

AS INTRODUCED IN LOK SABHA

Bill No. 26 of 2011

THE PREVENTION OF BRIBERY OF FOREIGN PUBLIC OFFICIALS
AND OFFICIALS OF PUBLIC INTERNATIONAL ORGANISATIONS
BILL, 2011

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BILL

to prevent corruption relating to bribery of foreign public officials and officials of public international organisations and for matters connected therewith or incidental thereto.

WHEREAS the United Nations Convention against Corruption annexed to the Resolution 58/4 of 31st October, 2003 was adopted by the General Assembly of the United Nations and opened it for signature at the High-level Political Signing Conference held in Merida, Mexico, from 9th to 11th December, 2003;

AND WHEREAS aforesaid Resolution urges all States and competent regional economic integration organisations to sign and ratify the United Nations Convention against Corruption as soon as possible in order to ensure its rapid entry into force;

AND WHEREAS aforesaid Resolution requests the Conference of the State Parties to the Convention to address the criminalisation of bribery of officials of public international organisations, including the United Nations, and related issues, taking into account questions of privileges and immunities, as well as of jurisdiction and the role of international organisations, by, *inter alia*, making recommendations regarding appropriate action in that regard;

AND WHEREAS the aforesaid Convention expresses concern about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardising sustainable development and the rule of law; and about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States;

AND WHEREAS India has signed the United Nations Convention Against Corruption on the 9th December, 2005;

AND WHEREAS on ratification of the Convention by India it shall be necessary to implement the aforesaid Convention as a State Party;

AND WHEREAS in terms of Article 16 of the aforesaid Convention, each State Party is required to adopt such legislative and other measures, as may be necessary to establish the bribery of foreign public officials and officials of public international organisations, as a criminal offence.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

Short title,
extent and
commencement.

1. (1) This Act may be called the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Act, 2011. 5

(2) It extends to the whole of India and applies also—

(a) to citizens of India wherever they may be;

(b) to the persons on, an aircraft or ship registered in India wherever they may be; 10

(c) to the persons on, an aircraft or ship registered outside India but for the time being in or over India; and

(d) to a person, who—

(i) is not a citizen of India;

(ii) operates an aircraft or ship; and 15

(iii) has his principal place of business or permanent residence in India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision. 20

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "Convention" means the United Nations Convention Against Corruption adopted by the Resolution 58/4 of 31st October, 2003 of the General Assembly of the United Nations;

(b) "contracting State" means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a Convention, treaty or otherwise; 25

(c) "foreign public official" means any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise and any official or agent of a public international organisation;

5 (d) "official of a public international organisation" means an international civil servant or any person who is authorised by such an organisation to act on behalf of that organisation;

(e) "foreign country" includes all levels and sub-divisions of Government, from national to local;

10 (f) "notification" means a notification published in the Official Gazette;

49 of 1988. (g) "Special Judge" means the Special Judge appointed under section 3 of the Prevention of Corruption Act, 1988;

(h) "undue advantage" that is to say bribery means an act of a foreign public official or official of public international organisation, who—

15 (i) by corrupt or illegal means, obtains for himself or for any other person, any valuable thing or pecuniary advantage; or

(ii) by abusing his position as such public official obtains for himself or for any other person, any valuable thing or pecuniary advantage; or

20 (iii) while holding office as such public official obtains for himself or for any other person any valuable thing or pecuniary advantage without any public interest; or

(iv) habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any foreign public official to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned.

30 (2) The words and expressions used under this Act but not defined and defined under 49 of 1988. the Prevention of Corruption Act, 1988 shall have the meanings respectively assigned to them under that Act.

CHAPTER II

35 OFFENCES AND PENALTIES OF BRIBERY OF FOREIGN PUBLIC OFFICIALS AND OFFICIALS OF PUBLIC INTERNATIONAL ORGANISATIONS

3. Whoever, being a foreign public official or official of public international organisation, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person or entity, any undue advantage other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or entity for rendering or attempting to render any service or disservice to any person or entity, shall be punishable with imprisonment which shall not be less than six months but which may extend to seven years and shall also be liable to fine. Prohibition for accepting gratification by foreign public official or official of public international organisation.

