

## Proposed amendments to the Prevention of Corruption (Amendment) Bill, 2013: Issues for consideration

The Prevention of Corruption (Amendment) Bill, 2013 was introduced in Rajya Sabha in August 2013 to amend the Prevention of Corruption Act, 1988.<sup>1</sup> Since then, there have been several changes proposed to the Bill. Details of the same are provided in the table below.

**Table 1: Developments in relation to the Prevention of Corruption (Amendment) Bill, 2013**

Date	Developments in relation to the Prevention of Corruption (Amendment) Bill, 2013
August 19, 2013	Bill to amend the Prevention of Corruption Act, 1988 introduced in Rajya Sabha
August 23, 2013	Bill referred to Standing Committee on Law and Justice
February 6, 2014	Standing Committee submits report on the 2013 Bill
November 2014	Government proposes amendments to the 2013 Bill pending in Parliament and refer the amendments to the Law Commission for examination
February 12, 2015	Law Commission submits report on 2013 Bill and government proposed 2014 amendments
May 5, 2015	Government circulates certain amendments to the 2013 Bill in Rajya Sabha. Amendments not moved.
November 27, 2015	Government circulates certain amendments to the 2013 Bill in Rajya Sabha. Identical to amendments circulated in May 2015.

Sources: The Prevention of Corruption Act, 1988, The Prevention of Corruption (Amendment) Bill, 2013; 69<sup>th</sup> Report, Standing Committee, Rajya Sabha; Notice of Amendments in Rajya Sabha, May 5, 2015; Notice of Amendments in Rajya Sabha, November 27, 2015, Report No. 254, Law Commission of India.

There are some issues in the proposed 2015 amendments that require consideration. These include: (i) exempting honest actions of persons from the offence of taking a bribe, and (ii) prior sanction for investigation. We present these below.

### Taking of a bribe not an offence if person performs actions honestly

**Provisions of the 2013 Bill:** Under the 1988 Act, the taking of a bribe is an offence. The 2013 Bill modifies the definition of taking of a bribe to include: (i) accepting or attempting to obtain a reward for performing a public function in an improper manner; (ii) inducing another public servant to perform his public function in an improper manner, in exchange for a reward.

**Changes made by proposed 2015 amendments:** The 2015 proposed amendments replaces this definition of taking of a bribe to cover the following acts of a public servant:

- (i) Obtains or agrees to receive or accepts or attempts to obtain, an undue advantage from any person;
- (ii) a) Obtains or agrees to receive or accepts or attempts to obtain, an undue advantage, intending that in consequence a public function would be performed improperly; b) Obtains or agrees to receive or accepts or attempts to obtain, an undue advantage, as a reward for the improper performance of a public function; c) Performs a public function improperly either in consequence or in anticipation of an undue advantage.

Further it adds a clause that states that ‘Whoever does not perform public function or activity dishonestly is not said to commit an offence under this section.’ [Refer to Clause 3 of the 2015 official amendments which inserts section 7(3) in the 1988 Act]

**Issue:** The 2015 proposed amendments state that in relation to taking a bribe, whoever does not perform a public function or activity dishonestly, would not be committing the offence. This implies that if the person can prove that he performed his public duty honestly, he would not be charged with the offence of taking of a bribe.

However, the term ‘performance of public function dishonestly’ has not been defined either in the 1988 Act or the 2013 Bill, in the context of taking of a bribe. Thus, it is unclear what this term means and what the implications of this provision could be. Further, it may be noted that this provision was not part of the amendments that were examined by the Law Commission, in its February 2015 report.<sup>2</sup>

### Requirement of prior sanction for investigation of a public official

**Provisions of the 2013 Bill:** No provision in the 1988 Act or 2013 Bill in relation to requirement of prior sanction for investigation of a public official for having committed an offence under the 1988 Act.

**Provision introduced in the 2015 amendments:** The 2015 proposed amendments state that before a police officer can conduct any investigation in relation to an offence said to have been committed by a public official

in the performance of his official duty, prior approval of an appropriate authority, as provided for in the Lokpal and Lokayuktas Act, 2013, must be taken.

However, such approval would not be necessary in cases which involve the arrest of a person on the spot on the charge of taking a bribe, either for himself or another. *[Refer to Clause 8B of the 2015 official amendments which inserts section 17A in the 1988 Act]*

**Issue 1:** This provision implies that prior sanction of the Lokpal or Lokayukta must be taken to start the process of investigation of a public official, in relation to an allegation of any offence under the Act. It may be noted that the 1988 Act and 2013 Bill do not contain such a provision.

