

PREVENTION OF CORRUPTION (AMENDMENT) BILL 2013

Letter to Standing Committee

12 February 2016

Sir,

Ref: Fo No 428/01/2016-AVD-IV (B), Ministry of Personnel, Public Grievances and Pensions,
Dept of Personnel and Training dated 22/1/2016

The Select Committee of the Rajya Sabha for examination of the Prevention of Corruption (Amendment) Bill 2013 met with stakeholders from civil society in Bengaluru on 7/2/16 at the Conference Hall, Vidhana Soudha.

Representatives from Janaagraha were present and I made a brief presentation. I was asked to send the inputs by email.

I am enclosing a note which answers some of the questions in the questionnaire circulated to us as well as detailed inputs on various other aspects of the Amendment.

Yours faithfully,

Malati Das IAS (retd)
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Government of Karnataka and
Advisor-Janaagraha, Bengaluru

**MEETING OF THE SELECT COMMITTEE OF THE RAJYA SABHA ON
THE PREVENTION OF CORRUPTION (AMENDMENT) BILL 2013 ON
7/2/2016 AT THE CONFERENCE HALL, VIDHANA SOUDHA,
BENGALURU**

**A NOTE ON JANAAGRAHA'S VIEWS REGARDING THE
AMENDMENTS**

Janaagraha

The Janaagraha Centre for Citizenship and Democracy is a non-profit organisation based in Bengaluru, India. It aims to improve the quality of life in urban India, through systemic change. Janaagraha sees 'quality of life' as comprising two distinct, but inter-related aspects – 'quality of urban infrastructure and services' (the quality of urban of amenities such as roads, drains, traffic, transport, water supply etc.) and 'quality of citizenship' (the role that urban citizens play by participating in their local communities). It works with both citizens and government to catalyse civic participation from the grassroots up, as well as governance reforms from the top down.

I Paid a Bribe

One of Janaagraha's most successful civic participation programmes is ***I Paid a Bribe (IPAB)*** which is an online initiative started by Janaagraha that focuses on **retail corruption**, also known as "**transactional corruption**" or "**petty corruption**". It is the largest online crowd-sourced anti-corruption platform in the world today. IPAB uses a crowd-sourcing model to collect bribe reports, and to build a repository of corruption-related data across government departments. Most importantly, it empowers citizens, governments, and advocacy organizations to tackle retail corruption both within India and increasingly throughout the world. The Hindi platform ***Maine Rishwat Di*** was introduced in in 2013.

As of July 2015, IPAB has partnered with 25 other countries to create replica IPAB sites and begin an international Crowdsourcing Against Corruption Coalition.

Since its launch on the 15th of August 2010, IPAB has received around **11,156,370 visits**, recorded **72,908 bribe reports** amounting to over **Rs 1,306.78 crores** from **1068 cities and towns** in India. It has also been scaled to 25 countries, with 12 more in the process of launching their own IPAB sites. Over time as more and more individuals began using IPAB to document corruption and connect with other citizens facing similar issues, IPAB has received critical acclaim and recognition from institutions such as the New York Times, the BBC, The Hindu, the Economic Times, India Today, and Google. Today IPAB has transformed into a globally-recognized innovation in the fight against ‘retail’ corruption.

IPAB works to:

- Understand retail corruption by capturing data through crowd-sourcing
- Analyse the geography and institutional breeding grounds for corruption.
- Expose retail corruption. When people report, their experiences increase the perception of risk and decrease corrupt behavior
- Create a network of support – where people use the platform to share individual experiences – to understand the extent of corruption, how to avoid paying a bribe, what documents are needed, what is the process, and so on.

And finally, to use the data to analyze trends, decipher work flows and advocate for changes of business processes within departments, to gradually eliminate opportunities for retail corruption altogether.

IPAB receives a large number of **non-anonymous reports**. Since March 2015, IPAB through its two Advisors, Dr. Malati Das IAS (retd), former Chief Secretary, Government of Karnataka and Dr. ST Ramesh, IPS (retd) former DG&IGP, Government of Karnataka, has been identifying actionable reports to be sent to the head of the government department/local body concerned for enquiry/appropriate action. Currently, this action is being taken with reference to bribe reports from Karnataka. An “actionable” report must contain the name and mobile number of the complainant and give accurate details about the office, official, agents if any, date and processes involved in the bribe transaction reported.

We at Janaagraha are concerned about the fate of these reporters who, having paid bribes under duress, want to be bribe -fighters and expose the public servants involved in corruption as the P.C. (Amendment) Bill 2013 will deem them to be criminals along with the bribe takers.

Janaagraha's Views: Questionnaire for stakeholders

Q 5: Valuers, surveyors, advocates, chartered accountants, consultants who provide services to public authorities on certain consideration should be brought under the purview of the PC Act.

Q 6: Under Section 8 : Any person who— (a) offers, promises or gives a financial or other advantage to another person, and intends such financial or other advantage— (i) to induce a public servant to *perform improperly* a public function or activity; or (ii) to reward such public servant for the *improper performance* of such public function or activity; or (b) offers, promises or gives a financial or other advantage to a public servant and knows or believes that the acceptance of such financial or other advantage by the public servant would itself constitute the *improper performance* of a relevant public function or activity, *shall be punishable with imprisonment which shall not be less than three years but which may extend to seven years and shall also be liable to fine* . . . (Italics mine).

