

The Prevention of Corruption (Amendment) Bill, 2013 (as reported by the Rajya Sabha Select Committee, 2016)

The 2013 Bill amends various provisions of the Prevention of Corruption Act, 1988. The government circulated further amendments to the 2013 Bill, in November 2015. The 2013 Bill was then referred to a Select Committee of Rajya Sabha, which submitted its report on August 12, 2016.¹ Salient features of the Bill as reported by the Rajya Sabha Select Committee, 2016 include:

- **Giving of a bribe:** The Bill introduces the offence of giving a bribe as a direct offence. However, a person who is compelled to give a bribe will not be charged with the offence if he reports the matter to law enforcement authorities within seven days.
- **Criminal misconduct:** The Bill redefines the provisions related to criminal misconduct to only cover two types of offences: (i) fraudulent misappropriation of property; and (ii) illicit enrichment (such as amassing of assets disproportionate to one’s known sources of income).
- **Prior approval for investigation:** Before a police officer conducts any investigation into an offence alleged to have been committed by a public servant, prior approval of the relevant government or competent authority should be taken. Such approval would not be necessary in cases which involves the arrest of a person on the spot on the charge of taking a bribe.
- **Time period for trial of cases:** As per the Bill, trial by special judge should be completed within two years. If not, reasons for the delay must be recorded, for every six months of extension of time obtained. However, the total period for completion of trial may not exceed four years.

This note examines the provisions of the 2013 Bill as reported by the Rajya Sabha Select Committee, 2016, in detail and presents some issues for consideration.

Key Features in the Bill

The 2013 Bill amends various provisions of the 1988 Act. The Table compares the 1988 Act with the 2013 Bill as reported by the Select Committee, 2016.

Table 1: Key changes proposed in the Bill compared with provisions of the Act:

Key Features	Prevention of Corruption Act, 1988	Prevention of Corruption (Amendment) Bill, 2013 [as reported by the Select Committee, 2016]
Definition of a 'bribe'	<ul style="list-style-type: none"> ▪ Any reward other than a salary. 	<ul style="list-style-type: none"> ▪ Undue advantage which is any gratification other than legal remuneration.
Giving a bribe to a public servant	<ul style="list-style-type: none"> ▪ No specific provision. ▪ Covered under the provision of abetment. ▪ If a bribe giver makes a statement in court that he gave a bribe it would not be used to prosecute him for the offence of abetment. 	<ul style="list-style-type: none"> ▪ Definition: Offering or giving an undue advantage to another person, intending to: i) induce, or ii) reward, the public official to perform his public duty improperly; or ▪ Offering an undue advantage to a public official, knowing that such acceptance would qualify as performing his public duty improperly. ▪ Exceptions: A person who is compelled to give such undue advantage will not be charged with the offence of giving a bribe. He must report the matter to law enforcement authorities within seven days. ▪ A person would not have committed the offence of bribe giving if he did so, after informing a law enforcement authority, to assist in its investigation of a public servant.
Giving a bribe by a commercial organisation to a public servant	<ul style="list-style-type: none"> ▪ No specific provision. ▪ Covered under the provision of abetment. 	<ul style="list-style-type: none"> ▪ Commercial organisation: If a person associated with the commercial organisation gives or promises to give an undue advantage for obtaining or retaining any advantage in business, the commercial organisation to be held guilty. ▪ It will be a defence for the commercial organisation to prove that it had adequate procedures in place to prevent the persons associated with it from offering an undue advantage. ▪ Central government to prescribe guidelines for adequate procedures for commercial organisations to prevent bribing of public servants.

