity in case of consent or connivance – *Section 10 substituted by official amendments.*
- Intentional enriching and possession of disproportionate assets proof of such illicit enrichment. – *Section 13 amended by the Bill.*
- Sanction for initiating investigation against a public servant to be granted by Lokpal or Lokayukta - *Section 17A inserted by official amendments.*
- Attachment and forfeiture of property – *Insertion of new Section 18A by the Bill and subsequent official amendments.*
- Extending protection of prior sanction of the Competent Authority of appropriate Government to retired government

servant and providing for timeline for granting sanction by that Competent Authority – *Section 19 to be amended by the Bill.*

3. As many as 19 Sections of Prevention of Corruption Act, 1988 are proposed to be amended through the Bill as well as official amendments proposed thereto. Besides that, amendment to the Prevention of Money Laundering Act, 2002 has also been proposed. Substitution of Sections 7, 8, 9, 10, 12, 13, 14, 19 and 20 ; Omission of Section 11 and 24; insertion in Sections 2, 4 and 32 and new Sections i.e., 17A and 18A and; consequential amendment to Sections 1, 15, 16 and 23 of the Prevention of Corruption Act, 1988 have been proposed.

Clause-2
(Insertion of Definition of 'Undue Advantage' under
Sub- Section 2(d) of the Principal Act)

4.0 Clause 2 of the Government Bill sought the omission of sub-section (6) of Section 5 of the Principal Act. However, the official amendments now seek to insert definition of 'undue advantage' under sub-clause (d) in the Section 2 of the Principal Act which has been treated as Clause 2 of the Bill being reported by the Committee. The Clause defines the terms 'undue advantage' as any gratification other than legal remuneration. The terms 'gratification' and 'legal remuneration' as defined under Explanation (b) and (c) to Section 7 of the Principal Act has now been given as explanation for the purpose of proposed Section 2. The Department of Personnel and Training (DoPT) has stated that the definition and meaning of the terms 'undue advantage' are well understood in the international jurisprudence and are taken from United Nations Convention Against Corruption (UNCAC).

4.1. Some stakeholders were of the view that there is need to provide an explanation to the terms 'non-pecuniary benefit' as there is every possibility of filing malicious and false complaint against the public servant. Further, it was also suggested that casual exchange of hospitality like presenting traditional gift/souvenir/memento subject to a certain monetary limit and courtesy lunch/dinner during meeting/official visit may not be brought under the purview of 'undue advantage'.

4.2. Members of the Committee also felt that the purport of the words 'undue advantage' used in the proposed amendments includes all forms of pecuniary and non-pecuniary gratifications and appears to be wide enough to be misused by the enforcement agencies.

Observations/ Recommendation of the Committee

4.3. The Committee, notes that the expression 'undue advantage' imported from UNCAC is not widely used in any statute. Committee also notes that the expression as used in Section 300 of IPC 1860 implies 'unfair advantage'. Even judicial interpretation of those terms is few and far between. The Committee, apprehends that the enforcement/probe agencies may misuse the said expression to harass public servant as well as members of civil society in corruption cases and advises that adequate precautions be taken in this regard. The Committee, however, notes that the Law Commission of India in its Two Hundred Fifty-fourth Report (February, 2015) has suggested to use the expressions 'undue advantage' in the PC Act. The Committee endorses the aforesaid amendments proposed to Section 2 of the PC Act, 1988 under the Clause.

4.4. Accordingly, the Committee recommends that the following Clause may be inserted after Section 2(c) of the Principal Act:

“In the Prevention of Corruption Act, 1988 (hereinafter referred to as the principal Act), in Section 2, after clause (c), the following clause shall be inserted, namely:—

‘ (d) “undue advantage” means any gratification whatever, other than legal remuneration.

Explanation. For the purposes of this clause,

(a) the word “gratification” is not limited to pecuniary gratifications or to gratifications estimable in money;

(b) the expression “legal remuneration” is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.”

Clause 3

(Insertion of new Sub-Section to Section 4 of PC Act, 1988 for Time Bound Trial of Corruption Cases)

5.0. Clause 3 of the Government Bill seeks to restructure Sections 7, 8, 9 and 10 of the Principal Act. However, an official amendment has been proposed to insert subSection (5) after sub-section (4) of Section 4 of the Principal Act casting obligation upon the Special Judge to ensure completion of trial of corruption cases within a period of two years from the date of

filing of the case which could be extendable to four years by the Special Judge by six months at a time. The reason for extension of time should be recorded in writing by the Special Judge. In view thereof, official amendments to Section 4 of the Principal Act is treated as Clause 3 in the Bill reported by the Committee.

5.1. From the data submitted to the Committee by State Governments, it was found that several corruption related cases were pending for ten to twenty years in many States. A majority of stakeholders were of the view that two years time limit proposed may be adhered to with extension of half of that period in exceptional cases. Like the time line for trial of cases for the judiciary, a time limit for investigation and time limit for giving sanction may also be provided in the Act for ensuring better conviction.

5.2. Some other stakeholders also submitted that fixing time limit of two years extendable at six monthly intervals to four years for trial will not happen without streamlining the court procedures. The Supreme Court and High Court may be impressed upon to lay down operative rules to prevent adjournments and hold trial on day-to-day basis as already mentioned under Sub-section 4 of Section 4 of the Prevention of Corruption Act, 1988.

5.3. To the query of the Committee whether laying of time line for criminal proceedings is in consonance with the ratio the case laid down in *Shri P. Ramachandra Rao Vs. State of Karnataka (2002) 4 SCC 578*, the Department of Legal Affairs cited the Speedy Trial Act, 1988 of Philippines, where entire trial period should not exceed 180 days from the first day of trial. The Department also submitted that the matter had also been referred to a seven judge constitutional Bench to review the decision. The Committee has alternatively suggested to use the expression 'as far as possible' *in lieu of* definite timeline proposed through the official amendment.