4. Whoever, in relation to the conduct of international business in order to obtain or retain business, intentionally, offers or promises to offer, gives or promises to give, directly or indirectly, any undue advantage, to any foreign public official or official of public international organisation, for himself or herself or for another person or entity, in order that such official, act or refrain from acting in the exercise of his or her official duties, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine. Prohibition for giving gratification to foreign public official or official of public international organisation.

Abetment and attempts.	<p>5. Whoever, abets the commission of an offence punishable under this Act or attempts to commit any such offence and in such attempt does any act towards the commission of such offence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine.</p>	5
Agreements with foreign countries.	<p>6. (1) The Central Government may enter into an agreement with the Government of any country outside India for—</p> <p style="padding-left: 40px;">(a) enforcing the provisions of this Act;</p> <p style="padding-left: 40px;">(b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act, and may, by notification, make such provisions as may be necessary for implementing the agreement (including mutual assistance).</p> <p>(2) The Central Government may, by notification, direct that the application of this Act in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.</p>	10 15
Provisions as to extradition.	<p>7. The offences under this Act shall be deemed to have been included as extraditable offences and provided for in all the extradition treaties made by India with convention countries and which extend to, and are binding on, India on the date of commencement of this Act.</p>	15
Letter of request to a contracting State in certain cases.	<p>8. (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973, if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Judge by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Judge, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—</p> <p style="padding-left: 40px;">(i) examine facts and circumstances of the case,</p> <p style="padding-left: 40px;">(ii) take such steps as the Special Judge may specify in such letter of request,</p> <p style="padding-left: 40px;">and</p> <p style="padding-left: 40px;">(iii) forward all the evidence so taken or collected to the Special Judge issuing such letter of request.</p> <p>(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.</p> <p>(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation.</p>	20 2 of 1974. 25 30 35
Assistance to a contracting State in certain cases.	<p>9. Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Judge or to any authority under the Act, as it thinks fit, for execution of such request in accordance with the provisions of this Act or, as the case may be, any other law for the time being in force.</p>	40
Reciprocal arrangements for processes and assistance for transfer of accused persons.	<p>10. (1) Where a Special Judge, in relation to an offence punishable under section 3 or section 4, desires —</p> <p style="padding-left: 40px;">(a) a summons to an accused person; or</p> <p style="padding-left: 40px;">(b) a warrant for the arrest of an accused person; or</p> <p style="padding-left: 40px;">(c) a summons to any person requiring him to attend and produce a document or other thing or to produce it; or</p> <p style="padding-left: 40px;">(d) a search warrant,</p>	45 50

issued by it shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such Court, Judge or Magistrate through such authorities, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be
5 executed.

(2) Where a Special Judge, in relation to an offence punishable under section 4 has received for service or execution—

(a) a summons to an accused person; or

(b) a warrant for the arrest of an accused person; or

10 (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it; or

(d) a search warrant,

issued by a court, Judge or Magistrate in a contracting State, it shall, cause the same to be served or executed as if it were a summons or warrant received by it from another court in the
15 said territories for service or execution within its local jurisdiction; and where—

2 of 1974.

(i) a warrant of arrest has been executed, the person arrested shall be dealt with in accordance with the procedure specified under the Code of Criminal Procedure, 1973;

20 (ii) a search warrant has been executed, the things found in this search shall, so far as possible, be dealt with in accordance with the procedure specified under the Code of Criminal Procedure, 1973:

Provided that in a case where a summon or search warrant received from a contracting State has been executed, the documents or other things produced or things found in the search shall be forwarded to the court issuing the summons or search warrant through such
25 authority as the Central Government may, by notification, specify in this behalf.

(3) Where a person transferred to a contracting State pursuant to sub-section (2) is a prisoner in India, the Special Judge or the Central Government may impose such conditions as that court or Government deems fit.

30 (4) Where the person transferred to India pursuant to sub-section (1) is a prisoner in a contracting State, the Special Judge in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

35 **11.** Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned court in India in such form and in such manner as the Central Government may, by notification, specify in this behalf.

Procedure in respect of letter of request.

40 **12.** (1) Where the property is suspected to be in a contracting State, the Special Judge, on an application by an officer authorised by the Central Government, may issue a letter of request to a court or an authority in the contracting State for execution of attachment or confiscation of the property in the contracting State.

