

Bill No. 97 of 2012

**THE PREVENTION OF BRIBERY IN PRIVATE SECTOR
BILL, 2012**

By

SHRI VARUN GANDHI, M.P.

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BILL

to establish bribery as a criminal offence and to promote effective practices to prevent bribery in private sector and for matters connected therewith or incidental thereto.

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

1. (1) This Act may be called the Prevention of Bribery in Private Sector Act, 2012.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification
5 in the Official Gazette, appoint.

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

Definitions.

(a) "bribe" includes facilitation payments, directly or through third parties, gift, hospitality and expenses which may or perceive to affect the outcome of business transactions, which are not reasonable and *bonafide*:

Explanation.—The term 'bribe' shall become extortion when the demand of bribe is accompanied by threats that endanger the personal integrity or the life of the person involved, or forced payment of bribe to protect legitimate right or the speed money, for expediting approvals and for providing or not withholding services;

(b) "commercial entity" means— 5

(i) a body incorporated under the laws of India which carries on business in India or outside India; or

(ii) any other body corporate, wherever incorporated, which carries on business, or part of a business, in India; or

(iii) a partnership formed under the law in India which carries on business in India or outside India; or 10

(iv) any other partnership, wherever formed, which carries on business, or part of a business, in India:

Explanation.—The term 'business' includes any trade, profession, commerce or manufacture; 15

(c) 'confiscation' means the permanent deprivation of property by order of a court or other competent authority and also includes forfeiture;

(d) 'foreign public official' means any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected as permanent or temporary, paid or unpaid or any person performing a public function or a public service for a foreign country; 20

(e) 'non-governmental organisation' means a body incorporated under the laws in India or any other body corporate, wherever incorporated which carries on its charitable or religious activities in India, any society registered under the Societies Registration Act, 1860; a trust registered under the Indian Trusts Act, 1882 or association of persons which carries on its charitable or religious activities in India and includes community based organisations; 25 21 of 1860.
2 of 1882.

Explanation.—The term 'charitable or religious activities' means activities as defined in sub-section (15) of section 2 of the Income Tax Act, 1961: 43 of 1961.

(f) 'person' includes— 30

(i) an individual;

(ii) a company;

(iii) a firm;

(iv) a society;

(v) a trust; 35

(vi) a Hindu Undivided Family (HUF);

(vii) an association of persons or a body of individuals, whether incorporated or not;

(viii) limited liability partnership;

(ix) every artificial juridical person not falling within any of the preceding sub-clauses; and 40

(x) any agency, office or branch owned or controlled by such person;

(g) 'prescribed' means prescribed by rules made under this Act;

(h) 'proceeds of crime' means any property derived or obtained, directly or indirectly through the commission of offence under this Act; and 45

(i) 'property' means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.

- 5 **3.** (1) A person shall be guilty of committing an offence of giving bribe, when committed intentionally in the course of economic, financial or commercial activities when it is established that there is a promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a commercial entity, for the person himself or for another person, in order that he in breach of his duties, acts or refrains from acting in certain matters. Bribery in the private sector.
- 10 (2) A person shall be guilty of committing an offence of receiving bribe, when committed intentionally in the course of economic, financial or commercial activities when it is established that there is solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a commercial entity, for the person himself or for another person, in order that he in breach of his duties, acts or refrains from acting in certain matters.
- 15 **4.** A person shall be guilty of committing an offence of bribery to a foreign public officials, when committed intentionally in the conduct of international business, when it is established that there is an offer, promise or giving any undue pecuniary or other advantage, whether directly or through an intermediary, to a foreign public official, for that official or for a third party, in order that the official acts or refrains from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage. Offence of Bribery of foreign public officials.
- 20 *Explanation.*—For the purpose of this section, offence of bribery of foreign public officials includes complicity, incitement, aiding, abetting and authorization of an act of bribery of a foreign public official or an attempt and conspiracy to bribe a foreign public official.
- 25 **5.** (1) Any person, who in any capacity abets or aids or instigates another person to commit an offence under sections 3 or 4 shall be deemed to be guilty of offence under that section. Abet, aid or instigate another person to commit an offence of bribery.
- (2) Any person, who attempts to commit an offence under sections 3 or 4 shall be deemed to be guilty of an offence under that section.
- 30 **6.** A commercial entity shall be guilty of committing an offence under this section if a person associated with it, bribes another person intending— Offence of Bribing by commercial entity.
- (i) to obtain or retain business for the commercial entity, or
- (ii) to obtain or retain an advantage in the conduct of business for the commercial entity:
- 35 Provided that the commercial entity may in defence prove that it has in place adequate procedures, as may be prescribed, designed to prevent persons associated with it from undertaking such conduct.
- 7.** A non-governmental organisation shall be guilty of committing an offence under this section if a person associated with it, bribes another person intending— Offence of bribery by non-governmental organisation.
- 40 (i) to obtain or retain assets, grants for the non-governmental organization; or
- (ii) to obtain or retain an advantage in the conduct of its charitable activities:
- Provided that the commercial entity may in defence prove that it has in place adequate procedures, as may be prescribed, designed to prevent persons associated with it from undertaking such conduct.
- 45 **8.** (1) Where a company contravenes any provision of this Act, every person who, at the time when contravention was committed, was in charge of or was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of offence and be punished accordingly: Offence of bribery by company.

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where any contravention has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of committing contravention and shall be liable to be proceeded against and punished accordingly. 5

Explanation.—For the purposes of this section,— 10

(i) 'company' means anybody corporate and includes a firm, society, trust, limited liability partnership or other association of persons; and

(ii) 'director' in relation to a firm means a partner of the firm and in relation to a trust means trustee of the trust.