Observations/ Recommendation of the Committee

5.4. The Committee endorses the aforesaid amendment to Section 4 of the Act prescribing the time line for trial of corruption cases. However, the Committee hopes that the Special Judges will make all efforts to complete the trial within the prescribed two years without seeking extension of time. It also impresses upon the investigation agencies to ensure that investigation and filing of chargesheets of offences committed under the Principal Act are also completed within a reasonable time-frame so that public servants are not harassed by prolonging the investigation of cases.

5.5. The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

“In Section 4 of the Principal Act, after sub-Section (4), the following sub-Section shall be inserted, namely:—

“(5) The special Judge shall ensure the completion of the trial within a period of two years from the date of filing of the case:

Provided that in case, the trial is not completed within a period of two years, the special Judge shall record the reasons therefor and complete the trial within a further period of six months which may be extended for six months each at a time, for the reasons to be recorded in writing, but the total period for completing the trial shall not exceed four years.”

Clause 4

(Substitution of Sections 7, 8, 9 and 10 of the PC Act)

6.0 With the new official amendments to Section 4, amendments proposed to Sections 7, 8, 9 and 10 of the Principal Act by the Government Bill, 2013 has been renumbered as Clause 4 of the Bill reported by the Committee. The said Clause *inter alia* proposes to make bribe giving as an offence explicitly in line with provisions of UNCAC. The said clause also prescribes similar punishment to both bribe giver and bribe taker being equal partners of the offence of corruption.

6.1. The statement by the bribe giver, after paying the bribe to the public servant, would not now be a defence for the bribe giver. The DoPT through official amendment has proposed insertion of sub-Section 2 to Section 8 to protect the bribe giver who informs the police/probe agencies prior to making payment of bribe and help to catch the bribe receiver red-handed. Now, as a consequence, the protection to bribe giver provided under Section 24 of the Principal Act is proposed to be omitted.

6.2. Apprehension was expressed by several stakeholders that taking bribe through middle men, which was covered in Principal Act, appears to be left out in the amendment. They felt that relevant provisions may be included to cover conduits or third parties in the chain of bribery to check corruption. Certain stakeholders including some Members of the Committee felt that act of omission or willful omission need to be included as offence under proposed Section 7 under Clause 4 of the Bill.

6.3. Punishment for petty as well as grand or hyper corruption is proposed to be same in the Bill. Some stakeholders suggested that it should be rationalised and linked to the enormity of bribe paid or received. It was suggested that graded punishment *in lieu* of uniform punishment for bribe givers and bribe takers should be introduced.

6.4. Several members of civil society stated that coercive bribe givers are the victim of the crime of bribery. They felt that coercive bribe givers should not be treated on equal footing with collusive bribe givers as far as punishment to bribe givers is concerned. The bribe giver may be held criminally liable with fine while the bribe taker as well as the abettor/broker may be held criminally liable with rigorous imprisonment.

6.5. Some stakeholders felt that the legal validity of the terms – ‘agrees to receive or obtain’ in the proposed Section 7 of the Prevention of Corruption Act, 1988 is yet to be tested as mere intention does not constitute crime unless such intention is acted upon.

6.6. Some Members of the Committee suggested that if a bribe giver, within thirty days of giving/paying undue advantage/bribe to public servant, voluntarily turns as an approver by reporting the matter to police/probe agencies and assist them, he may be given immunity from criminal prosecution. The bribe giver has to return matching amount of benefit secured by him/her by making payment to the State.

6.7. Some stakeholders appealed to the Committee to retain Section 24 of the Principal Act to protect coercive bribe giver.

6.8. The Department of Personnel and Training felt that both bribe giver and bribe receiver are equal partners in the offence of bribery whether the bribe giver is a willing partner or is forced to commit such crime involuntarily would be clear after analysis of facts in retrospect after taking into account all relevant factors. The law *per se* cannot define parameters to decide such segregation. The analysis of evidence lies within the domain of judiciary. The court can decide quantum of punishment and fine to be imposed after analysing facts and circumstances of each case. Further, it stated that the terms 'active bribery' and 'passive bribery' are not used in the Bill but are used in UNCAC. Further, the Department stated that the terms ‘coercive bribery’ and ‘collusive bribery’ are also in vogue in international arena and there exists thin line between these two types of bribery. There is every likelihood that most of the bribe givers though acting in collusion may claim that bribe was paid under compulsion to evade and escape

punishment. In view of the Government's policy of zero tolerance to corruption, no distinction in bribe giving except giving protection to bribe giver who informs police/probe agencies prior to payment of bribe to public servant is justified.

6.9. Some Members of the Committee felt that the expression 'expecting to be a public servant' is vague and no one can be a public servant before his selection or election and may be used to target individuals who are yet to enter the public office.

Observations/ Recommendations of the Committee

6.10. The Committee feels that the words 'expecting to be a public servant' may be deleted in the proposed Section 7 and in all relevant Sections of the PC Act, 1988. The Committee further recommends that the words 'agrees to receive' may be deleted from Section 7 and all relevant Sections in the Act.

6.11. The proposed Section 8 criminalizes the act of bribe-giving as an independent offence and provides that any one who offers, promises or gives 'undue advantage' to any person to induce the public servant to perform public duty improperly would constitute cognizable offence. The Committee feels that mere offering of bribe may not be appropriate to be an offence unless it is accepted or demanded. The Committee, therefore, suggests that the words 'offer' may be deleted from proposed Section 8.

6.12. The Committee notes that bribe giver has been given protection in the proposed sub-Section (2) of Section 8 where the bribe giver informs the law enforcement authority or investigation agency before giving the bribe but the Committee does not find any protection to coercive bribe giver in the Bill. The issue was much debated and deliberated by the Committee that some protection in such cases may also be provided. The Committee takes note of the suggestions in para 6.6 *supra* and recommends that if the bribe giver within seven days of giving or paying bribe to public servant report the matter to police or law enforcing agency, he may be given immunity from criminal prosecution.

