

REPORT NO.

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PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

SIXTY-NINTH REPORT

The Prevention of Corruption (Amendment) Bill, 2013

(Presented to the Rajya Sabha on 6th February., 2014)

(Laid on the Table of Lok Sabha on 6th February, 2014)



Rajya Sabha Secretariat, New Delhi
February, 2014/Magha, 1935 (Saka)



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ACRONYMS

AACI	:	Alliance against Conflict of Interests
ACB	:	Anti Corruption Breeau
BPNI	:	Breastfeeding Promotion Network of India
CBI	:	Central Bureau Investigation
CCTV	:	Close Circuit of Television
CrPC	:	Code of Criminal Procedure
CVC	:	Central Vigilance Commission
CVO	:	Chief Vigilance Officer
DA	:	Disproportionate Asset
DOPT	:	Department of Personnel Training
DSPE Act	:	Delhi Special Police Establishment Act, 1946
ED	:	Enforcement Directorate
FDR	:	Foundation for Democratic Reforms
IO	:	Investigating Officer
ITR	:	Income Tax Return
MLA	:	Member of Legislative Assembly
MP	:	Member of Parliament
NeDFi	:	North-eastern Development Finance Corporation Ltd.
NGO	:	Non-Government Organisation
PC Act	:	Prevention of Corruption Act, 1988
PMLA	:	Prevention of Money Laundering Act
UBI	:	United Bank of India
UK	:	United Kingdom
UNCAC	:	United Nations Convention Against Corruption
USA	:	United State of America
USFCPA	:	US Foreign Corrupt Practices Act
SFEMA	:	Smugglers and Foreign Exchange Manipulators Act

COMPOSITION OF THE COMMITTEE
(Constituted on 31st August, 2013)

1. Shri Shantaram Naik — *Chairman*

RAJYA SABHA

2. Ms. Anu Aga
3. Shri Ram Jethmalani
4. Shri Sanjiv Kumar
5. Shri Parimal Nathwani
6. Shri Ram Vilas Paswan
7. Shri Sukhendu Sekhar Roy
8. Shri Ramchandra Prasad Singh
9. Dr. Abhishek Manu Singhvi
10. Shri Bhupender Yadav

LOK SABHA

11. Maulana Badruddin Ajmal
12. Shri T. R. Baalu
13. Shri E.T. Mohammed Basheer
14. Shri N.S.V. Chitthan
15. Shri P.C. Gaddigoudar
16. Shri D.B. Chandre Gowda
17. Shri Shailendra Kumar
18. Shri Jitender Singh Malik
19. Shri Arjun Meghwal
20. Shri Pinaki Misra
21. Shri Abhijit Mukherjee
22. Shri S.S. Ramasubbu
23. Shri S. Semmalai
24. Shri S.D. "Shariq"
25. Smt. Meena Singh
26. Shri Vijay Bahadur Singh
27. Dr. Prabha Kishore Taviad
28. Shri Suresh Kashinath Taware
29. Shri Madhusudan Yadav
30. Vacant
31. Vacant

SECRETARIAT

Shri Alok Kumar Chaterjee, Joint Secretary
Shri K.P. Singh, Director
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Sixty-ninth Report on the Prevention of Corruption (Amendment) Bill, 2013 (**Annexure-A**). The Bill seeks to amend further the Prevention of Corruption Act 1988.

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred the Bill, as introduced in the Rajya Sabha on the 19th August, 2013 and pending therein, to this Committee on the 23rd August, 2013 for examination and report.

3. Keeping in view the importance of the Bill, the Committee decided to issue a press communiqué in national and local newspapers and dailies, to solicit views/suggestions from desirous individuals/organisations on the provisions of the Bill. In response thereto many memoranda containing suggestions were received, from various organizations / individuals / experts, by the Committee. The views/suggestion received by Committee in written memoranda alongwith comments of DoPT, Ministry of Personnel Public Grievances and Pensions are at (**Annexure-B**).

4. The Committee heard the presentation of the Secretary, Department of Personnel and Training, Ministry of Personnel Public Grievances and Pensions on the provisions of the Bill in its meeting held on the 13th September, 2013. During its Study Visit to Chennai, Mumbai and Jaipur from 3rd to 10th October, 2013 the Committee interacted with the representatives of State Governments of Tamil Nadu, Maharashtra, Rajasthan, managements of Indian Bank, Chennai Port Trust and Neyveli Lignite Corporation, Bharat Petroleum Corporation Ltd., Bank of Baroda, Shipping Corporation Ltd., State Bank of Bikaner and Jaipur, Instrumentation Ltd., Kota and Rajasthan Electronics and Instruments Ltd .and select NGOs, select Chambers of Commerce & Industry and other stakeholders on the Bill. The Committee also heard the views of Central Vigilance Commissioner, Director, Central Bureau of Investigation and Director, Enforcement of Directorate on the Prevention of Corruption (Amendment) Bill, 2013 on the 3rd January, 2014. The Committee also heard the views of stakeholders/ NGOs in its meeting held on 16th January, 2014 in Delhi.

(ii)

4.1 The Committee during its Study visit to Kolkata and Guwahati from 21st to 24th January, 2014 interacted with State Governments of West Bengal and Assam, representatives of select Chambers of Commerce & Industry and select NGOs working in the field of anti-corruption drive, managements of UCO Bank, United Bank of India (UBI), Metal Scrap Trading Corporation Ltd., North-eastern Development Finance Corporation Ltd. (NeDFi), Brahmaputra Valley Fertilizers Corporation Ltd. and Food Corporation of India (FCI) etc. on the Bill.

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

- (i) Background note on the Bill submitted by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions;
- (ii) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts and State Governments of Tamil Nadu, Maharashtra, Rajasthan, West Bengal & Assam on the provisions of the Bill and the comments of the Department of Personnel and Training thereon;
- (iii) Views expressed during the oral evidence tendered before the Committee by the stakeholders such as Foundation for Democratic Reforms (FDR) & Lok Satta, Hyderabad, Breastfeeding Promotion Network of India (BPNI), Member Prime Ministers' Council on India's Nutrition Challenges, Alliance against Conflict of Interests (AACI), Delhi Society for Justice (Regd.), Punjab, Residents & Shopkeepers Welfare Society (Regd.), Delhi and other individuals on 16th January, 2014;
- (iv) Replies of the Department of Personnel and Training and State Governments of Tamil Nadu, Maharashtra, Rajasthan, West Bengal & Assam to the questionnaire of the Committee on the Bill;
- (v) Replies of Stakeholders to the questionnaire of the Committee on the Bill; and
- (vi) Other research material/ documents related to the Bill.