Penalties. **9.** (1) An individual guilty of an offence under sections 3 or 4 shall be liable on the first offence, for imprisonment for a term not exceeding five years or to a fine not exceeding rupees three lakh or both and for second or subsequent contravention, for imprisonment for a term not exceeding ten years or to a fine not less than rupees five lakh or both. 15

(2) any other person guilty of an offence under sections 3 or 4 shall be liable on the first offence, to a fine not exceeding rupees two lakh and for second or subsequent contravention, to a fine not less than rupees three lakh. 20

(3) A person guilty of an offence under section 5 is liable on conviction to a fine not more than rupees one lakh.

Confiscation of proceeds of crime. **10.** (1) On conviction of a person the proceeds of crime derived from or involved in offences under sections 3 or 4, or the property the value of which corresponds to that of such proceeds shall be confiscated. 25

(2) If proceeds of crime have been transformed or converted, by the person in part or in full, into other property, such property shall be liable to be confiscated.

(3) If proceeds of crime have been intermingled by the person with property acquired from legitimate sources, such property shall be liable to be confiscated up to the assessed value of the intermingled proceeds. 30

(4) Income or other benefits derived by any person from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to be confiscated in the same manner and to the same extent as proceeds of crime. 35

(5) For the purpose of this section, notwithstanding any rights or privilege provided through any other Act or by an agreement between the parties, the adjudicating authority shall have authority to order any bank, financial institution, financial intermediary or commercial entity to provide information, seize or produce records, freeze accounts and remit the proceeds of crime to the designated account. 40

(6) The proceeds of crime confiscated under this Act shall vest in the Central Government.

Power to appoint Special Judges. **11.** (1) **The Central Government, shall, by notification in the Official Gazette, appoint such number of Special Judges as may be necessary to try the offences punishable under this Act.** 45

(2) A person shall not be qualified for appointment as a Special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge under the Code of Criminal Procedures, 1973. 2 of 1974.

2 of 1974. (3) A Special Judge shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the trial.

(4) A Special Judge, while trying an offence punishable under this Act shall exercise all the powers and functions exercisable by a District Judge.

5 12. Subject to the provisions of this Act, the High Court may exercise, so far as 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 Special Judge was a Court of Session trying cases within the local limits of the High Court. Appeal and revision.

10 13. (1) The Central Government shall take appropriate steps to provide effective protection from potential retaliation or intimidation to witnesses, reporting persons and experts who give testimony concerning offences established under the Act and to their relatives. Protection of witnesses and reporting persons.

15 (2) The Central Government shall establish procedures for the physical protection of such witnesses and reporting persons and for non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons.

(3) The provisions of the sub-sections (1) and (2) shall also apply to victims in so far as they are witnesses.

(4) In cases of extortion bribe, if the bribe giver files a complaint, he shall be protected under this clause as a whistleblower:

20 Provided that this protection shall not be made available in case of speed money.

14. (1) The commercial entities shall make adequate procedures, as may be prescribed, designed to prevent persons associated with it from undertaking bribery. Prevention of bribery by commercial entity.

25 (2) The procedures shall provide for commercial entities to establish and ensure the effectiveness of internal controls, ethics and compliance measures for preventing and detecting bribery and shall *inter alia*, include,—

(i) a clearly articulated and visible policy prohibiting bribery;

(ii) instructions for strict compliance with the policy at all levels of the entity;

(iii) appropriate disciplinary procedures to address violation of the procedures at all levels of the entity;

30 (iv) setting up of independent monitoring body;

(v) oversight of ethics and compliance measures and reporting to the independent monitoring body;

35 (vi) ensuring applicability of the policy and procedures to third parties such as agents, intermediaries, consultants, representatives, distributors, partners, contractors, advisors, suppliers, associates, subsidiaries and joint venture partners and seeking commitment from such third parties to adhere to policy prohibiting bribery;

(vii) measures for periodic communication and training at all levels of the entity of laws against bribery and entity's policy against bribery; and

40 (viii) putting in place an appropriate whistleblower mechanism including rewards for reporting and protection of the whistleblowers.

15. (1) The banks, financial institutions and other financial intermediaries shall take reasonable steps to determine the identity of beneficial owners of funds deposited into the accounts of such customers in such manner as may be prescribed. Prevention and detection of proceeds of crime.

45 (2) The banks, financial institutions and other financial intermediaries shall maintain record of beneficial owners under sub-section (1) and shall provide such information as and when required by the adjudication authorities.

Provision of the Act not in derogation of any other law for the time being in force.

16. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force in relation to any of the matters provided under this Act.

Power to make rules.

17. (1) The Central Government shall, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The problem of bribery has assumed alarming proportions. It is estimated that a significant proportion of our Gross Domestic Product is lost on account of this widespread corruption in offices of public and private sector. Therefore, bribery not only hurts the psyche of the people but it also hurts the economic growth. Moreover, the problem is more hurting to the poor as they are the most vulnerable section of the society.

Bribery by the Government officials is only one part of the issue. Bribery is also rampant in private sector. There is dearth of laws to address the issue of bribery in private sector. The Bill seeks to provide a legislative framework to resolve the issue. The Bill also seeks to provide for a witness protection programme to be implemented by the Government.

Hence this Bill.

NEW DELHI;
July 7, 2012.

VARUN GANDHI

FINANCIAL MEMORANDUM

Clause 11 of the Bill provides for appointment of Special Judges to try the offences under this Act. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve an annual recurring expenditure of about rupees one hundred crore from the Consolidated Fund of India.

A non-recurring expenditure of about rupees forty crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 17 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. Since the rules will relate to matters of detail only, the delegation of legislation power is of a normal character.

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