

## Layers of protection: on changes in anti-corruption law

The amendments to the Prevention of Corruption Act, 1988, adopted recently by both Houses of Parliament, are a mixed bag. Moves to make changes in this law, aimed at combating corruption in government, were initiated during the UPA's second term in office and largely centred on the misuse of one provision — Section 13 (1)d. Former Prime Minister Manmohan Singh had criticised this section, under which public servants are culpable for securing a pecuniary advantage for another “without any public interest”, for ignoring a foundational principle of criminal law: *mens rea*. This resulted in many honest officials being prosecuted even when they gained nothing and merely exercised their power or discretion in favour of someone. Insofar as it had a chilling effect on governance and deterred bold decision-making, the amended form may have a liberating effect on honest officials. Besides, it is more concise and restricts criminal misconduct to two offences: misappropriating or converting to one's own use property entrusted to a public servant or is in his control, and amassing unexplained wealth. There was concern initially with the wording, “intentionally enriches himself illicitly during the period of his office”, as it raised a doubt whether the ‘intention’ to amass wealth would also have to be proved. Now an explanation has been added that a person “shall be presumed to have intentionally enriched himself” if he cannot account for his assets through known sources of income.

By making citizens liable for offering a bribe to a public servant, the anti-corruption law has been brought in line with the UN Convention Against Corruption. The only exception to this rule is when one is forced to give a bribe. This exception kicks in only when the fact that one was forced to pay a bribe is reported to a law enforcement authority within seven days. The penal provision can empower people by allowing them to cite it to refuse to pay a bribe. At the same time, what happens when the police or any other agency refuses to register a complaint? People may be left in the lurch with no redress. Further, it may render them vulnerable to threats from unscrupulous public servants who collect money to speed up public services but do not deliver. The most unacceptable change is the introduction of a prior approval norm to start an investigation. When a prior sanction requirement exists in law for prosecution, it is incomprehensible that the legislature should create another layer of protection in the initial stage of a probe. Public servants need to be protected against unfair prosecution, but a genuine drive against corruption needs a package of legislative measures. These should contain penal provisions, create an ombudsman in the form of a Lokpal or Lokayukta, as well as assure citizens of time-bound services and whistle-blower protection. Laws to fulfil these objectives are either not operational or are yet to materialise.

Sign up to receive our newsletter in your inbox every day!

Please enter a valid email address.

The U.S. policy of separating children from undocumented migrant parents is cruel

Our existing notification subscribers need to choose this option to keep getting the alerts.

END

Downloaded from [crackIAS.com](http://crackIAS.com)

© **Zuccess App** by [crackIAS.com](http://crackIAS.com)