6.13. The Committee endorses other provisions of the proposed official amendments to Sections 7 and 8 of the Principal Act and suggests incorporation of the same in the Bill.

6.14. The Committee feels that minimum term of sentence for bribe giver proposed under Section 8 may not be specified and be left to the discretion of the Court to decide the quantum of minimum punishment on the basis of gravity of offence in terms of imprisonment or fine or both.

6.15. The Committee, accordingly, recommends that the Clauses 7 and 8 be incorporated as per the following formulation:

“7. Any public servant who,—

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, intending that in consequence a public duty would be performed improperly or dishonestly either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage as a reward for the improper or dishonest performance (whether by himself or by another public servant) of a public duty; or

(c) performs, or induces another public servant to perform, improperly or dishonestly a public duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable, with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, ‘S’ asks a person, ‘P’ to give him an amount of five thousand rupees to process his routine ration card application on time. S is guilty of an offence under this section .

Explanation 2.—For the purpose of this section,--

(i) the expressions “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain (or is to accept or attempt to obtain) the advantage directly or through a third party.”

“8. (1) Any person who gives or promises to give an undue advantage to another person, and intends such undue advantage—

(i) to induce a public servant to perform improperly a public duty; or

(ii) to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisations shall be punishable with fine.

Illustration.— A person, ‘P’ gives a public servant, ‘S’ an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. ‘P’ is guilty of an offence under this sub-section.

Explanation.—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the latter.”

Corporate Liability of Commercial Organisations

7.0. In order to contain corporate corruption, liability of commercial organization has been increased to the extent of making its in-charge guilty of offence of corruption, if its agent or employee offers undue advantage/bribe to public servant with consent/connivance of the former to obtain or retain advantage in business for that commercial organization and would be punished with three to seven years of imprisonment and with fine if the consent/ connivance of Board/ Management of commercial organization is proved in the court of law. However, if that commercial organization has put in place internal preventive mechanism to curb corrupt practices that would be a defense for the management of commercial organization. The Union Government would also evolve a uniform set of guidelines under Rules for prevention of corruption by the agent or employees of commercial organization in consultation with stakeholders.

7.1. Some stakeholders and the Members of the Committee stated that there are certain entities which are neither charitable organizations nor carrying out any business like, i.e., Clubs, Software Technology Parks, Chamber of Commerce and Industry, Professional Bodies (eg. Bar Council of India, ICAI & IICS). It was, therefore, suggested that the word 'entities' may be used *in lieu* of 'commercial organisation'.

7.2. Some Members of the Committee stated that the charitable organizations should not be included under the definition of 'commercial organisations'. It was felt that inclusion of charitable organizations in the definition Clause will lead to unnecessary harassment of these organizations.

7.3. Some stakeholders were of the view that deeming 'in-charge of commercial organization' guilty for the acts of his employees without consent or connivance of that in-charge would go against canons of criminal jurisprudence according to which, everyone is presumed to be innocent until proven guilty. They felt that the vicarious liability of the Board/Management of a commercial organization for its employee or agent for his negligence should not be the cause of prosecution against the members of Board/Management. Rather it should be considered as a case of willful negligence.

7.4. However, some stakeholders pointed out that the Foreign Corrupt Practices Act, 1997 of USA and the UK Bribery Act, 2010 have put additional obligations upon Multi National Corporations (MNCs) of those countries operating in India. However, some cases of MNCs paying bribes

to public servants have been reported in the media. This, they stated, shows that the code of ethics developed for internal functioning has very little adherence. Thus, the companies both private and public, besides adoption of internal code of conduct need to be legally and vicariously liable for the bribes paid by their agents or fixers to public servant and companies need to become intolerant to corruption and strengthen standard of their corporate governance and integrity. They felt that commercial organizations should be held legally accountable and vicariously liable for corrupt activities by its employees in addition to having internal preventive mechanism to thwart corrupt activities.

7.5. Some Members of the Committee proposed for the reduction of maximum punishment of the commercial organization from seven to five years, while some Members suggested a revised proviso to the Clause of the Bill to mention explicitly that the person who is involved in corruption would be punishable with imprisonment while the in-charge of the commercial organization would be punishable with fine.

7.6. Some Members expressed apprehensions that since bribe giving has been a cognizable offence, Board/Management of a commercial organization may be hauled up by the police for the misdemeanor of his employees even before the connivance/consent of the Board/Management is proved beyond reasonable doubt causing harassment to the commercial organization. It may hamper ease of doing business in the country. It was suggested that some sort of safeguard may be provided in the law to protect the Board/Management of the commercial organization from harassment by police.

7.7. The Department of Personnel and Training felt that uniform guidelines need to be provided by the Union Government for all commercial organisation to prevent corrupt activities therein. The Department stated that the incharge of commercial organisation, where his consent or connivance exists, can be prosecuted vicariously, otherwise the employee or agent who pays bribe to public servant shall be prosecuted. The Department further stated that the punishment for bribe giving by any individual or entity including commercial organization is the same. Both the bribe giver and bribe receiver are equal partners in the offence of corruption. The suggestion of restricting the punishment to monetary fine on bribe giver shall take away the element of deterrence from the proposed provision. The DoPT has also agreed to delete the terms 'charitable organization' from the definition of commercial entity.

Observations/ Recommendations of the Committee

7.8. The Committee recommends that in the explanation Clause in the amendment to Section 9 (3), the definition of the word ‘business’ should exclude the words ‘including charitable services’. The Committee further recommends that in the proposed Section 10, the words ‘in court’ be added after the words ‘and such offence is proved’. The Committee agrees with other aspects of the proposed Sections 9 and 10 as mentioned in the official amendments proposed by the Government.