6. The Committee adopted the Report in its meeting held on the 5th February, 2014

7. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
February 5, 2014
Magha 16, 1935

SHANTARAM NAIK
Chairman,
Committee on Personnel,
Public Grievances, Law and Justice

(iii)

REPORT

The Prevention of Corruption (Amendment) Bill, 2013 seeks to amend further the Prevention of Corruption Act, 1988 (PC Act), the Delhi Special Police Establishment Act, 1946 (DSPE Act) and the Criminal Law (Amendment) Ordinance, 1944 in order to achieve following objectives:-

- Widening of description of both demand and supply sides of corruption by providing criminalization of
 - i) bribe giving by any person/organization to public servant;
 - ii) bribe taking by public servant by direct or indirect manner; and
 - iii) corporate liability in bribe giving.
- Protection of honest public servants.
- Laying down of criteria and procedure for sanction of prosecution.
- Confiscation of proceeds of corruption.

2. The Statement of Objects and Reasons to the Bill mentions that changes proposed to the aforesaid Acts/Ordinance have been necessitated due to ratification of the United Nations Convention Against Corruption (UNCAC) in May, 2011 by our country; and Judicial pronouncements in corruption cases to fill in gaps in description and coverage of offence of bribery so as to bring it in line with the current international practice.

Nature of Proposed Amendments

3. The Prevention of Corruption (Amendment) Bill, 2013 proposes following changes in aforesaid Acts/Ordinance to widen the description and coverage of offence of bribery in the line with current international practice.

3.1 Substitution of following Sections of the PC Act, 1988 have been proposed:-

- i) Sections - 7, 8, 9 and 10 - (Clause- 3 of the Bill)
- ii) Section - 12 - (Clause -5 of the Bill)
- iii) Section - 14 - (Clause -7 of the Bill)
- iv) Section - 20 - (Clause-11 of the Bill)

3.2 Amendment of following Sections is proposed in the PC Act, 1988:-

- Section - 1 - (Clause-1 of the Bill)
- Section - 5 - (Clause-2 of the Bill)
- Section - 13 - (Clause-6 of the Bill)
- Section - 15 - (Clause-8 of the Bill)
- Section - 19 - (Clause-10 of the Bill)

3.3 Amendment is proposed to Section 6A of the Delhi Special Police Establishment Act, 1946 (Clause-14 of the Bill).

3.4 Insertion of a separate Chapter i.e. Chapter IVA captioned 'Attachment and Forfeiture of Property' after Chapter IV of the PC Act, 1988 on the lines of Criminal Law (Amendment) Ordinance, 1944 (Clause-9 of the Bill).

3.5 Deletion of followings Sections of the PC Act, 1988:-

- Section - 11 - (Clause-4 of the Bill)
- Section - 24 - (Clause 12 of Bill)

3.6 Para 4A of the Criminal Law (Amendment) Ordinance, 1944 (Clause 13 of the Bill).

Salient Features of the Proposed Amendment

Offering of Bribe is an Offence

4. No provision of the Prevention of Corruption Act, 1988 deals with the supply side of corruption directly. However, only Section 12 of that Act deals with supply side of corruption indirectly through the route of abetment which provides minimum punishment of six months extendable to five years of imprisonment with fine. But Section 24 of that Act provides that statement made by the bribe giver in any proceedings against public servant for the crime of corruption (described under Sections 7 to 11, 13 & 15 of the Act) shall not subject that person to prosecution. It is mentioned in the Statement of Objects and Reasons to the Bill that in vast majority of cases the bribe giver goes scot free by taking resort to provisions of Section 24 of the Prevention of Corruption Act, 1988 and therefore it becomes increasingly difficult to tackle consensual bribery in particular. In order to plug such deficiencies in the law, Section 8 of that Act has been substituted by introducing a new definition of 'bribe giving' which is largely based on Section 1 of the UK Bribery Act, 2010 under Clause 3 of the Bill. Thus any person who now offers, promises or gives financial or other advantage to another person (third party/intermediaries) or public servant to induce or reward the public servant to perform improperly any public function or activity would constitute as an act of corruption. Even the offering/giving or promising financial other advantage by the bribe giver itself constitutes 'improper' performance of relevant public function or activity'. It therefore implies that bribe giver can not give any pecuniary or non-pecuniary advantage to public servant even in the case of proper function of public function or activity. In simpler term any advantages given or provided to public servant even without demand from the bribe taker

could be considered as bribe as the public servant is supposed not to take any thing other than legal remuneration for discharging his/her duty. The terms 'illegal gratification' has been substituted by 'financial or other advantage' in proposed Sections- 7, 8 & 9 of the Act which includes undue advantages of pecuniary and non-pecuniary nature including sexual favour, membership of club, employment of close relatives/associates, etc.

5. The minimum punishment proposed for that offence is three years which is extendable to seven years of imprisonment with fine. The punishment prescribed for bribe giver is equal to the punishment prescribed for the bribe taker in corruption cases. At the same time the immunity provided to the bribe giver for subsequent reporting during proceedings in the Court of law has been proposed for abolition under Clause 12 of the Bill.

Widening of Description of Bribe Receiving by Public Servant and Enhanced Punishment therefor.

6. Demand side of corruption is now under Sections 7 to 11, 13 and 14 of the Prevention of Corruption Act 1988 which were lifted from Sections 161 to 165 and 165A of Indian Penal code, 1860 during amendment to PC Act way back in 1988. Public servant taking illegal gratification other than legal remuneration for official act constitute offence of bribe taking under Sections 7 to 11, 13 and 14 of that Act is proposed to be modified on the lines of Section 2 of the UK Bribery Act, 2010. The new provisions under proposed Section 7 of PC Act make it an offence for any public servant to request, agree to receive or accept or attempt to obtain from any person any financial or other advantage:-

- a) intending that, in consequence, a relevant public function or activity should be performed improperly either by himself or by another public servant;
- b) where such request, agreement, acceptance or attempt itself constitutes the improper performance of a relevant public function or activity.

The proposed Section defines 'public function/activity' and 'improper function of public function/activity'. Any function/activity in order to become public function must be of public nature and performed in course of person's employment and is performed impartially and in good faith. The public function is construed to be performed improperly when it is performed in breach of 'relevant expectation'. Again test of 'relevant expectation' is what a reasonable person in our country expect in relation to performance of public function/activity. In addition, failure to perform public function/activity is itself a breach of relevant expectation. The enhanced punishment proposed for bribe taking is minimum of three years extendable to seven years of imprisonment and fine in addition to confiscation of proceeds of bribe from the disproportionate assets.