Under the 1988 Act, prior sanction of the government is required at the stage of prosecution of the public servant. The 2<sup>nd</sup> Administrative Reforms Commission had examined the 1988 Act, in 2007 and had recommended that the requirement of prior sanction for prosecution should 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.<sup>5</sup>

**Issue 2:** The amendments state that the appropriate authority to grant such prior sanction would be the Lokpal, for central government officials, and the relevant Lokayukta, for state government officials. However, the Lokpal does not exercise jurisdiction over Judges. Since provisions of the 1988 Act cover judges, it is unclear who the sanctioning authority would be, in their case.

Further, it may be noted that the Lokpal, at the centre, and the lokayktas, in some states, have not yet been constituted. This may affect the implementation of the Act, in granting of sanction for investigation in relation to a public official.

## **Bribe giving under all circumstances to be criminalised**

**Provisions of the 2013 Bill:** The 2013 Bill introduced the offence of giving of a bribe. It defines the offence of giving of a bribe to include:

- (i) Offering or promising or giving a financial or other advantage to another person, intending to:
  - (a) induce the public servant to perform his public function improperly; or
  - (b) reward the public official to perform his public duty improperly; or
- (ii) Offering a financial or other advantage to a public official, knowing that such acceptance would qualify as performing his public duty improperly. *[Clause 3, 2013 Bill]*

**Provision in the 2015 amendments:** The 2015 proposed amendments retains this definition of giving of a bribe.

Further, it adds a provision to state that a person would not be said to have given a bribe if he did so after informing a law enforcement authority or investigating agency in order to provide assistance to such body in its investigation of the offence against a public servant. *([Refer to Clause 4 of the 2015 official amendments which inserts section 8 in the 1988 Act])*

It also provides illustrations to clarify the types of bribe giving that would be covered. This includes bribes given willingly (license for a bid), and those given to obtain routine entitlements (ration card application).

**Issue:** The 2015 amendments continue to criminalize the giving of a bribe under all circumstances. However, if a bribe giver were to report the matter to the investigating authorities, and then give a bribe to assist the investigation, he would not be charged with the offence of bribe giving.

Several experts have examined the issue of whether bribe giving under all circumstances should be made an offence under the principal Act. The UN Convention states that giving a bribe, either directly or indirectly, should be made a punishable offence.<sup>3</sup> India has ratified this Convention.<sup>4</sup>

The report of the Second Administrative Reforms Commission has recommended that the Prevention of Corruption Act must distinguish between coercive and collusive bribe givers.<sup>5</sup> The Standing Committee examining the 2013 Bill has observed that individuals who report the matter to the state after the payment of a bribe in normal circumstances may be distinguished from those who pay a bribe in compelling emergent situations. While in the former case no protection is necessary, in the latter situation the court may take a decision based on facts and circumstances of the case.<sup>6</sup> An argument has also been made that giving immunity to a 'harassed bribe giver' would incentivise him to report the incident.<sup>7</sup>

## Offences covered under the ambit of Criminal Misconduct

**Section 13 (1) (d), 1988 Act:** Under the principal Act, criminal misconduct by a public servant includes: 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.

**Clause 6, 2013 Bill:** The 2013 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. In doing so, the Bill no longer covers the three circumstances provided for in the principal Act.

The 2015 proposed amendments do not modify this provision in the 2013 Bill. Thus, the three circumstances that were provided for in the 1988 Act as acts of 'criminal misconduct' will not be covered in this provision.

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1. The Prevention of Corruption (Amendment) Bill, 2013, <http://www.prsindia.org/billtrack/the-prevention-of-corruption-amendment-bill-2013-2865/>.

2. 'The Prevention of Corruption (Amendment) Bill, 2013', Report No. 254, Law Commission of India, February, 2015.

3. *Article 15*, Bribery of National Public official, United Nations Convention Against Corruption.

4. United Nations Convention Against Corruption, United Nations Office on Drugs and Crime, United Nations, 2004.

5. 'Ethics in Governance', Fourth Report, Second Administrative Reforms Commission, January 2007.

6. Prevention of Corruption (Amendment) Bill, 2013, 69th Report, Standing Committee, Rajya Sabha.

7. 'Why for a class of bribes, the act of giving a bribe should be treated as legal', Kaushik Basu, Chief Economic Adviser, Ministry of Finance, 2011.

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