Under the Bill, giving a bribe, directly or through a third party, is made an offence. The intention is clear. By criminalizing the act of bribe giving, the Bill is following international practice. The UN Convention states that giving a bribe, either directly or indirectly, should be made a punishable offence. India has ratified this Convention. While the bribe giver must be punished, we must also take into account the ground realities in India, and this may have several consequences that may go against the objectives of the PC Act.

The critical phrases are that the bribe giver (whose actions have now been criminalized) is paying a bribe to induce the public servant to "*perform improperly*" a "*relevant public function or activity*" - (b) *a public function or activity is performed improperly, if— (i) it is performed in breach of a relevant expectation; and (ii) there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation; (c) "relevant expectation",— (i) in*

relation to a public function or activity performed, means the performing of the public function or activity impartially or in good faith, as the case may be; (ii) in relation to a public function or activity performed in a position of trust (by virtue of performing such function or activity), means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of such trust;

In other words there is a quid pro quo. The bribe giver stands to gain by the public servant performing his activities improperly. This is the collusive bribe. However a large percentage of bribes are paid to the public servant to “perform *properly*” not “*improperly*” a public function or activity. Here the bribe is paid under duress. The individual is entitled to the service sought and no laws, rules or regulations are being transgressed. What are the factors that facilitate coerced bribe giving? Various factors come into play: 1) the applicant’s ignorance of laws and procedures is often exploited by the public servant, 2) the matter is deliberately delayed by officials till the applicant reluctantly pays “speed money” out of desperation or 3) pointless/irrelevant queries are raised till the person pays a bribe. In many cases it is very well organized: reporters on IPAB say they are approached by facilitators or officials and informed of “the rate.” Many angry reports on IPAB note that builders routinely collect bribes for the Stamps and Registration department from unwilling apartment owners for registration of the property sale deed.

The Second Administrative Reforms Commission has recommended distinguishing between a coerced and a collusive bribe giver. The bribe reporters on IPAB are usually people who were coerced to pay bribes and are very angry about it. Now will they be coerced to pay up and keep quiet lest they be prosecuted? The onus of proving that the bribe was coerced not collusive will probably fall on the bribe giver. The provision can also be misused by corrupt public servants to terrorize a person who was coerced to pay a bribe and wants to report it to the appropriate authority.

Second, under the PC Act 1988, a person testifying during a corruption trial that he paid a bribe would not be prosecuted for the offence of abetment. The Bill omits this provision. This may deter bribe givers from appearing as witnesses in cases against public officials. It will make the prosecutor’s task more difficult.

A new section (section 8 (2)) is sought to be inserted to give protection from prosecution to those who inform law enforcement agencies before paying the bribe. While this is welcome it must be recognized that given the widespread nature of retail corruption in our country, very often people pay under duress. They need a certificate or license or khata within a certain time frame but the public servant by deliberately delaying matters or raising irrelevant queries will force the citizen to pay speed money. Making a report to the law enforcement authorities is a time consuming matter. A poor, semi-literate farmer may have to travel miles to make the complaint and he will need some assistance to do so. Meanwhile what happens to the document he wants urgently? It will discourage citizens except the most committed bribe fighter. I interviewed such a bribe fighter. He told me that he spent a lot of time and money (travelling to the Lok Ayukta's office in Bengaluru several times) to register a complaint against a village accountant. Hence while the proposed section is desirable, its implementation may not be very effective.

To summarize, the provision criminalizing bribe giving is a double edged sword. On the one hand, bribe givers must be punished. On the other we need to be able to distinguish between the collusive and the coerced bribe payer. We need to strengthen the Right of Citizens for Time bound Delivery of Goods and Services enactments (known in Karnataka as Sakala) and improve the implementation. Currently only a few departments and processes have been brought under Sakala. More protection should be afforded to complainants under the Whistleblower's Act.

It is recommended that the PC Bill must differentiate between collusive bribe givers and coerced bribe givers. The protection offered to a witness who testifies to having paid a bribe must be retained to ensure the prosecution's case does not fail due to lack of witnesses.

Q 10: Members of the management and Principals of affiliated colleges and Deemed Universities should be brought under the purview of the PC Act.

Q 13: Prolonged trials and appeals have helped corrupt public servants subvert the law. There should be some way of ensuring trials do not go beyond 4 years. A timeline should be prescribed for investigative agencies as well.

Other Issues:

Element of intention: The Bill modifies the section wherein the offence of possessing disproportionate assets requires establishing the existence of disproportionate monetary resources or property in the public servant's possession to establish that the public servant had disproportionate assets, with a second clause that states that, in addition to the existence of disproportionate assets, *the intention of the public servant to acquire disproportionate assets also be established*. This need not be included as intentionality is difficult to establish.

Gifts: While the PC Act penalised a public servant who accepted/ obtained a valuable item for little or no cost, from a person with whom he had official dealings, the Bill has deleted this provision. This is a great source of illegal transfer of assets and should be retained.

Minimum punishment: The minimum punishment for habitual offenders must be enhanced from three to five years extendable to 10 years.