Attachment, seizure and confiscation, etc., of property in a contracting State or India.

45 (2) Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under section 3 or section 4 committed in that contracting State, the Central Government may forward such letter of request to the Special Judge for execution in accordance with the provisions of this Act.

(3) The Special Judge shall, on receipt of a letter of request under sub-section (2), direct any authority to take all steps necessary for tracing and identifying such property.

(4) The steps referred to in sub-section (3) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters. 5

(5) Any inquiry, investigation or survey referred to in sub-section (4) shall be carried out by an authority mentioned in sub-section (3) in accordance with such directions issued in accordance with the provisions of this Act.

Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act.

13. Save as otherwise provided under this Act, or the Prevention of Money-laundering Act, 2002 the provisions of the Criminal Law Amendment Ordinance 1944, as amended by section 29 of the Prevention of Corruption Act, 1988, shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of the property under this Act. 10 15 of 2003. 49 of 1988.

Certain provisions of Act 49 of 1988 to apply.

14. The provisions of the Prevention of Corruption Act, 1988 and the rules made there-under, (including those relating to appointment of Special Judges under Chapter II and investigation into the cases and inspection of bankers books under Chapter IV of that Act), shall, so far as may be, apply in relation to the offence under this Act as they apply in relation to the offence under the Prevention of Corruption Act, 1988. 15

Military, Naval and Air Force or other laws not to be affected.

15. (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950, the Air force Act, 1950, the Navy Act, 1957, the Border Security Force Act, 1968, the Coast Guard Act, 1978 and the National Security Guard Act, 1986. 20 45 of 1950. 46 of 1950. 62 of 1957. 47 of 1968. 30 of 1978. 47 of 1986.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the court of a Special Judge shall be deemed to be a court of ordinary criminal justice. 25

Appeal and revision.

16. Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 on a High Court as if the court of the Special Judge were a Court of Session trying cases within the local limits of the High Court. 2 of 1974.

Act to be in addition to any other law.

17. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any foreign public official or official of public international organisation from any proceeding which might, apart from this Act, be instituted against him. 30

Proceedings under this Act to be taken in consultation with contracting State against foreign public official to whom privileges and immunities under any law or Convention or treaty apply.

18. In case any foreign public official or official of public international organisation is alleged to have committed an offence under this Act to whom certain privileges and immunities applies under the United Nations (Privileges and Immunities) Act, 1947 or the International Finance Corporation (Status, Immunities and Privileges) Act, 1958, or the International Development Association (Status, Immunities and Privileges) Act, 1960, or the Diplomatic Relations (Vienna Convention) Act, 1972, or under any other law for the time being in force or under any Convention or treaty, the Central Government shall, in consultation with the contracting State or public international organisation, as the case may be, take adequate measures for proceeding under this Act against such public official. 35 46 of 1947. 42 of 1958. 32 of 1960. 43 of 1972. 40

Code of Criminal Procedure, 1973 to apply subject to certain modifications.

19. Save as otherwise provided under this Act, the provisions of the Code of Criminal Procedure, 1973, as amended by section 22 of the Prevention of Corruption Act, 1988 shall have effect in their application in relation to any proceeding in relation to an offence punishable under this Act. 45 2 of 1974. 49 of 1988.

20. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Power to
remove
difficulties.

5 Provided that no order shall be made under this section after the expiry of the period of four years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

21. The enactments specified in the Schedule to this Act shall be amended in the manner specified therein and such amendments shall take effect on the date of commencement of this Act.

Amendment
of certain
enactments.

THE SCHEDULE

(See section 21)

AMENDMENT OF CERTAIN ENACTMENTS

PART I

THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Amendment of section 3.

In section 3, in sub-section (1), in clause (a), for the words "any offence punishable under this Act", the words and figures "any offence punishable under this Act or the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Act, 2011" shall be substituted.

PART II

THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

(15 OF 2003)

Amendment of Schedule.

In the Schedule, in Part B, after paragraph 5, the following paragraph shall be inserted, namely:—

"PARAGRAPH 5A

The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Act, 2011.