Corporate Liability in Bribe Giving to Public Servant

7. Under proposed new Section 9 of the Act (Clause 3 of Bill) it will be an offence for the commercial organization if person associated with it bribes a public servant intending to obtain or retain business for such organization; or to obtain or retain an advantage in the conduct of business for it. But it shall be a defence for the commercial organization to prove that it had in place adequate procedure designed to prevent person associated with it from undertaking such conduct of bribe giving. The proposed new Section 10 under Clause 3 of the Bill provides for punishment to any Director, Manager, Secretary or any other officer of

the commercial organization if it is proved that the offence is committed with consent or connivance of or is attributable to any neglect on the part of that person for punishment of three years extendable to seven years of imprisonment with fine. But if it is proved that the offence is committed without his/her knowledge or he/she has exercised all due diligence to prevent commissioning of such offence the commercial organization may be liable to fine proposed under new Section 9 coupled with proviso to proposed new Section 10 (1) of the Act under Clause 3 of the Bill.

Enhanced Punishment for Habitual Commission of All Offences Including New Offences Relating to Bribe taking

8. The act of bribe giving is included in the offence in the PC Act which was earlier confined to Section 8, 9 and 12 of the Act in restricted way. Furthermore punishment was two years extendable to seven years of imprisonment with fine which has been proposed to three years extendable to ten years of imprisonment with fine through Clause 7 of the Bill.

Protection to Honest Public Servant

9. The safeguard of prior sanction for prosecution provided under Section 19 of the Act to protect public servant against malicious and vexatious prosecution for any bonafide omission or commission in the discharge of official duty. The affording of such protection need to be based on careful appraisal of the facts and the process of decision making involved. It is proposed to amend the said Section for extending the same protection to public servant after they cease to hold public office through Clause 10 of the Bill.

10. Section 6A of DSPE Act, 1946 also protects honest civil servant from harassment in investigation/prosecution for things done in bonafide

performance of public duty. It is proposed to extend the protection of prior approval of the Central Government before conducting any inquiry/investigation by Central Bureau of Investigation in respect of offences under the Prevention of Corruption Act, 1988 to civil servant holding such senior policy level position even after they cease to hold such position due to retirement, reversion, etc.

11. It is also proposed to amend Section 10 to provide *inter-alia* that no request can be made, by a private person for the previous sanction of the appropriate Government or competent authority unless such person has filed a complaint in a competent court; and the court has directed the complainant to obtain the sanction for prosecution. In the case of a request from a private person, the appropriate Government or competent authority shall not accord sanction without providing an opportunity of being heard to the concerned public servant.

12. Any request for sanction for prosecution of a public servant will have to be decided by appropriate Government/Competent Authority within three months extendable by one month where consultation with Attorney General or Advocate General of State is necessary.

Confiscation of Proceeds of Corruption

13. The Prevention of Corruption Act, 1988 does not specifically provide for the confiscation of the bribe and proceeds of bribery. It is now proposed through Clause 9 of the Bill to insert a new Chapter, i.e., Chapter IVA captioned 'Punishment and Forfeiture of Property' on the lines of the Criminal Law (Amendment) Ordinance, 1944.

Other Consequential Amendments

14. Sub-Sections (2) and (3) of Section 20 of the PC Act have lost their relevance since bribe giving has become an offence under the proposed

new Section 8 of the Act and therefore are proposed for deletion. Sub-Section (1) of Section 20 of the PC Act is proposed for amendment to synchronize the said Section with new concept of 'offer/acceptance of financial or other advantage' and 'improper performance of relevant public function or duty' taken from the UK Bribery Act, 2010 in the case of prosecution of public servant accepting bribe. With insertion of a new Chapter on Punishment and Forfeiture of Property in the PC Act, Schedule to the Criminal (Amendment) Ordinance, 1944 and Section 5 of the PC Act, 1988 are proposed for suitable modification.

15. Major Suggestions Received and considered by the Committee on the Bill

A. Expansion of Description of Corruption

- The word 'corruption' and 'corrupt practices' need to be defined in the PC Act. The corrupt practice *inter-alia* may include those policies of Government which are formulated in the name of public good to give benefit to crony capitalists or vested interest groups.
- Inclusion of gross perversion of Constitution and democratic institutions amounting to willful violation of oath of office, abuse of authority and making favoritism, obstruction to justice and squandering of public money, within the definition of offence of corruption.
- Conflict of interest to be included in the definition of bribery.
- MPs, MLAs, although are public servant and have not been expressly included in the definition Section of the Prevention of Corruption Act, 1988. Article 2(a) of UNCAC was cited in this regard.
- Phases like 'improper performance' 'relevant expectation' 'public function or activity' 'test of what is expected' are ambiguous and likely to be legally interpreted variedly.
- Consensual and harassed bribe givers need to be distinguished and should not be treated on same footing as far as punishment concerned in the PC Act.

- Punishment in collusive bribery to be made double of other cases of bribery (Coercive bribery).
- Burden of Proof on the accused in the case of collusive bribery.
- Immunity to bribe givers who is a victim of extortionary bribery on the line with plea bargaining available to culprit in USA.
- Deletion of Section 24 of the Prevention of Corruption Act, 1988 would make laying of traps difficult for catching bribe seekers/takers red handed. Retention of this Section is suggested to provide protection to harassed bribe givers to approach investigating/enforcement authorities for laying of traps.
- The Prevention of Corruption Act punishes public servant for abusing his official position while performing his duty or otherwise whenever pecuniary advantage or valuable things for himself or herself or any other person is accepted or sought. The condition of obtaining pecuniary advantage or valuable thing by public servant for himself or any other person in the discharge of his official duty which was removed from the Prevention of Corruption Act, 1947 in 1964 through amendment is being brought back without any proper explanation.
- Public servant who has received bribe under threat and subsequently report to investigating agencies within reasonable time period may not be punishable under the Prevention of Corruption Act, 1988.
- Deletion of Section 11 of the Prevention Corruption Act about public servant obtaining valuable things without consideration from persons concerned in proceeding or business transacted by such public servant would also weaken the investigating procedure. There is no need to differentiate between punishment proposed in the case of harassment bribery or consensual bribery unless the bribe giver who is a victim approaches law enforcement agencies and becomes a decoy in furtherance of cause of justice requiring immunity against prosecution.
- Bribe given by the bribe giver in emergent compelling situation having no choice for the bribe giver to save the life of another person particularly in hospital should be protected when reported to police even though Section 24 of the Act has been proposed for deletion under the Bill.

- Bribe given due to ignorance or illiteracy should not be subjected to equal punishment as proposed for the bribe taker.

