

Select Committee Report Summary

The Prevention of Corruption (Amendment) Bill, 2013

- The Select Committee constituted to examine the Prevention of Corruption (Amendment) Bill, 2013 submitted its report to Rajya Sabha on August 12, 2016. The Committee also examined the amendments to the Bill that were circulated by the government in November 2015. The Bill was introduced in Rajya Sabha in August 2013, and was previously examined by the Standing Committee in February 2014.
- **Applicability of the Bill:** The Act and Bill cover current public servants, and those who are expecting to be public servants. The Committee recommended that those expecting to be public servants be excluded from the ambit of the Act. It stated that since one cannot be a public servant before his selection, persons who are yet to enter public office may be unfairly affected.
- **Definition of taking a bribe:** The Act and Bill penalise a public servant if he 'agrees to receive' a bribe. The Committee recommended that this phrase be omitted. It noted that stakeholders had submitted that mere intention (to take a bribe) does not constitute a crime. It would only be a crime if such intention is combined with the action of taking a bribe by the public servant.
- The 2015 amendments introduce a provision that exempts a person from penalty for bribe taking if he 'has not performed his public function dishonestly'. The Committee recommended that this provision be omitted.
- **Definition of giving a bribe:** The Bill penalises a person (including a commercial organisation) who 'offers or promises' a bribe to another. The Committee observed that the mere 'offer' of a bribe may not be an offence unless it is accepted. It suggested that the term 'offer' be deleted.
- **Coercive and collusive bribe giving:** The Committee noted that the Bill does not distinguish between someone who is coerced into giving a bribe, and one who colludes with the bribe taker and gives the bribe. It recommended that if a bribe giver who is compelled to give a bribe reports the matter to the police, within seven days, he may be given immunity from criminal prosecution.
- **Bribe giving by commercial organisations:** The Bill penalises a commercial organisation for giving a bribe to a public servant to obtain or retain business. The Bill defines a business to include charitable services. The Committee recommended that charitable organisations not be included as this would cause them unnecessary harassment.
- **Punishment for bribe giving:** Under the Bill, a bribe giver will face punishment between three to seven years, and a fine. The Committee recommended that the minimum term of punishment not be specified. It could be left to the discretion of the Court based on the nature and seriousness of the offence.
- **Definition of 'undue advantage':** The 2015 amendments define the term 'undue advantage' to include any gratification other than legal remuneration. The Committee observed that this term is not widely used in other laws, and could be misused by enforcement agencies. It endorsed the introduction of this term, but suggested precautions against its misuse.
- **Matters to be considered while deciding the fine amount:** The Act states that, in determining the fine to be paid for the offence of (i) criminal misconduct, and (ii) habitual offender, the Court must consider the value of the property etc. that was misappropriated by the public servant. The Committee recommended that this provision be extended to the offences of (i) attempting to or (ii) taking a bribe, and (iii) giving a bribe (by an individual and commercial organisation).
- **Prior approval for investigation of a public servant:** The 2015 amendments state that a police officer must get prior approval of: (i) the Lokpal; or (ii) the Lokayukta or relevant state authority before it can investigate into an offence alleged to have been committed by a public servant. The Committee recommended that the sanctioning authority for a public servant must be the relevant government that has appointed him. Further, in the case of any other person, the sanctioning authority must be the one who has the competence to remove him from office.
- Also, the sanctioning authority must give its approval for investigation within three months. This may be extended by one month, for reasons that must be recorded in writing by such authority.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of PRS Legislative Research ("PRS"). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.