Key Features	Prevention of Corruption Act, 1988	Prevention of Corruption (Amendment) Bill, 2013 [as reported by the Select Committee, 2016]
		<ul style="list-style-type: none"> ▪ Heads of the commercial organisation: If a commercial organisation is held guilty of giving a bribe, and it is proved that it was committed with the consent of the director, manager, secretary or other officer, they will also be punished.
Acts that qualify as taking a bribe by a public servant	Covers any of the following acts: <ul style="list-style-type: none"> ▪ Accepting or attempting to obtain any reward, other than a salary. ▪ Accepting a reward to favour or disfavour anyone. ▪ Accepting a reward from another person to exercise personal influence over a public servant. 	Covers any of the following acts: <ul style="list-style-type: none"> ▪ Attempting to obtain or obtaining, or accepting an undue advantage; ▪ Attempting to obtain or obtaining, or accepting an undue advantage, i) with the intention of, or ii) as a reward for, or iii) before or after, the improper performance of a public function.
Criminal Misconduct by a public servant	Covers 6 types of offences: <ul style="list-style-type: none"> ▪ Fraudulent misappropriation of property in the control of a public servant. ▪ Possession of monetary resources or property disproportionate to known sources of income. ▪ Habitually taking a bribe or valuable thing for free. ▪ Obtaining a valuable thing or reward illegally. ▪ Abuse of position to obtain a valuable thing or monetary reward. ▪ Obtaining valuable thing or monetary reward without public interest. 	Covers 2 types of offences: <ul style="list-style-type: none"> ▪ Fraudulent misappropriation of property entrusted to a public servant. ▪ Intentional enrichment by illicit means during the period of office. This would involve amassing resources disproportionate to one's known sources of income. [It shall be presumed that the person intentionally enriched himself.]
Abetment	<ul style="list-style-type: none"> ▪ Covers a public servant abetting an offence related to influencing another public servant. ▪ Covers any person abetting offences like: i) taking a bribe and ii) obtaining a valuable thing from a person engaged with in a business transaction. 	<ul style="list-style-type: none"> ▪ Covers abetment by any person for all offences; ▪ Excludes the offence of attempting to misappropriate property (covered under criminal misconduct).
Habitual Offender	<ul style="list-style-type: none"> ▪ Habitually taking a reward to either influence a public servant or abet in the taking of a bribe. 	<ul style="list-style-type: none"> ▪ The committing of any offence under the Act by a person who has previously been convicted.
Presumption of guilt	<ul style="list-style-type: none"> ▪ The guilt of the accused would be presumed for the following 3 offences: i) taking a bribe, ii) being a habitual offender and iii) for abetting an offence. 	<ul style="list-style-type: none"> ▪ The guilt of the accused would be presumed only for the offence of taking a bribe.
Trivial rewards	<ul style="list-style-type: none"> ▪ Such a presumption of guilt would not apply if the reward obtained is considered 'trivial' by the court. 	<ul style="list-style-type: none"> ▪ Omits the provision related to trivial rewards.
Attachment and forfeiture of property	<ul style="list-style-type: none"> ▪ Not provided in the Act. 	<ul style="list-style-type: none"> ▪ The provisions of the Criminal Law Amendment Ordinance, 1944 would apply. This would be subject to the provisions of the Prevention of Money Laundering Act, 2002. ▪ In places where the 1944 Ordinance refers to a District Judge, it will be inferred to be a Special Judge.
Prior approval for investigation	<ul style="list-style-type: none"> ▪ Not provided in the Act. 	<ul style="list-style-type: none"> ▪ Before a police officer conducts any investigation into an offence alleged to have been committed by a public servant, prior approval of the relevant government or competent authority to be taken. ▪ The relevant authority must convey his decision within a period of three months. This may be extended by another month, with reasons to be recorded in writing. ▪ Such approval would not be necessary in certain cases which involves the arrest of a person on the spot on the charge of taking a bribe, either for himself or another.
Prior sanction for prosecution	<ul style="list-style-type: none"> ▪ The prior sanction from the appropriate authority is required for prosecution of public servants. 	<ul style="list-style-type: none"> ▪ Extends the requirement of prior sanction to former public servants, for any act committed in office.
Time period for trial of cases	<ul style="list-style-type: none"> ▪ No time period mentioned. 	<ul style="list-style-type: none"> ▪ Trial by special judge to be completed within 2 years. ▪ If not, reasons for the delay must be recorded, for every six months of extension of time obtained. ▪ Total period for completion of trial not to exceed 4 years.

Key Features	Prevention of Corruption Act, 1988	Prevention of Corruption (Amendment) Bill, 2013 [as reported by the Select Committee, 2016]
Penalties:		
▪ Habitual offender	▪ Imprisonment of five years-10 years and a fine.	▪ Same as the 1988 Act.
▪ Criminal Misconduct	▪ Imprisonment of four years-10 years and a fine.	▪ Same as the 1988 Act.
▪ Taking a bribe, abetment	▪ Imprisonment of three years-seven years and a fine.	▪ Same as the 1988 Act.
▪ Giving a bribe	▪ Not a specific offence.	<ul style="list-style-type: none"> ▪ Any person: Imprisonment up to seven years and a fine. ▪ Heads of commercial organisations: Imprisonment of three years-seven years and a fine. ▪ Commercial organisations: Fine.