B. Confiscation and Forfeiture of Proceeds of Bribery

- For forfeiture of property of alleged corrupt public servant, prior approval of appropriate Government may be transferred to the head of investigating agency.
- Deletion of Section 20 as proposed by the Bill about the presumption that illegal gratification taken by the accused was taken as a motive or reward or without/insufficient consideration will reduce the efficacy of anti-corruption measures, and should not be deleted.
- Section 18G provides for offering of equivalent security in lieu of attachment of ill-gotten property by the accused may force the accused to under value the attached property.
- Providing certain sum/interest from the attached property to the alleged public servant for the maintenance of his/her family or meet litigation expenses as proposed under Section 18 H (1) will go against the spirit of the law.
- Section 18H(2) may be amended to the effect that immovable attached property may be temporarily converted for public purpose like school, hospital, etc. The movable property may be deposited in Government account.
- Investigating Officer (IO) of anti corruption agencies like CBI, Anti Corruption Bureau (ACB) may be given power from the head of that investigating agency to attach the property of the alleged accused public servant as has been given to officers of the Enforcement Directorate under the Prevention of Money Laundering Act.
- In the Clause 6 of the Bill, regarding proposed Section 13(1)(b) the terms if the public servants 'intentionally enriches himself illicitly' appears to have been taken from Article 20 of United Nations Convention Against Corruption which has been slightly tinkered posing additional burden on he investigating agency.
- Provisions under Section 13 (1)(d)(iii) of the Prevention of Corruption Act, 1988 has been misused by investigating agencies and is exposed to potential misinterpretation leading to

prosecution of honest public servant. Therefore, the concerned Section needs to be deleted in public interest.

- Forfeiture of property should not only of corrupt public servant but also of persons/organization who indulge in bribe giving.
- Immediate implementation of The Benami Transaction (Prohibition) Act, 1988 to give more teeth to Prevention of Corruption Act, 1988.
- The Corrupt Public Servants (Forfeiture of Property) Bill as suggested in One Hundred Sixty-sixth Report of Law Commission to be enacted to confiscate entire assets of corrupt public servant not just proceeds of corruption.
- Mandatory declaration of business of spouse/children and relatives of the public servants by the public servants by themselves to Government.
- There may be scope for harassing honest public servant by planting cash/valuables in the office/residence of those officials of the rival party out of vengeance. Even the anti corruption agencies might be used for such nefarious design by the rival party. Thus a public servant who is not known as habitual bribe taker/demanding should not be prosecuted without verification of assets of that person. Therefore, the focus might be shifted from physically receiving /demanding bribe to physically acquiring/creating disproportionate assets.
- Submission of asset declaration alongwith Income Tax Return (ITR) to Income Tax Authorities annually by all tax payers including public servant.
- Public servants or their relatives as trustees of shrine, religious trust need to disclose the same to the office in view of the fact that '*Gupt Daan*' received by the trust lead to increase of asset for the trust giving indirect benefit to the trustees. Suggestion has been received to treat *Gupt Daan* received more than Rs.1,000/- as bribe, therefore, need to be discouraged and disclosed for the purpose of which CCTV, cameras may be placed near the hundis to trap the bribe givers. Hundis of that trust may be opened in the presence of Income Tax Authorities.

C. Sanction of Prosecution by Appropriate Government or Competent Authority

- With sanction for prosecution of Government servants under

Section 19 of the Prevention of Corruption Act, 1988 sanction required under Section 197 of the Code of Criminal Procedure, 1973 may be dispensed with or *vice-versa*.

- The Bill does not provide for action/punishment against sanctioning authority failing to meet time line prescribed under Section 19 of proposed Bill for giving sanction of prosecution.
- Special order spelling out reasons for denial for sanction for prosecution to be included in Section 19 of the proposed Bill.
- Delay in grant of sanction of prosecution by appropriate Government or competent authority beyond the maximum period of four months as proposed under Section 19 of the Prevention of Corruption Act, 1988 to be treated as 'Deemed Sanction'.
- Material required to be placed before sanctioning authority need to be spelt out enabling competent/sanctioning authority to grant/deny sanction of prosecution of allegedly corrupt public servant in the speaking order for such grant or denial.
- Sanctioning authority meticulously examine issues and material placed before it before giving sanction for prosecution so that prosecution is not hit in future by issues relating to sanction not being proper or without a speaking order.
- Sanctioning authorities should not be summoned by the Court rather material/document placed before him for sanctioning prosecution may be produced before the Court.
- Immunity and security to sanctioning authorities may be provided in the Act to exercise their discretion appropriately when request received from Central Bureau of Investigation (CBI).
- Legislative backup to time limit prescribed by Supreme Court in Vineet Narain case for granting sanction of prosecution by appropriate Government or Competent authority is indeed a welcome measure.
- In accordance with Section 4(1) of the Central Vigilance Commission Act, 2003 the CVC has superintendence over CBI in relation to offences under the Prevention of Corruption Act, 1988. Therefore the Central Government cannot usurp function of the CVC through Section 6A of Delhi Special Police Establishment Act, 1946.

- Further *vire* of Section 6A of Delhi Special Police Establishment Act, 1946 is now under consideration of five Constitutional Bench of Supreme Court. It is suggested to keep amendment to that section in abeyance till final verdict of Supreme Court in such cases comes.
- Prior approval of Central Government under Section 6A of Delhi Special Police Establishment Act, 1946 for conducting any inquiry or investigation by Central Bureau of Investigation against civil servant holding senior policy level position even after they cease to hold such position due to reversion or retirement or other reasons need to be removed.
- Transferring power of sanction for investigation by Central Bureau of Investigation to Central Vigilance Commission from Central Government.
- Delegation of sanction of prosecution to Empowered Committee comprising the Central Vigilance Commission and Departmental Secretary to Government. In the case of sanction against Secretary to Government, the Empowered Committee would comprise Cabinet Secretary and Central Vigilance Commission. Similar arrangement may also be made at State level. In case of refusal of sanction of prosecution reasons may be recorded and placed before the respective legislature.
- Prior sanction need not be taken in the cases of trap and disproportionate asset.
- Retiring as well as serving public servant should be treated at par regarding sanction of prosecution.

D. Corporate Liability in Corruption

- Providing commercial organization to put in place adequate procedure to prevent persons of that organization to enter into corrupt practice can be used as an escape route under the proposed Bill.
- Commercial organization found to have been indulging in the act of bribe giving may be black listed and banned in addition to fine and imprisonment to the person concerned associated with it.