7.9. The Committee further recommends that the word ‘offer’ used in the proposed Section 9 (1) may be omitted.

7.10. The Committee is in agreement with the Section 10, as proposed to be amended by the official amendments.

7.11. The proposed Sections 9 and 10 in the Prevention of Corruption Act, 1988 may accordingly, be incorporated as under:-

“9. (1) A commercial organisation shall be guilty of an offence and shall be punishable with fine, if any person associated with the commercial organisation gives or promises to give any undue advantage to a public servant intending—

(a) to obtain or retain business for such commercial organisation;
or

(b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person gives or promises to give any undue advantage to a public servant if, and only if, such person is, or would be, guilty of an offence under section 8, whether or not the person has been prosecuted for such an offence.

(3) For the purposes of section 8 and this section,—

(a) "commercial organisation" means—

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

- (ii) *any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;*
- (iii) *a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or*
- (iv) *any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;*
- (c) *"business" includes a trade or profession or providing service;*
- (d) *a person is said to be associated with the commercial organisation if, irrespective of any promise to give or giving of any undue advantage which constitutes offence under sub-section (1), such person is a person who performs services for or on behalf of the commercial organisation.*

Explanation 1.—The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2.—Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3.—If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who performs services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under section 8 and this section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders, and with a view to enhancing compliance with the provisions relating to the adequate procedures which can be put in place by the commercial organisations to prevent persons

associated with them from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary.

10.(1) Where an offence under section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.—For the purposes of this section, "director", in relation to a firm means a partner in the firm."

Clause 5

(Omission of Section 11 of the PC Act)

8.0. The omission of Section 11 is necessitated because of the fact that the definition of offences envisaged therein is to be substituted by making Sections 7, 8, 9 and 10 quite comprehensive.

Observations/ Recommendation of the Committee

8.1. The Committee recommends that the Clause 4 of the Government Bill may be treated as Clause 5 in the Bill reported by it and endorses the deletion of Section 11 from PC Act, 1988 in view of reasons of attributed *supra*.

Clause 6

(Substitution of Section 12 of the PC Act)

9.0. The Clause 5 in the Government Bill is treated as Clause 6 in the Bill reported by the Committee. The said clauses prescribes equal minimum and maximum punishment to the abettor as prescribed for bribe giver/taker.

9.2. Most stakeholders agreed to the amendment proposed by the Government.

Observations/ Recommendation of the Committee:

9.3. The Committee endorses amendment to Section 12 of the Prevention of Corruption Act, 1988 for enhancement of punishment for abettor in the offence enumerated in preceding Sections of the said Act.

9.4. The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

“12. Whoever abets any offence punishable under this Act, other than any offence under section 15, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine.”

Clause 7

(Amendment to Section 13 of the PC Act)

10.0. The Clause 6 of the Government Bill is treated as Clause 7 in the Bill reported by the Committee which substitutes Section 13 of the Principal Act.

10.1. The Clause states that misappropriation of Government property and possession of assets disproportionate to his/ her known source of income would constitute criminal misconduct on the part of the public servant. Explanation to Section 13(b) states that intentional enrichment shall be presumed if public servant fails to give satisfactory account of the property in his/her possession or in the possession of any person in his/her behalf. Explanation is given to elucidate the definition of the terms “known sources of income”.

10.2. It was suggested that the word ‘otherwise’ in Section 13(1) (a) used before the word 'convert' appears to be vague and liable to be misused.

10.3. In the course of deliberations, Members raised concern about the use of the terms ‘lawful sources’ in Section 13 of the Prevention of Corruption Act, 1988. It was observed that many a time, courts do not accept lawful sources as recognized by other authorities or statutory bodies. It was felt that there is a need to define the term to avoid multiple interpretations by the court of law.

10.4. It was also suggested to the Committee that Section 13(1) (d)(iii) of the Prevention of Corruption Act, 1988 covers new species of crime related to corruption which was not contemplated under Prevention of Corruption

Act, 1947. The present amendment proposes to alter the said Section to the extent of deleting Section 13(1)(d)(iii) which may not be appropriate to contain corruption where bureaucrats in connivance with politician causes pecuniary benefit to any private party without having proper consideration of public interest. A three Bench judgement of Delhi High Court in the matter of Runu Ghosh and others Vs. Central Bureau of Investigation (CBI) has upheld the said Section in 2011 which has not yet been overruled by the Supreme Court. However, most stakeholders agreed to the amendment proposed by the Government.

Observations/ Recommendation of the Committee:

10.5. The Committee agrees with amendment proposed to Section 13 of the PC Act, 1988 under the Clause as proposed by the Government.

10.6. The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

“For sub-section (1) of section 13 of the principal Act, the following shall be substituted, namely:—

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation 2.—In Explanation 1, “known sources of income” means income received from any lawful sources.”.

Clause 8

(Substitution of Section 14 of the PC Act, 1988 for Enhancement of Punishment for Habitual Offender)

11.0 The Clause 7 of the Government Bill, which seeks to amend Section 14 of the Act, is now considered as Clause 8 of the Bill reported by the Committee. The amendment proposes enhanced imprisonment of five years and ten years, as minimum and maximum punishment, respectively.

11.1. Most stakeholders appreciated enhanced punishment for habitual offenders.

Observation/Recommendation of the Committee:

11.2. The Committee endorses enhanced punishment from three to five years imprisonment as minimum punishment for habitual offenders under Clause 8 of the Bill.

11.3. The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

“For Section 14 of the principal Act, the following section shall be substituted, namely:—

"14. Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to ten years and shall also be liable to fine."

Clause 9

(Consequential amendment to Section 15 of the PC Act, 1988)

12.0. Clause 8 of the Government Bill, which seeks to amend Section 15 of the Principal Act is treated as Clause 9 in the Bill reported by the Committee.

Recommendation of the Committee:

12.1. The Committee agrees with the amendment to Section 15 of the PC Act as it is a consequential amendment pursuant to the amendment of Section 13.