Section	Description of offence
3	Prohibition for accepting gratification by foreign Public Officials or official of public international organisation.
4	Prohibition for giving gratification to foreign public official or official of public international organisation.
5	Abetment and attempts."

STATEMENT OF OBJECTS AND REASONS

Bribery of public officials to obtain advantages in international business raises serious moral and political concerns, undermines good governance and sustainable economic development, and distorts competition. Corruption in awarding business contracts has social, political, environmental and economic costs which no country can afford. Serious consequences result when public officials take bribes in awarding contracts to foreign businesses for public services such as roads, water, electricity etc. resulting in inappropriate decisions and undermining plans for development.

2. The United Nations Convention against Corruption annexed to the Resolution 58/4 of 31st October, 2003 was adopted by the General Assembly of the United Nations and opened it for signature at the High-level Political Signing Conference held in Merida, Mexico, from 9th to 11th December, 2003. India has signed the Convention on 9th December, 2005. The ratification of Convention would require criminalising the act of foreign bribery and it would strengthen India's existing anti-corruption laws that demonstrate India's commitment to good governance and give more credibility in its fight against bribery and corruption.

3. India already has in place a framework for combating corruption under certain laws, namely, the Prevention of Corruption Act, 1988 and the Prevention of Money-laundering Act, 2002 which covers a number of areas that need international standards for the criminalisation of bribery. Article 16 of the Convention requires that each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, the giving or taking of undue advantage to or by a foreign public official or an official of a public international organisation, directly or indirectly, for the official himself or herself or another person or entity when committed intentionally. However, the bribery of foreign public officials in international business transactions is not covered under the above said Acts. Therefore, a need has been felt to bring a legislation to give effect to the aforesaid Convention.

4. The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011 seek to prevent corruption relating to bribery of foreign public officials and officials of public international organisations and for matters connected therewith or incidental thereto. The proposed legislation, *inter alia*,—

(a) prohibits accepting gratification by foreign public official or official of public international organisation and making such act punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine;

(b) prohibits giving gratification to foreign public official or official of public international organisation and making such act punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine;

(c) makes abetment and attempts of the acts specified at (a) and (b) above also punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine;

(d) confers power upon the Central Government to enter into agreements with foreign countries enforcing the provisions of proposed legislation;

(e) makes provision declaring the offences under the proposed legislation as extraditable offences;

(f) makes provision for rendering assistance to a contracting State in certain cases to give effect to provisions of the proposed legislation;

(g) makes provision for reciprocal arrangements for processes and assistance for transfer of accused persons;

(h) makes provision for attachment, seizure and confiscation, etc., of property in a contracting State or India.

5. It is also proposed that proceedings under the proposed legislation shall be taken in consultation with the contracting State against foreign public official to whom privileges and immunities under any law or Convention or treaty are accorded.

6. The Bill seeks to achieve the above objectives.

V.NARAYANASAMY.

NEW DELHI;

The 22nd March, 2011.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Item (b) of sub-clause (1) of clause 6 of the Bill provides that the Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement (including mutual legal assistance) in connection with the agreement entered into with the Government of any country outside India for exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act. Sub-clause (2) of clause 6 enables the Central Government to specify conditions, exceptions or qualifications subject to which reciprocal arrangements shall be given effect.

2. Sub-clause (1) of clause 10 empowers the Central Government to specify, by notification, the form of summon or warrant and the authority through which such summons or warrant shall be sent to any contracting State for its service or execution.

3. Clause 11 empowers the Central Government to specify, by notification, the form and manner in which every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant to be transmitted to, a Contracting State shall be sent to the concerned court in India.

4. The matters in respect of which notifications may be issued in accordance with the provisions of the Bill are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACT FROM THE PREVENTION OF CORRUPTION ACT, 1988

(No. 49 OF 1988)

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CHAPTER II

APPOINTMENT OF SPECIAL JUDGES

Power to
appoint
special Judges.

3. (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:—

(a) any offence punishable under this Act; and

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to prevent corruption relating to bribery of foreign public officials and officials of public international organisations and for matters connected therewith or incidental thereto.

(Shri V. Narayanasamy, Minister of State for Personnel, Public Grievances and Pensions)

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