E. Other Related Suggestions

- Special Judges designated under Prevention of Corruption Act,

1988 (Section 4) to try corruption cases on day-to-day basis should give primary attention for disposal of cases in time bound manner. Fixing of time limit for each stages of trial, guidelines by higher courts to preclude unwarranted adjournments and avoidable delays for expeditious trial of such cases were suggested for expeditious trial of corruption related cases.

- Expeditious trial of corruption cases leading to confiscation of proceeds of bribery within a period of three to six months as prolong trial proceedings often results in acquittal.
- Conclusion of trial of corruption cases by Special courts within a period of six months.
- Children/spouse of sitting judges in courts often gets extraordinary relief from their brother/sister judges. Although judges are public servants instances are very rare where people from judiciary have been prosecuted under the Prevention of Corruption Act, 1988.
- Compounding of offence under the PC Act, 1988 by the State on deposit of bribe money. Section 320 of CRPC, 1973 was cited in that context.
- The proposed Bill exempt applicability of the Probation of Offender's Act, 1958 and Section 360 of Code of Criminal Procedure to all offences punishable under the Prevention of Corruption Act, 1988 which was now applicable to offences under Section 13 of that Act.
- Designating a particular officer as in the case of UK who will apply his or her mind to material for grant/rejection of sanction of prosecution and responsible for consequences for malicious and vexatious prosecution based on sanction given by that authority.
- Investigation of corruption cases by subject matter experts rather than by career police officials for increase in conviction rate as has been in practice in Hong Kong. Till then officials of anti corruption agency found indulging in fabrication and tampering of evidence against corrupt public servants and harassment to honest public servants might be punished appropriately.
- Plea bargaining results in better conviction although with lesser punishment which is prevalent in the US and UK. Introduction

of 'pre-trial inquiry' alongwith 'plea bargaining' in corruption cases under the PC Amendment Act would increase in conviction rate of cases and reduce huge expenses incurred on such cases.

- NGOs having substantially financed by Government to be tried under the Prevention of Corruption Act, 1988.
- Whistle blowers who provides information to and cooperate with Anti Corruption agencies in the trap case may be rewarded with fifty percent of value of the bribe demanded by the public servant.
- While the Whistle blower Protection Law is under consideration of Parliament and meets the obligation under Article 33 of UNCAC regarding whistle blowers, deletion of Section 24 of the Act giving immunity to bribe giver in harassment/coercive bribery is justified.
- Whistle blowers who report the act of corruption in any organization involving other parties need to be protected. Pending legislation in this regard may be enacted to give more teeth to the Prevention of Corruption Act.

Deliberations in the light of suggestions received together with Recommendations / Observations of the Committee

Definition of 'Corruption' in the Prevention of Corruption Act

16. The word 'corruption' has not been defined in the Prevention of Corruption Act, rather acts of bribery which constitute corruption have been defined separately in other Sections of the Act with detailed explanations and illustrations. Those provisions of the Act comprehensively cover all aspects of bribery stipulated under United Nation Convention Against Corruption (UNCAC) and the UK Bribery Act, 2010

17. Many of the stake holders, who submitted their views, whether in writing or through personal deposition, strongly felt that the word 'corruption' needs to be defined in the Act. A few Members of the

Committee also felt the same. It was felt that the words like ‘corruption’ or ‘corrupt practices’ be defined in the proposed Bill. Similarly many stakeholders felt that the phrases used in the Bill like ‘improper performance’, ‘relevant expectation’, ‘public function or the activity’ are ambiguous and the absence of a precise definition of these expressions leaves a lot of scope judicial interpretation. They felt that courts should not be given much scope to interpret the law, rather the law itself should be drafted in such a way leaving a very minimal scope for interpretation.

18. When the clarification on these issues was sought from the administrative Ministry and the Legislative Department, the Committee was apprised that the word 'corruption' had neither been defined in the Prevention of Corruption Act, 1988, nor in the Bill. The Chapter 3 of the PC Act, 1988, provides for the offences and the penalties under the Act and while doing so, the expressions like ‘gratification other than legal remuneration’, ‘taking gratification by corrupt or illegal means’ ‘gratification for exercise of personal influence’, ‘obtaining valuable thing without consideration’, etc. have been used and described. The present Bill, while substituting the Sections- 7, 8, 9 and 10 of the PC Act, provides for an elaborate description of the offences relating to public servant being bribed {Section 7(1)}: it also describes the phrases ‘public function or activity’, ‘public function or activity performed improperly’, ‘relevant expectation’ ‘position of trust’ ,etc. {Section 7(2)}, offence relating to bribing of a public servant i.e. bribe giving {Sections 8 & 9} and holding person in charge of commercial organization to be guilty of offence {Section10} with a view to extensively cover the offence relating to bribe under Clause 3 of the Bill. Even the United Nations Convention Against Corruption (UNCAC) to which India is an original signatories

does not define the word ‘corruption’ in the definition clause rather corrupt practices, offence related to bribery has been defined in many clauses separately. The attempt of Government to explain the description of bribery by including the ‘act of bribe giving’ within its purview may reduce the scope of supply side of bribery to contain and curb corruption. The Government felt that the Bill now adequately covers the offence and hold a view that if a close definition is provided, it may provide scope for the offenders to take advantage thereof.

19. The Committee acknowledges the effort made in the proposed Bill to provide for an enlarged description of the offence both in regard to bribe giving and bribe taking. The Committee also takes note of the concerns raised by the stake holders and some Members of the Committee. The Committee desires that the Government should look into these concerns of stakeholders and Members of the Committee for inclusion of definition of ‘Corruption’ and ‘Corrupt Practices’ and see what further can be done so as to achieve the objective of the Bill.

Bribe Giving-An Offence

20. The proposed amendment to the Prevention of Corruption Act prescribes equal enhanced punishment to both bribe takers (public servants), bribe givers and intermediaries. The minimum punishment now would be three years extendable to seven years of imprisonment with fine. The immunity given to bribe giver under Section 24 of the PC Act, 1988, when reported the matter to investigating agencies / court after the commission of crime by the bribe giver, is proposed to be done away with. Many suggestions have been received for not treating the bribe givers in the case of coercive corruption on the same footing with the

bribe givers in consensual bribery and pleaded for giving protection to them especially in the case of coercive bribery. Another suggestion was received for reducing quantum of punishment to the bribe givers in the case of coercive bribery as compared to bribe takers in view of the fact that the bribe is paid to get the service or the job for which he/she has legitimate right in normal course of law to receive from the State. Even the investigating agencies of some States have suggested to retain Section 24 of the PC Act so that bribe givers could feel free to cooperate with Anti Corruption Bureau (ACB) for laying of traps to catch alleged corrupt public servants for furtherance of cause of justice. The DOPT in their response to aforesaid suggestions of State Governments as well as other stakeholders have submitted that the bribe giver in the consensual bribery who is also equally beneficiary of the act of corruption, may resort to the route of protection given under Section 24 to escape the liability, if protection were offered to the bribe givers in coercive bribery. It would be difficult to curb corruption without checking the supply side of corruption in both coercive as well as consensual bribery.