Sources: Prevention of Corruption Act, 1988; Prevention of Corruption (Amendment) Bill, 2013 [as reported by the Select Committee, August 2016]

Issues for consideration

Requirement of prior sanction for investigation of a public official

The requirement of prior sanction may not be necessary at the stage of investigation

2016 SC Bill:
Clause 12

The 2016 Select Committee amendments modify the 1988 Act to provide that prior sanction will have to be obtained for the investigation of a public servant. The provision states that before a police officer can begin any investigation into an offence under the Act, prior approval of the relevant government or competent authority must be taken. Such approval would not be necessary in cases of arrest of a person on the spot for the offence of taking a bribe.

Typically, a criminal investigation includes verification of facts and circumstances and collection of evidence, to decide whether there is a case for prosecuting the accused.² In the absence of such preliminary information being made available to the relevant authority, the basis on which it would take a decision to grant sanction for investigation is unclear.

The rationale for requiring prior sanction is to protect public servants from harassment. However, it could result in delays in investigation and prosecution of genuine cases of corruption. Under the 1988 Act, prior sanction must be obtained at the stage of prosecution of the public servant. By requiring prior sanction for investigation as well, the question is whether this protection is necessary at two stages, i.e. investigation and prosecution.

Note that the 2nd Administrative Reforms Commission recommended that the use of prior sanction be limited, even at the stage of prosecution. It stated that it may not be necessary for cases (i) where a public servant has been trapped red-handed; or (ii) of possession of assets disproportionate to known sources of income.³

Supreme Court had observed that prior sanction for investigation could affect its efficiency

The requirement of prior sanction in the 2016 Select Committee amendments could be at variance with the observations of the Supreme Court on prior sanction for investigation.⁴ The Court had observed that such a provision would impede an unhampered, unbiased, efficient and fearless investigation. The Court had said this in the context of the only law that contained a similar provision of prior sanction for investigation, the Delhi Special Police Establishment Act, 1946.

The 1946 Act required the CBI to obtain prior approval from the central government for investigation against a public official of the rank of Joint Secretary and above. (This provision was subsequently struck down by the Court on the grounds that differentiating between two classes of public servants violated Article 14 of the Constitution.)

The inclusion of giving a bribe as a specific offence

Bribe giving under all circumstances to be criminalised

Under the 1988 Act, a bribe giver may be penalised for abetting the offence of taking a bribe. Under the 2016 Select Committee amendments, the act of giving a bribe, directly or through a third party, is made an offence. This is based on the United Nations Convention against Corruption (UNCAC) which states that giving a bribe, either directly or indirectly, should be made a punishable offence.⁵ India has ratified the UNCAC.⁶

Act: Section
12
2016 SC
Bill: Clause
4

Further, the 2016 Select Committee amendments state that a person who is compelled to give a bribe will not be charged with the offence of bribe giving if he reports the matter to law enforcement authorities within seven days. This is in line with recommendations of experts who have stressed the need to distinguish between bribe givers based on the circumstances under which they give a bribe.^{3,7}

However, the question is whether coerced bribe givers will be able to report matters without fearing harassment in order to receive immunity. Also, it is unclear if this would incentivise the reporting of incidents of bribery.

Certain offences under criminal misconduct modified

Act: Section 13 (1) (d)

Under the 1988 Act, criminal misconduct by a public servant covers six types of offences, including: i) using illegal means to obtain any valuable thing or monetary reward for himself or any other person; ii) abusing his position as a public servant to obtain a valuable thing or monetary reward for himself or any other person; and iii) obtaining a valuable thing or monetary reward without public interest for any person. The offences carry a sentence of imprisonment of four years to 10 years and a fine

2016 SC Bill: Clause 7

The 2016 Select Committee's Bill redefines criminal misconduct by a public servant to only include: i) fraudulent misappropriation of property under one's control, and ii) intentional illicit enrichment and possession of disproportionate assets. Three other elements covered in the 1988 Act have now been included under separate offences in the 2016 Select Committee's Bill with different punishments. Note that the offence related to obtaining a valuable thing or monetary reward without public interest has been omitted from the 2016 Select Committee's Bill.

The Table below details the provisions under the offence of criminal misconduct in the 1988 Act and the changes proposed in the 2016 Select Committee's Bill.