12.2. The Committee accordingly, endorses the clauses.

Clause 10

(Consequential changes to Section 16 of the PC Act, 1988)

13. The Committee also recommends following consequential amendments to Section 16 of the Principal Act:

“In Section 16 of the Principal Act-

for the words, brackets and figures, "sub-Section (2) of Section 13 or Section 14", the words, figures and brackets "Section 7 or Section 8 or Section 9 or Section 10 or sub-Section (2) of Section 13 or Section 14 or Section 15" shall be substituted;

for the word, brackets and letter "clause (e)" the word, brackets and letter "clause (b)" shall be substituted.”

Clause 11

(Consequential amendment to Section 17)

14.0. Amendment to second proviso to Section 17 is a consequential amendment in view of the amendments to Section 13 of the Act.

Recommendation of the Committee:

14.1. The Committee agrees with the amendment as it is a consequential amendment pursuant to the amendment of Section 13.

14.2. The Committee, accordingly, endorses the Clause.

Clauses 12 and 14

(Protection to Public Servant (Both Serving and Retired) for Bonafide Acts of Omission and Commission under PC Act, 1988)

15.0. Clause 12 of the Bill reported by the Committee seeks to insert new Section-17A after Section 17 of the PC Act, 1988. Further, Clause 14 of the Bill to be reported is the same as Clause 10 of the Government Bill which seeks to amend Section 19 of the Principal Act to extend protection to retired government servants for the bonafide acts of omission and commission done while in the office.

15.1. The official amendment intends to insert a new Section 17A to make it obligatory on the police/probe agency to obtain sanction of Lokpal, in cases involving employees of the Union, and of respective Lokayuktas, in cases involving employees of the States, before initiating any

inquiry/investigation against a public servant in all cases of corruption except where the public servant is caught red-handed. Any complaint to police/probe agency shall be treated as a deemed complaint to Lokpal or Lokayukta as the case may be. However, sanction of prosecution would remain with Competent Authority and that authority shall have to convey its sanction within a period of three months which can be extended by another period of one month where consultation with Attorney General/Advocate General is required.

15.2. Several stakeholders stated that the grant of sanction of prosecution by Lokpal/Lokayukta for prosecuting public servants under Section 23 of the Lokpal & Lokayuktas Act, 2013 may be *ultra vires* of Article 311 of Constitution. It was felt that disciplinary/ appointing authority should retain the power to grant sanction of prosecution of Government servant as that authority is well-versed with the functioning and conduct of his/her employee.

15.3. It was suggested that previous sanction for launching investigation/inquiry against public servant is apparently discriminatory *vis-à-vis* the bribe giver who is a common man. Therefore it may not be necessary in the PC Act.

15.4. It was also suggested by some stakeholders that the requirement of prior sanction for prosecution currently available to serving public servant may be extended to retired Government Servant under the PC Act for the official acts done while in service. An empowered Committee comprising of Central Vigilance Commissioner and the Secretary of the Department concerned in the case of Officers below the rank of Secretary and a Committee comprising of the Central Vigilance Commissioner and the Cabinet Secretary in the case of officer of the rank of Secretary may be constituted to sanction of prosecution within two months. Similarly, arrangement may be made for the officers of State Governments. In the case of refusal, the reasons for such refusal should be placed before the respective legislature annually. It was further suggested that Sanction for investigation by CBI may be left to a Committee comprising the CVC and Secretary of the Department concerned in the case of officer below the rank of Secretary and a Committee comprising the CVC and Cabinet Secretary in the case of officer of the rank of Secretary.

15.5. The Central Vigilance Commission has proposed that permission for investigation may be granted as follows:

- Group B,C and D Employees: Head of Concerned Department
- Employees covered under CVC Act, 2003 (Other than Joint Secretary and above): CVC
- Joint Secretaries and above and other high dignitaries: Lokpal

The Commission has stated that the proposed Section 17A (2) will also lead to usurpation of its power by another statutory authority, namely, the Lokpal.

15.6. Central Bureau of Investigation opposed the provisions as it may cause unnecessary delay in investigation. PSUs/PSBs and State Governments supported that Competent Authority should be the sanctioning authority for investigation and prosecution, while, Members of civil society have supported the Lokpal/Lokayukta to be the sanctioning authority.

15.7. Some Members of the Committee suggested that a committee consisting of a retired judge of High Court, the retired IPS officer in the rank of IG and retired IAS officer in the rank of Principal Secretary, would grant sanction of prosecution within a period of three months and four months where consultation is required with Attorney General for India. The expiry of such period may be treated as deemed sanction.

Observation/ Recommendation of the Committee:

15.8. The Committee notes that almost all State Governments/UT Administration are of the view that the power of granting sanction for prosecution should remain with the Competent/Appointing Authority of appropriate Government for practical reasons and administrative convenience. The Committee, therefore, has suggested amendments to proposed Section 17A in the following manner:-

“17A(1) No police officer shall conduct any enquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-

in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

15.9. The Committee is in agreement with the amendments as proposed by the Government and recommends that Clause 12 as amended for insertion of Section 17A in PC Act, 1988 and Clause 14 as given in the Government Bill for amendment to Section 19 of the Principal Act, be effected.

Clause 13

(Insertion of Section 18A in PC Act for Attachment and Forfeiture of Property)

16.0. Clause 13 of the Bill reported by the Committee seeks to insert new Chapter IVA under Section 18A relating to attachment and forfeiture of property and proceeds of corrupt practices, which was Clause 9 of the Government Bill. Certain official amendments proposed to the clause would enable application of the Prevention of Money Laundering Act, 2002 to attachment and forfeiture cases under the PC Act and where there is a gap the Criminal Law Amendment Ordinance, 1944 would be applicable.

16.1. Certain State Governments stated that the provisions in the Prevention of Money Laundering Act, 2002 permits confiscation of property during the trial period without the approval of competent authority. Similarly, it was pointed out, the Odisha Special Act, 2005 also permits the Officer of the court to confiscate property of corrupt Government Servant during the trial period but the provisions in the Criminal Amendment Law Ordinance, 1944 requires approval of the competent authority to confiscate property of the

corrupt public servant. It was suggested that time limit given in the Odisha Special Act, may be considered for inclusion in the proposed Bill.