21. In the course of its deliberations, the Committee noted the apprehension raised by various stakeholders that the line between the coercive bribery and the consensual bribery is very thin. They cited umpteen number of instances where a coercive bribery case may be turned into a case of consensual bribery so as to implicate the bribe giver under this Act.

22. It has *inter-alia* been suggested that bribe given in compelling emergent situation particularly in the case of hospitalization, protection may be provided to the bribe givers as he is compelled to pay bribe to save the life of an individual. The Committee observes

that the person who reports the matter of corruption to the Anti Corruption Agencies prior to offering bribe to the public servant has clear intention of not paying bribe and getting benefit out of it. He/She is rather cooperating with Anti Corruption Agencies to help the State to curb the demand of bribe by the public servant and also be a part of laying of traps etc. Such type of individuals are although victim of bribe takers but help the State to curb corruption, therefore, they need to be protected by the State. The Committee observes that the individuals who report the matter to State after payment of bribery in normal circumstances need not be protected whereas person who pays bribe in compelling emergent situation, the court may take decision based upon facts and circumstances of the case which could be laid down in the Rules by Government.

23. The Committee considers the above reference to be treated as illustration. The Committee very strongly feels that coercive bribery occurring at any level need to be curbed. The Committee accordingly suggests Government to consider for making necessary relevant provisions in the respective laws, rules, regulations, instructions and guidelines to ensure that the chances of coercive bribery are reduced to minimum.

24. The Committee understands that coercive bribery mostly takes place at the lower level of administrative apparatus where services are delivered to the common man. It is reported that bribe is demanded from the common man in the case of delivery of ration card, passport, birth /death/ caste certificate, registration of property, plan approval for building, etc. The Committee feels that 'The Right of Citizens for Time Bound Delivery of Goods and

Services and Redressal of their Grievances Bill, 2011', which is pending consideration of Parliament needs to be enacted at the earliest which would address the concern of common man who are forced to be bribe giver to get services from the State in time for which, he is otherwise entitled to. In that law, the officer who is incharge of delivery of service would be liable in the case of failure of delivery of service within time limit prescribed by the State and would be punishable with fine which could be extended to Rs.50,000/- . The Committee hopes that petty corruption cases occurring at lower level of administrative apparatus of the State will be reduced to considerable extent with the liability imposed on public servant in that law.

25. The Committee feels that the State Governments may also be urged to put in place preventive measures such as putting Notice Board of 'No To Bribery' with telephone and email address of Chief Vigilance Officer (CVO) of the Department concerned and Vigilance Commission at the point of delivery of service of lower administrative apparatus to create adequate awareness amongst common man as well as help to inculcate the value of honesty amongst the bribe givers in the case of coercive bribery.

26. Protection has been suggested to the whistleblowers in the case of disclosure of corruption in public office where he is not a party under 'The whistle Blowers Protection Bill, 2011' which is pending consideration of Parliament, may be enacted without any further delay to encourage honest individual to report crime of corruption to the State or Lokpal / Lokayukta for appropriate action and help to curb corruption in public offices.

Attachment and Forfeiture of Property in Disproportionate Asset case

27. The Committee understands that possession of assets disproportionate to known lawful source of income of the public servant is a criminal misconduct under Section 13 of the PC Act, 1988. Under that Section, particularly (Section 13(1) (d) (iii), intention of the public servant was not required in disproportionate assets cases which has been reportedly misused by the investigating agencies. The proposed amendment to that Section has introduced the phrase 'intentionally enriching the public servant illicitly during the period of his/her office' which is taken from Article 20 of UNCAC. That amendment has introduced element of intention in the disproportionate asset cases which would pose additional burden upon the anti-corruption agencies to prove in the court of law. The Committee in this context, observes that the inability of the public servant to reasonably explain the source of disproportionate asset in relation to his/her lawful income should be sufficient ground for prosecution rather than questioning the intention of the public servant. The Committee, therefore, recommends that the element of 'intention' in the proposed Section 13 of the PC Act may removed. The committee appreciates insertion of a separate chapter on 'Attachment and Forfeiture of Property' in the PC Act and endorses it.

Corporate Liability to Prevent Bribery

28. It was pointed out to the Committee by the Department of Personnel and Training (DOPT) that the intersection where the corporate entity interacts with the public servants provides a fertile ground for breeding corruption. The proposed Sections 8 and 9 of the PC Act under

Clause 3 of the Bill is based on broad contours of Section 7 of the UK Bribery Act, 2010, to provide for liability of commercial entity for its failure to prevent act of bribe giving to public servant by any person (its employee or agent or subsidiary) associated with it.

29. The Committee understands that an entity whether incorporated in India or incorporated outside but having business in India, partnership firm, association of persons, formed to carry business or trade, and provide services including charitable service would now be liable to prevent corruption by any individual associated with it with exercise of due diligence and also putting in place adequate procedure preventing such individuals associated with it to indulge in act of bribe giving. The punishment provided to person associated with corporate entity indulged in bribe giving to public servant is same as prescribed to any other bribe giver as well as takers i.e. minimum of three years extendable to seven years of imprisonment with fine. The same quantum of punishment is also extendable under the proposed Section 10 of PC Act to the incharge of commercial entity i.e. Director, Manager, Secretary etc., when it is proved that such offence of bribe giving to public servant is committed by any person associated with it with consent / connivance of or is attributable to any neglect on the part of incharge of that entity to prevent such conduct of the individual associated with it. However, commercial entity is punishable with fine as proposed under proposed Section 9 (1) of the PC Act.

30. The Committee notices differentiation in punishment to commercial entity and persons associated with it. Punishment is prescribed for persons associated with the commercial entity who

indulge in act of bribe giving to public servant and delinquent incharge of that entity under the Bill in proposed Section 10(1) and (2) of PC Act, respectively. While the punishment prescribed for commercial organization is a civil liability (fine only) under proposed Section 9 (i) and punishment prescribed under Section 10(1) and (2) is imprisonment of three years extendable to seven years with fine which is similar to punishment prescribed for other bribe givers and by bribe takers (public servant) under the clause 3 of the Bill. The punishment for 'vicarious liability' to the commercial organization is fine whereas to incharge of that organization is imprisonment with fine. The Committee desires that the punishment prescribed for commercial organization should be in addition to the punishment prescribed to individual/associated with it and in-charge of the commercial organization.

