

PRESENTATION ON

UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

Department of Personnel & Training
Ministry of Personnel, Public Grievances and Pensions
Government of India

By

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Foundation for democratic Reforms (FDR) and Lok Satta's Recommendations regarding implementations of provisions of chapters III&IV of the United Nation's Convention against Corruption

Issue 1: *Private Sector*

Articles 21, 22, 23 (Chapter III), Article 12 (Chapter II)

Our Recommendations:

- Scarce Natural resources: The need to move away from the existing national policy based on an opaque and non-competitive procedures, and towards a policy that is more transparent and competitive
- Regulatory Reforms-Service guarantees
- Imposition of a windfall profits tax on private parties which will profit enormously from the allocation of a public natural resource like coal for captive mining. Simultaneous already investments
- Monopoly
- Non-Governmental agencies, which receive substantial funding, should be covered under the Prevention of Corruption Act. Norms should be laid down that any institution or body that has received more than 50% of its annual operating costs, or a sum equal to or greater than Rs.1 crores during any of the preceding 3years should be deemed to have obtained 'Substantial funding' for that period and purpose of such funding.
- Restrictions regarding private employment of former Public officials.

Issue 2: *Immunity to bribe givers, expanding and strengthening scope of Corruption Offences*

Article 15(Chapter III)

Our Recommendations:

- **Immunity to bribe givers**
When corruption is rampant, we need reliable evidence to act decisively against public servants. Most corruption in India is extortionary where a citizen or corporate is fleeced by an unscrupulous official simply to do what was originally due to them or what they are entitled to. In such a scenario, it is important to give immunity to bribe givers who are victims of extortion in order to be able to prosecute corrupt officials. Even in countries like the US, plea bargaining is a very common occurrence where by a culprit gets immunity by cooperating with the officials.

- **Corruption offences should also include:**
 - Gross perversion of the constitution and democratic institutions amounting to willful violation of oath of office.
 - Abuse of authority unduly favoring or harming someone.
 - Obstruction of justice.
 - Squandering public money.

- **Offence of Collusive Bribery:**

Section 7 of the Prevention of Corruption Act needs to be amended to provide for a special offence of ‘collusive bribery’. An offence could be classified as ‘collusive bribery’ if the outcome or intended outcome of the transaction leads to a loss to the state, public or public interest. The punishments for all such cases of collusive bribery should be double that of other cases of bribery.

- **Burden of proof on the accused in such cases:**

In all such cases if it is established that the interest of the state or public has suffered because of an act of a public servant, then the court shall presume that the public servant and the beneficiary of the decision committed an offence of ‘collusive bribery’.

Issue 3: *Illicit enrichment* ***Article 20(Chapter III)***

Our recommendations:

- The Corrupt Public Servants (Forfeiture of Property) Bill as suggested by the 166th Law Commission should be enacted without further delay. In particular, the provisions for attachment, forfeiture and confiscation of corrupt proceedings should ensure that:
 - (a) Wealth/assets of corrupt public servants, not just the proceedings transacted in the corruption offences are covered.
 - (b) The assets/wealth of persons related to or associated with the corrupt public servant and benefitting from his offences should be covered.
 - (c) Hurdles to seizure and confiscation of ill-gotten wealth in the form of ill-defined “prior approval” provisions from the Central and State Government are not placed.
 - (d) Any income of public servants that is not declared / intimated as being from lawful sources should be considered as illegal.
- Immediate implementation of the Benami Transactions (Prohibition) Act, 1988 is necessary.

Issue 4: *Liability for corruption offences* ***Article 26(Chapter III)***

Our recommendations:

- **Stricter punishments:**

The punishments for all such cases of collusive bribery should be double that of other cases of bribery.

- **Mandatory Sentencing:**

A definite, long-term prison sentence is required to address serious offence, particularly those committed by higher officials, whether elected or appointed. Hence, it is recommended that conviction should entail a mandatory prison sentence of 5 years. All over the world, stiff prison sentences and confiscation of assets are employed in such offences. In cases of (i) involving large financial sums for serious economic offences, particularly those involving higher officials, (ii) collusive corruption, and (iii) breach of fiduciary responsibility and betrayal of public trust resulting in grave loss to the public exchequer, the minimum prison sentence should be 15 years. For instance, in the USA, former Illinois Governor Rod Blagojevich in federal corruption conviction was sentenced to 14 years and Doctors Arun Sharma and Kiran Sharma were sentenced to 15 years in a massive health care fraud, and their properties were confiscated.

Issue 5: *Prosecution, Investigations and prosecution, adjudication and sanctions* ***Article 30(Chapter III)***

Our recommendations:

Sanction for Prosecution:

- Prior sanction should not be necessary for prosecuting a public servant who has been trapped red-handed or in cases of possessing assets disproportionate to the known sources of income.
- The Prevention of Corruption Act should be amended to ensure that sanctioning authorities are not summoned and instead the documents can be obtained and produced before the courts by the appropriate authority.
- The Presiding Officer of a House of Legislature should be designated as the sanctioning authority for MPs and MLAs respectively.
- The requirement of prior sanction for prosecution now applicable to serving public servants should also apply to retired public servants for acts performed while in service.
- In all cases where the Government of India is empowered to grant sanction for prosecution, this power should be delegated to an Empowered Committee comprising the Central Vigilance Commissioner and the Departmental Secretary to Government. In case

of a difference of opinion between the two, the matter could be resolved by placing it before the full Central Vigilance Commission. In case, sanction is required against a Secretary to Government, then the Empowered Committee would comprise of Cabinet Secretary and the Central Vigilance Commissioner. Similar arrangements may also be made at the State level. In all cases the order granting sanction for prosecution or otherwise shall be issued within two months. In case of refusal, the reasons for refusal should be placed before the respective legislature annually.

Investigations:

- Permission to take up investigations under the present statutory arrangement should be given by the Central Vigilance Commissioner in consultation with the concerned Secretary. In case of investigation against a Secretary to Government, the permission should be given by a Committee comprising the Cabinet Secretary and the Central Vigilance Commissioner.
- This would require an amendment to the Delhi Special Police Establishment Act. In the interim the powers of the Union Government may be delegated to the Central Vigilance Commissioner, to be exercised in the manner stated above. A time limit of 30 days may be prescribed for processing this permission.
- Appropriate provision must be made in the case of states.

Issue 6: Protection of witnesses, experts and victims
Article 32(Chapter III)

Our Recommendations:

- Whistle blowers

Issue 7: Bribery of foreign public officials and officials of public international organizations
Article 16(Chapter III)

Our recommendations:

Issue 8: *Strengthening investigative techniques, Capacity addition*
Article 50(Chapter IV)

Our recommendations:

- Need to have a plan and action program to expand CBI almost ten-fold over the next ten years if the agency has to respond to the growing challenge and serve the country effectively. This should be coupled with adequate infrastructure for surveillance, forensic laboratories, Communications and mobility.
- There are only 6,000 personnel in the CBI with nation-wide jurisdiction. Of these, only about 2,000 are investigators. The number of corruption cases registered by CBI is of the order of 1,000 every year. Obviously, these are miniscule numbers in the face of a massive national problem.
- Similarly in State ACBs need to be strengthened by adding to their capacity with budgetary commitments and adequate resources.