16.2. Some State Governments stated that the proceeds of corruption are held in false name by the public servant and there is propensity to transfer property quickly when the corrupt government servant is caught. In this regard, it was submitted that the provisions in Odisha and Bihar Special Courts Act relating to forfeiture and confiscation of property appears to be better where the permission of Special Judge is not required by the prosecuting agency to attach the property. This stops the transfer of that property by the public servant. Thus, the State Governments suggested that those provisions may be imported under proposed Section 18A of the Prevention of Corruption Act. It was further stated that the provisions for attachment of property under the Criminal Ordinance Amendment Law, 1944 and the Prevention of Money Laundering Act, 2003 are out dated whereas the provisions in Odisha and Bihar Special Courts Act are functionally better and may be included in the proposed amendment.

16.3. In this light, the Department of Personnel and Training, submitted that the *Adinterim* attachment of property is essential as there have been cases where the public servant has diverted the property while the investigation is being carried out. This can lead to problems in the investigation process. *Ad interim* attachment is provided under the Criminal Law Amendment Ordinance, 1944. The *Ad interim* attachment of property is also available under the Prevention of Money Laundering Act, 2002 and the Lokpal and Lokatuktas Act, 2013. The Department submitted that the Criminal Law (Amendment) Ordinance, 1944 is more suitable than the provisions of Prevention of Money Laundering Act, 2002 and Odisha/Bihar Special Courts Act. The Department suggested that the provisions of Prevention of Money Laundering Act, 2002 may be used first and if those fail, provisions under Criminal Law (Amendment) Ordinance, 1944 may be used.

Observation/ Recommendation of the Committee:

16.4. The Committee recommends that the Clauses as suggested in the official amendments may be adopted as Criminal Law (Amendment) Ordinance, 1944 and Prevention of Money Laundering Act, 2002 are better suited for the purpose of attachment and forfeiture of property obtained through corrupt practices.

16.5. The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

“After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

‘CHAPTER IVA

ATTACHMENT AND FORFEITURE OF PROPERTY

18A. (1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002, the provisions of the Criminal Law Amendment Ordinance, 1944 shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 shall have effect, subject to the modification that the references to “District Judge” shall be construed as references to “Special Judge”.”

Clause 15

(Substitution of Section 20 of the PC Act)

17.0. The Clause 15 of the Bill being reported by the Committee seeks to substitute Section 20 of the PC Act. The Section states that if, during a trial under the offences mentioned in Section 7, it is proved that the public servant has obtained an undue advantage, it shall be presumed that the advantage was taken by the public servant in order to perform a public function improperly.

Observation/ Recommendation of the Committee:-

17.1. The Committee recommends that the words ‘relevant public function or activity’ be replaced with ‘public duty’. The Committee agrees with the amendment and recommends the adoption of the Clause as provided in the official amendments with the minor changes as suggested above.

17.2. The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

“For section 20 of the principal Act, the following section shall be substituted, namely:—

"20. Where, in any trial of an offence punishable under section 7, it is proved that an accused person has accepted or obtained or

has agreed to receive or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that undue advantage, as the case may be, intending that, in consequence, a public duty would be performed improperly either by himself or by another public servant."

Clause 16

(Amendment of Section 23 of the PC Act)

18.0. Clause 16 of the Bill being reported by the Committee seeks to amend Section 23. The Clause provides for consequential amendments in view of the amendments proposed to Section 13 (1) in the Bill.

Recommendation of the Committee:-

18.1. The Committee agrees with the amendments being consequential in nature.

Clause 17

(Omission of Section 24 of the PC Act)

19.0. Clause 17 of the Bill being reported by the Committee seeks to omit Section 24 of the Act as the provision shall become redundant in view of the proposed amendments to Sections 7, 8, 9 and 10.

Recommendation of the Committee:-

19.1. The Committee endorses omission of Section 24 in the Prevention of Corruption Act, 1988 in view of the amendments to Sections 7 and 8 of the Act.

Clause 18

(Insertion of new Section 32 in the Principal Act)

20.0. Clause 18 of the Bill being reported by the Committee seeks to insert new Section 32 in the Principal Act which provides for rule making power to the Central Government. The Government in its official amendments proposed for insertion of this Section providing power to make rules.

Recommendation of the Committee:-

20.1. The Committee agrees with the proposed amendment.

Clause 19

(Amendment of Schedule to Prevention of Money Laundering Act, 2002)

21.0. Clause 19 of the Bill being reported by the Committee seeks to amend Part A of the Schedule of the Prevention of Money Laundering Act, 2002 and inserts new offences to be covered under the Act. These amendments are necessitated in view of the proposed insertion of new Section 18A in the PC Act by the official amendments.

Recommendation of the Committee:-

21.1. The Committee agrees with the proposed amendment.

Clause 1, the Enacting Formula and Title

22. Clause 1, The Enacting Formula and the Title were adopted with some changes which are consequential in nature namely, '2013' and 'Sixty-fourth' to be substituted by '2016' and 'Sixty-seventh', respectively.