Previous Sanction of Competent Authority for prosecution of Public Servant

31. Previous sanction of appropriate Government or competent authority for prosecution exists in the Prevention of Corruption Act, 1988 as well as the Code of Criminal Procedure, 1973.

32. Previous sanction is a condition precedent for taking cognizance of offences in relation to crime of corruption punishable under Sections 7, 10, 11, 13 and 15 of the said Act by the Court under Section 19 of the Prevention of Corruption Act, 1988. Previous sanction of Central Government and State Government in the case of serving Central and State Government employees, respectively, is required for the court. For other category of public servants (MP/MLA), previous sanction of the appropriate authority competent to remove that person from the public

office is required.

33. Section 197 of The Code of Criminal Procedure, 1973 also provides for previous sanction of appropriate Government or competent authority for any other cases of offence committed by a Judge/Magistrate/Public Servant while discharging his/her duty.

34. Section 6A of the Delhi Special Police Establishment Act, 1946 even requires prior permission of Central Government before launching investigation against senior officers of union Government at policy making level (Joint Secretary and above) by the Central Bureau of Investigation (CBI).

35. The Committee notes the scope of prior sanction of appropriate authority in aforesaid three separate laws. Previous sanction of appropriate Government or competent authority is to be sought under Section 19 of the Prevention of Corruption Act, 1988 for corruption related cases whereas previous sanction of appropriate authority is to be sought for any sort of offences committed by public servants while discharging their official duty under Section 197 of the Code of Criminal Procedure, 1973. Amendment proposed to Section 19 of The Prevention of Corruption Act, 1988 through Clause -10 of the Bill is to extend the protection of previous sanction already available to serving public servant to honest public servants after their retirement or demitting public office in order to protect them from frivolous, vexatious even malicious prosecution. In the corruption cases referred to Lok Pal, prior sanction of appropriate Government or competent authority is dispensed with. In nut-shell in *prime facie* crime unrelated to official duty no prior sanction of prosecution is required whereas corruption related cases even related

to official duty no prior-sanction of appropriate authority is required while the case is monitored by the Lok Pal. Cases not monitored by Lok Pal prior sanction for serving as well retired public servants would remain with the appropriate Government/Competent Authority.

36. The Committee is in agreement with the provisions of the Bill extending the protection to the honest public servant who ceased to be government servant for the bona fide omission / commission during their term in office.

37. The definition of 'public servant' under Section 2(c) of the Prevention of Corruption Act, 1988 *inter-alia* includes serving Government servant only. Similarly, the protection of sanction for prosecution by appropriate Government is available to serving Government servant only under Section 19 of the Act which is now proposed to be extended to retired Government servants under the Bill. The proposed amendment to Section 19 of the Act requires consequential changes in the definition of 'public servant' as mentioned in the Prevention of Corruption Act. The Committee desires that necessary amendment/clarification in Section 2 of the PC Act may be made to give effect to proposed amendment to Section 19 to extend protection of sanction for prosecution to the retired Government servant in addition to serving Government servant.

Punishment for Habitual Commission of Offence under PC Act

38. The Committee would point out that the minimum punishment for habitual offenders under the Prevention of Corruption Act, 1988

is five years of imprisonment under the Lokpal and Lokayukta Act, 2013 and three years of imprisonment in the proposed Bill but the maximum punishment in both legislation is ten years of imprisonment. While the enhancing punishment for habitual offenders under the Bill, the Ministry of Personnel enhanced the minimum punishment from two years to three years of imprisonment which may result in inconsistency with the Lokpal and Lokayuktas Act, 2013 . The Committee would like the Ministry to synchronize the minimum punishment for habitual offenders under the Prevention of Corruption Act and the Lokpal and Lokayukta Act, 2013 by enhancing it from three years to five years of imprisonment extendable to ten years in the proposed legislation to remove existing incongruity in the law.

Expeditious trial of Corruption cases

39. Section 4 of the Prevention Corruption Act, 1988 provides that corruption cases to be tried on day to day basis by special judges. Experience show that corruption cases are hardly tried on expeditious basis and thereby leading to poor conviction rate. Fixing of a time limit for each stages of trial, guidelines by higher courts to preclude unwarranted adjournments and avoidable delays for expeditious trial of such cases were suggested for expeditious trial of corruption related cases. The Committee recommends that the time line for trial of corruption cases be prescribed as provided for in Lokpal & Lokayukta referred cases.

Recommendations/Observation of the Committee at a Glance

1. The Committee acknowledges the effort made in the proposed Bill to provide for an enlarged description of the offence both in regard to bribe giving and bribe taking. The Committee also takes note of the concerns raised by the stake holders and some Members of the Committee. The Committee desires that the Government should look into these concerns of stakeholders and Members of the Committee for inclusion of definition of ‘Corruption’ and ‘Corrupt Practices’ and see what further can be done so as to achieve the objective of the Bill. (Para -19)

Bribe Giving-An Offence.

2. In the course of its deliberations, the Committee noted the apprehension raised by various stakeholders that the line between the coercive bribery and the consensual bribery is very thin. They cited umpteen number of instances where a coercive bribery case may be turned into a case of consensual bribery so as to implicate the bribe giver under this Act. (Para -21)

3. It has *inter-alia* been suggested that bribe given in compelling emergent situation particularly in the case of hospitalization, protection may be provided to the bribe givers as he is compelled to pay bribe to save the life of an individual. The Committee observes that the person who reports the matter of corruption to the Anti Corruption Agencies prior to offering bribe to the public servant has clear intention of not paying bribe and getting benefit out of it. He/She is rather cooperating with Anti Corruption Agencies to help

the State to curb the demand of bribe by the public servant and also be a part of laying of traps etc. Such type of individuals are although victim of bribe takers but help the State to curb corruption, therefore, they need to be protected by the State. The Committee observes that the individuals who report the matter to State after payment of bribery in normal circumstances need not be protected whereas person who pays bribe in compelling emergent situation, the court may take decision based upon facts and circumstances of the case which could be laid down in the Rules by Government.

(Para- 22)

4. The Committee considers the above reference to be treated as illustration. The Committee very strongly feels that coercive bribery occurring at any level need to be curbed. The Committee accordingly suggests Government to consider for making necessary relevant provisions in the respective laws, rules, regulations, instructions and guidelines to ensure that the chances of coercive bribery are reduced to minimum.