Table 2: Changes proposed to the offence of criminal misconduct in the Bill as reported by the 2016 SC

Provisions under 'criminal misconduct' in the 1988 Act	Changes in the Bill as reported by the 2016 Select Committee
<ul style="list-style-type: none"> Fraudulent misappropriation of property in the control of a public servant. 	<ul style="list-style-type: none"> Retained under the offence of criminal misconduct. Punishment: Imprisonment of four years to 10 years and a fine (same as 1988 Act).
<ul style="list-style-type: none"> Possession of monetary resources or property disproportionate to known sources of income. 	<ul style="list-style-type: none"> Retained under the offence of criminal misconduct. Punishment: Imprisonment of four years to 10 years and a fine (same as 1988 Act).
<ul style="list-style-type: none"> Obtaining a valuable thing or reward illegally. 	<ul style="list-style-type: none"> Covered under the offence of taking of a bribe. Punishment: Imprisonment of three to seven years and a fine (lower than the 1988 Act).
<ul style="list-style-type: none"> Abuse of position to obtain a valuable thing or monetary reward. 	<ul style="list-style-type: none"> Covered under the offence of taking of a bribe. Punishment: Imprisonment of three to seven years and a fine (lower than the 1988 Act).
<ul style="list-style-type: none"> Habitually taking a bribe or valuable thing for free. 	<ul style="list-style-type: none"> Covered under the offence of being a habitual offender. Punishment: Imprisonment of five to 10 years and a fine (same as 1988 Act).
<ul style="list-style-type: none"> Obtaining valuable thing or monetary reward without public interest. 	<ul style="list-style-type: none"> Omitted from the Bill as reported by the 2016 Select Committee.

Sources: Prevention of Corruption Act, 1988; Prevention of Corruption (Amendment) Bill as reported by the 2016 Select Committee; PRS.

Offences for which the guilt of the accused is presumed

The burden of proof on accused person only for taking a bribe

Act: Section 20 (1)
2016 SC Bill: Clause 15

Under the 1988 Act, for certain offences like taking a bribe, habitual offender and abetment, the burden of proof is on the accused. The 2016 Select Committee amendments modify this provision to transfer the burden of proof onto the accused only in the case of taking a bribe. The Table below captures the shift in relation to burden of proof from the 1988 Act to the 2016 Select Committee's Bill.

Table 3: Burden of proof for certain offences under the 1988 Act and the Bill as reported by the 2016 Select Committee

Offence	1988 Act	Bill as reported by the 2016 Select Committee
Taking a bribe	On the accused.	On the accused.
Giving a bribe	Not a direct offence (covered under abetment).	On the prosecution.
Abetment	On the accused.	On the prosecution.

Habitual offender

On the accused.

On the prosecution.

Sources: The Prevention of Corruption Act, 1988; Prevention of Corruption (Amendment) Bill, 2013 [as reported by the Select Committee, August 2016]; PRS.

Trivial rewards not exempt

Act: Section 20 (2) Under the 1988 Act, if the reward obtained by the public servant is considered as 'trivial' by the court, then it shall not be presumed as an act of corruption. This provision has been omitted in the 2016 Select Committee's Bill.

Comparison with the UN Convention against Corruption (UNCAC), 2005

According to the Statement of Objects and Reasons of the 2013 Bill, the amendments to the Act were introduced to bring it in line with the UNCAC, 2005. However, certain provisions of the UNCAC have not been included in the 2016 Select Committee's Bill. These include: i) giving a bribe to a foreign public servant; ii) taking a bribe by a private sector entity; and (iii) compensation for those aggrieved by acts of corruption.⁸

1. 'Report of the Select Committee of Rajya Sabha on the Prevention of Corruption (Amendment) Bill, 2013', August 12, 2016, <http://www.prsindia.org/uploads/media/Corruption/Select%20comm%20-Prevention%20of%20Corruption.pdf>.
2. H.N. Rishbud and Inder Singh vs. The State of Delhi, AIR 1955 SC 196; Central Bureau of Investigation Manual, 2005.
3. 'Ethics in Governance', Fourth Report, Second Administrative Reforms Commission, January 2007.
4. Subramaniam Swamy vs. Director, CBI, (2014) 8 SCC 682, (paragraph 59).
5. Article 15, Bribery of National Public official, United Nations Convention Against Corruption, 2005.
6. Statement of Objects and Reasons, Prevention of Corruption (Amendment) Bill, 2013.
7. '69th Report: Prevention of Corruption (Amendment) Bill, 2013', Standing Committee on Law and Justice, February 2014.
8. United Nations Convention Against Corruption, United Nations Office on Drugs and Crime, United Nations, 2005.

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