23. The Committee recommends that the Bill as reported by it may be passed.


 (डॉ. रीटा वाशिष्ठा)
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THE PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2013

As reported by the Select Committee
[Words and figures underlined indicate the amendments and (*) mark indicates the omission suggested by the Select Committee]**

	THE PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2016 A BILL	
	<i>further to amend the Prevention of Corruption Act, 1988.</i>	
	BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—	
	1. (1) This Act may be called the Prevention of Corruption (Amendment) Act, <u>2016</u> .	Short title and commencement.
	(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	
<i>49 of 1988.</i>	2. In the Prevention of Corruption Act, 1988 (hereinafter referred to as the principal Act), <u>in section 2, after clause (c), the following clause shall be inserted, namely:—</u>	Amendment of section 2.
	<u>‘ (d) “undue advantage” means any gratification whatever, other than legal remuneration.</u>	

	<u>Explanation.</u> —For the purposes of this clause, —	
	(a) <u>the word “gratification” is not limited to pecuniary gratifications or to gratifications estimable in money;</u>	
	(b) <u>the expression “legal remuneration” is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.</u>	
	(c) <u>3. In section 4 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—</u>	Amendment of section 4.
	<u>“(5) The special Judge shall ensure the completion of the trial within a period of two years from the date of filing of the case:</u>	
	<u>Provided that in case the trial is not completed within a period of two years, the special Judge shall record the reasons therefor and complete the trial within a further period of six months which may be extended for six months each at a time, for the reasons to be recorded in writing, but the total period for completing the trial shall not exceed four years.”.</u>	
	<u>4. For sections 7, 8, 9 and 10 of the principal Act, the following sections shall be substituted, namely:—</u>	Substitution of new sections for sections 7, 8, 9 and 10.
	<u>7. Any public servant who,—</u>	Offence relating to public servant being bribed.
	(a) <u>obtains or accepts (***)or attempts to obtain from any person, an undue advantage, intending that in consequence a public (***) duty would be performed improperly or dishonestly either by himself or by another public servant; or</u>	
	(b) <u>(***)obtains or(***) accepts or attempts to obtain, an undue advantage as a reward for the improper or dishonest performance (whether by himself or by another public servant) of a public (***) duty; or</u>	
	(c) <u>(***)</u>	

	(d) performs, or induces another public servant to perform, improperly or dishonestly a public (***) <u>duty</u> in anticipation of or in consequence of (***) <u>accepting an undue advantage</u> from any person,	
	shall be punishable, with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.	
	<u>Explanation 1.</u> —For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitutes an offence even if the performance of a public duty by public servant, is not or has not been improper.	
	<u>Illustration.</u> —A public servant, ‘S’ asks a person, ‘P’ to give him an amount of five thousand rupees to process his routine ration card application on time. S is guilty of an offence under this section .	
	<u>Explanation 2.</u> —For the purpose of this section,— (i) the expressions “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;	
	(ii) it shall be immaterial whether such person being a public servant obtains (***) or accepts, or attempts to obtain (or is to (***) accept or attempt to obtain) the advantage directly or through a third party.	
	<u>Explanation 3.</u> —(***)	
	<u>Explanation 4.</u> — (***)	
	(2) (***)	
	8. (1) Any person who(***) <u>gives or promises to give an undue advantage</u> to another person, and intends such <u>undue advantage</u> —	Offence relating to bribing of a public servant.
	(i) to induce a public servant to perform improperly a public (***) <u>duty</u> ; or	

	(ii) to reward such public servant for the improper performance of public (***) <u>duty</u> ; (***)	
	(b) (***)	
	shall be punishable with imprisonment for a term which(***) may extend to seven years <u>or with fine or with both</u> :	
	<u>Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:</u>	
	<u>Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:</u>	
	<u>Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisations shall be punishable with fine.</u>	
	<u>Illustration.— A person, ‘P’ gives a public servant, ‘S’ an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. ‘P’ is guilty of an offence under this sub-section.</u>	
	<u>Explanation.—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.</u>	
	<u>(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the latter.</u>	
Offence relating to bribing a public servant by a commercial organisation.	9. (1) A commercial organisation shall be guilty of an offence and shall be punishable with fine, if any person associated with the commercial organisation (***) <u>gives or promises to give any undue advantage to a public servant intending</u>	
	(a) to obtain or retain business for such commercial	

	organisation; <u>or</u>	
	(b) to obtain or retain an advantage in the conduct of business for such commercial organisation:	
	Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct.	
	(2) For the purposes of this section, a person (***) <u>gives or promises to give any undue advantage</u> to a public servant if, and only if, such person is, or would be, guilty of an offence under section 8, whether or not the person has been prosecuted for such an offence.	
	(3) For the purposes of section 8 and this section,—	
	(a) "commercial organisation" means—	
	(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;	
	(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;	
	(iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or	
	(iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;	
	(b) "business" includes a trade or profession or providing service (***)	
	(c) a person is said to be associated with the commercial organisation if, (***) <u>irrespective of any (***) promise to give or giving of any undue advantage</u> which constitutes offence under sub-section (1), such person is a person who performs services for or on behalf of the commercial organisation.	

	<i>Explanation 1.</i> —The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.	
	<i>Explanation 2.</i> —Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.	
	<i>Explanation 3.</i> —If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who performs services for or on behalf of the commercial organisation.	
2 of 1974.	(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under section 8 and this section shall be cognizable.	
	<u>(5) The Central Government shall, in consultation with the concerned stakeholders, and with a view to enhancing compliance with the provisions relating to the adequate procedures which can be put in place by the commercial organisations to prevent persons associated with them from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary.</u>	
	<u>10.(1) Where an offence under section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer of the commercial organisation, such director, manager, secretary or other officer shall be(***) guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.</u>	Person in charge of commercial organisation to be guilty of offence.
	(2) (***)	
	<i>Explanation.</i> —For the purposes of this section, "director", in relation to a firm means a partner in the firm."	
	5. Section 11 of the principal Act shall be omitted.	Omission of section 11.