(Para- 23)

5. The Committee understands that coercive bribery mostly takes place at the lower level of administrative apparatus where services are delivered to the common man. It is reported that bribe is demanded from the common man in the case of delivery of ration card, passport, birth /death/ caste certificate, registration of property, plan approval for building, etc. The Committee feels that 'The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011', which is pending consideration of Parliament needs to be enacted at the earliest which would address the concern of common man who are

forced to be bribe giver to get services from the State in time for which, he is otherwise entitled to. In that law, the officer who is incharge of delivery of service would be liable in the case of failure of delivery of service within time limit prescribed by the State and would be punishable with fine which could be extended to Rs. 50,000/-. The Committee hopes that petty corruption cases occurring at lower level of administrative apparatus of the State will be reduced to considerable extent with the liability imposed on public servant in that law. *(Para -24)*

6. The Committee feels that the State Governments may also be urged to put in place preventive measures such as putting Notice Board of 'No To Bribery' with telephone and email address of Chief Vigilance Officer (CVO) of the Department concerned and Vigilance Commission at the point of delivery of service of lower administrative apparatus to create adequate awareness amongst common man as well as help to inculcate the value of honesty amongst the bribe givers in the case of coercive bribery. *(Para- 25)*

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servant is a criminal misconduct under Section 13 of the PC Act, 1988. Under that Section, particularly (Section 13(1) (d) (iii), intention of the public servant was not required in disproportionate assets cases which has been reportedly misused by the investigating agencies. The proposed amendment to that Section has introduced the phrase 'intentionally enriching the public servant illicitly during the period of his/her office' which is taken from Article 20 of UNCAC. That amendment has introduced element of intention in the disproportionate asset cases which would pose additional burden upon the anti-corruption agencies to prove in the court of law. The Committee in this context, observes that the inability of the public servant to reasonably explain the source of disproportionate asset in relation to his/her lawful income should be sufficient ground for prosecution rather than questioning the intention of the public servant. The Committee, therefore, recommends that the element of 'intention' in the proposed Section 13 of the PC Act may removed. The committee appreciates insertion of a separate chapter on 'Attachment and Forfeiture of Property' in the PC Act and endorses it.

(Para- 27)

Corporate Liability to Prevent Bribery

9. The Committee understands that an entity whether incorporated in India or incorporated outside but having business in India, partnership firm, association of persons, formed to carry business or trade, and provide services including charitable service would now be liable to prevent corruption by any individual associated with it with exercise of due diligence and also putting in place adequate procedure preventing such individuals associated with it to indulge in act of bribe giving. The punishment provided to

person associated with corporate entity indulged in bribe giving to public servant is same as prescribed to any other bribe giver as well as takers i.e. minimum of three years extendable to seven years of imprisonment with fine. The same quantum of punishment is also extendable under the proposed Section 10 of PC Act to the incharge of commercial entity i.e. Director, Manager, Secretary etc., when it is proved that such offence of bribe giving to public servant is committed by any person associated with it with consent / connivance of or is attributable to any neglect on the part of incharge of that entity to prevent such conduct of the individual associated with it. However, commercial entity is punishable with fine as proposed under proposed Section 9 (1) of the PC Act. *(Para -29)*

10. The Committee notices differentiation in punishment to commercial entity and persons associated with it. Punishment is prescribed for persons associated with the commercial entity who indulge in act of bribe giving to public servant and delinquent incharge of that entity under the Bill in proposed Section 10(1) and (2) of PC Act, respectively. While the punishment prescribed for commercial organization is a civil liability (fine only) under proposed Section 9 (i) and punishment prescribed under Section 10(1) and (2) is imprisonment of three years extendable to seven years with fine which is similar to punishment prescribed for other bribe givers and by bribe takers (public servant) under the clause 3 of the Bill. The punishment for 'vicarious liability' to the commercial organization is fine whereas to incharge of that organization is imprisonment with fine. The Committee desires that the punishment prescribed for commercial organization should be in addition to the punishment

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11. The Committee notes the scope of prior sanction of appropriate authority in aforesaid three separate laws. Previous sanction of appropriate Government or competent authority is to be sought under Section 19 of the Prevention of Corruption Act, 1988 for corruption related cases whereas previous sanction of appropriate authority is to be sought for any sort of offences committed by public servants while discharging their official duty under Section 197 of the Code of Criminal Procedure, 1973. Amendment proposed to Section 19 of The Prevention of Corruption Act, 1988 through Clause -10 of the Bill is to extend the protection of previous sanction already available to serving public servant to honest public servants after their retirement or demitting public office in order to protect them from frivolous, vexatious even malicious prosecution. In the corruption cases referred to Lok Pal, prior sanction of appropriate Government or competent authority is dispensed with. In nut-shell in *prime facie* crime unrelated to official duty no prior sanction of prosecution is required whereas corruption related cases even related to official duty no prior-sanction of appropriate authority is required while the case is monitored by the Lok Pal. Cases not monitored by Lok Pal prior sanction for serving as well retired public servants would remain with the appropriate Government/Competent Authority. (Para -35)

11. The Committee is in agreement with the provisions of the Bill extending the protection to the honest public servant who ceased to be government servant for the bona fide omission / commission during their term in office. *(Para -36)*

12. The definition of 'public servant' under Section 2(c) of the Prevention of Corruption Act, 1988 *inter-alia* includes serving Government servant only. Similarly, the protection of sanction for prosecution by appropriate Government is available to serving Government servant only under Section 19 of the Act which is now proposed to be extended to retired Government servants under the Bill. The proposed amendment to Section 19 of the Act requires consequential changes in the definition of 'public servant' as mentioned in the Prevention of Corruption Act. The Committee desires that necessary amendment/clarification in Section 2 of the PC Act may be made to give effect to proposed amendment to Section 19 to extend protection of sanction for prosecution to the retired Government servant in addition to serving Government servant. *(Para -37)*

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minimum punishment from two years to three years of imprisonment which may result in inconsistency with the Lokpal and Lokayuktas Act,2013 . The Committee would like the Ministry to synchronize the minimum punishment for habitual offenders under the Prevention of Corruption Act and the Lokpal and Lokayukta Act, 2013 by enhancing it from three years to five years of imprisonment extendable to ten years in the proposed legislation to remove existing incongruity in the law. (Para -38)

Expeditious trial of Corruption cases

14. Section 4 of the Prevention Corruption Act, 1988 provides that corruption cases to be tried on day to day basis by special judges. Experience show that corruption cases are hardly tried on expeditious basis and thereby leading to poor conviction rate. Fixing of a time limit for each stages of trial, guidelines by higher courts to preclude unwarranted adjournments and avoidable delays for expeditious trial of such cases were suggested for expeditious trial of corruption related cases. The Committee recommends that the time line for trial of corruption cases be prescribed as provided for in Lokpal & Lakayukta referred cases. (Para -39)

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