	<p>6. For section 12 of the principal Act, the following section shall be substituted, namely:</p>	<p>Substitution of new section for section 12.</p>
	<p>"12. Whoever abets any offence punishable under this Act, <u>other than any offence under section 15</u>, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine."</p>	<p>Punishment for abetment of offences defined in the Act.</p>
	<p>7. For sub-section (1) of section 13 of the principal Act, the following shall be substituted, namely:—</p>	<p>Amendment of section 13.</p>
	<p>(1) A public servant is said to commit the offence of criminal misconduct,—</p>	
	<p>(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or</p>	
	<p>(b) if he intentionally enriches himself illicitly during the period of his office.</p>	
	<p><u>Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.</u></p> <p><u>Explanation 2.—In Explanation 1, "known sources of income" means income received from any lawful sources."</u></p>	
	<p>8. For section 14 of the principal Act, the following section shall be substituted, namely:—</p>	<p>Substitution of new section for section 14.</p>
	<p>"14. Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than <u>five</u> years but which may extend to ten years and shall also be liable to fine."</p>	<p>Punishment for habitual offender.</p>
	<p>9. In section 15 of the principal Act, for the words, brackets and letters "clause (c) or clause (d)", the word, brackets and letter "clause (a)" shall be substituted.</p>	<p>Amendment of section 15.</p>

<p>10. In section 16 of the principal Act,- (a) <u>for the words, brackets and figures, "sub-section (2) of section 13 or section 14", the words, figures and brackets "section 7 or section 8 or section 9 or section 10 or sub-section (2) of section 13 or section 14 or section 15" shall be substituted;</u> (b) <u>for the word, brackets and letter "clause (c)" the word, brackets and letter "clause (b)" shall be substituted.</u></p>	<p>Amendment of section 16.</p>
<p>11. In section 17 of the principal Act, in the second proviso, <i>for</i> the words, brackets, letter and figure "clause (c) of sub-section (1)", the words, brackets, letter and figure "clause (b) of sub-section (1)" shall be substituted.</p>	<p>Amendment of section 17.</p>
<p>12. After section 17 of the principal Act, the following section shall be inserted, namely:—</p>	<p>Insertion of new section 17A.</p>
<p><u>"17A. (1) No police officer shall conduct any enquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-</u></p>	<p>Enquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.</p>
<p><u>(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;</u></p>	
<p><u>(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;</u></p>	
<p><u>(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:</u></p>	<p>1 of 2014</p>
<p><u>Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person;</u></p>	
<p><u>Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such</u></p>	

	<u>authority, be extended by a further period of one month.</u>	
	13. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—	Insertion of new Chapter IVA.
	‘CHAPTER IVA ATTACHMENT AND FORFEITURE OF PROPERTY	
15 of 2003. Ord. 38 of 1944.	<u>18A. (1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002, the provisions of the Criminal Law Amendment Ordinance, 1944 shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.</u>	Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act.
Ord. 38 of 1944.	<u>(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 shall have effect, subject to the modification that the references to “District Judge” shall be construed as references to “Special Judge”.</u>	
	18B. (***)	
	18C. (***)	
	18D. (***)	
	18E. (***)	
	18F. (***)	
	18G. (***)	
	18H. (***)	
	18I. (***)	
	18J. (***)	
	18K. (***)	
	18L. (***)	
	18M. (***)	
	18N. (***)	
Amendment of section 19.	14. In section 19 of the principal Act, in sub-section (1),—	
	(i) for the words and figures "sections 7, 10, 11, 13 and 15", the words and figures "sections 7, 13 and 15" shall be substituted;	
	(ii) in clause (a), for the words "who is employed", the words "who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted;	
	(iii) in clause (b), for the words "who is employed", the words	

	"who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted;	
	(iv) after clause (c), the following provisos shall be inserted, namely:—	
	“Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—	
	(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and	
2 of 1974.	(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:	
	Provided further that in the case of request from the person other than a police officer or an officer of an investigating agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:	
	Provided also that the appropriate Government or the competent authority, as the case may be, shall convey its decision under this sub-section within a period of three months, which may, for reasons to be recorded in writing by the appropriate Government or the competent authority, that the consultation with the Attorney General or the Advocate General, as the case may be, is required, be extended by a further period of one month.”.	
	15. For section 20 of the principal Act, the following section shall be substituted, namely:—	Substitution of new section for section 20.
	"20. Where, in any trial of an offence punishable under section 7, it is proved that an accused person has accepted or	Presumption where public servant accepts

	obtained or has agreed to receive or attempted to obtain for himself, or for any other person, <u>any undue advantage</u> from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that <u>undue advantage</u> , as the case may be, intending that, in consequence, a (***) public (***) <u>duty</u> would be performed improperly either by himself or by another public servant."	any undue advantage (***)
	16. <u>In section 23 of the principal Act, —</u>	Amendment of section 23.
	<u>(a) in the marginal heading, for the word, figures, brackets and letter "section 13 (1) (c)", the word, figures, brackets and letter "section 13 (1) (a)" shall be substituted:</u>	
	<u>(b) for the word, brackets and letter "clause (c)", the word, brackets and letter "clause (a)" shall be substituted.</u>	
	17. Section 24 shall be omitted.	Omission of section 24.
	18. <u>After section 31 of the principal Act, the following section shall be inserted, namely:—</u>	Insertion of new section 32.
	<u>"32. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.</u>	Power to make rules.
	<u>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:</u>	
	<u>(a) prescribing guidelines about the adequate procedures which can be put in place by commercial organizations to prevent persons associated with them from bribing any person, being or expecting to be a public servant, under sub-section (5) of section 9;</u>	
	<u>(b) any other matter which is required to be, or may be, prescribed.</u>	
	<u>(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session</u>	

	<u>immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.</u>	
	(***)	Amendment of Ordinance.
	(***)	Amendment of Act 25 of 1946.
	<u>19. In the Prevention of Money Laundering Act, 2002, in Part A of the Schedule, for Paragraph 8, the following Paragraph shall be substituted, namely:—</u>	Amendment of Act 15 of 2003.

“PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Section	Description of offence
7	Offence relating to public servant being bribed.
8	Offence relating to bribing a public servant.
9	Offence relating to bribing a public servant by a commercial organisation.
10	Person in charge of commercial organisation to be guilty of offence.
12	Punishment for abetment of offences defined in the Act.
13	Criminal misconduct by a public servant.
14	Punishment for habitual offender.”.