

Fast-track enactment & enforcement of anti-corruption laws

SEPTEMBER 02, 2016

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THE

recent presentation of report of Select Committee of Rajya Sabha on The Prevention of Corruption (Amendment) Bill, 2013 should serve as soul-searching opportunity for law makers.

Members of Parliament (MPs) should dwell on their lackadaisical approach toward battling corruption. After we elaborate the inordinate delay in enacting three anti-bribery laws, the readers of edit might consider the word 'lackadaisical' as too soft a description for lip-service that politicians pay to anti-corruption resolve. After getting elected, politicians conveniently forget their poll rhetoric on corruption, which has indisputably eaten into vitals of governance system. And what holds true for delay in enacting anti-bribery laws also holds true for tortuous delays in passing several laws relating to different domains through both houses of Parliament.

This calls for a separate discourse on reinventing the entire law-making process to cut delays, frequent amendments and poor drafting that leads to avoidable litigation.

The long saga of Prevention of Corruption (Amendment) Bill, 2013 to amend the Prevention of Corruption Act, 1988 (PCA) started during UPA-I regime. The 2008 version of the Bill lapsed due to dissolution of the 14th Lok Sabha. The 2013 Bill survived its demise because it was introduced in the Rajya Sabha on 19th August 2013. As we know, a bill introduced in upper house does not lapse with the dissolution of lower house.

The Bill was referred to Parliament Standing Committee (PSC) on Personnel, Public Grievances, Law and Justice, which presented its report during February 2014. After taking into view PSC's recommendations and the ones made by the Law Commission in its 254th report, Modi Cabinet cleared 31 official amendments to 2013 Bill on 29th April 2015.

The Government gave notices for further consideration the Bill during the Budget, Monsoon and Winter Sessions of 2015 of the Parliament. Rajya Sabha finally considered The Bill with official amendments on 3rd December 2015. After initial discussions, the House decided to refer the Bill to Select Committee of the Rajya Sabha. This unanimous decision was taken ostensibly on the ground that proposed official amendments were **"substantive in nature"** and had **"far reaching impact"** on the Bill.

In its report submitted on 12th August 2016, the Select Committee has made certain recommendations, which the Government would have to consider. This exercise might necessitate further changes to the Bill. It is not clear when the Cabinet would take a call on recommendations of the Select Committee.

In all probability, the updated Bill is likely to be reconsidered for passage by Rajya Sabha sometime during 2017. Thereafter, Lok Sabha has to discuss and pass the bill. The country would have thus taken 10 years to amend PCA, assuming the Bill is enacted and assented by the President.

Imagine how effectively the Bill would have tackled corruption, if it had become law several years back. The Bill's notable features include specifying timelines for clearing corruption cases by the Special Judge & penalizing companies for paying bribes as well as individuals that offer bribes.

Consider now the story of Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011. This Bill was drafted to comply with Article 16 of United Nations Convention Against Corruption (UNCAC). India signed UNCAC in December 2005 and ratified it during May 2011.

This Bill also went through elaborate route before its demise. Lok Sabha referred it PSC, which recommended certain changes in the Bill during March 2012. In August 2012, UPA Cabinet accepted these recommendations and decided to move the Bill in Lok Sabha with official alterations.

As put by an official explanation, ***"A consolidated notice for moving official amendments along with a notice for consideration and passing of the Bill were sent to Lok Sabha during Budget Session, 2013 and Monsoon Session, 2013 of the Parliament respectively, but the Bill did not come up for consideration."***

Necessary notices were again sent to Lok Sabha Secretariat for consideration and passing of the Bill during the Winter Session of Parliament, but the Bill could not be taken up during the extended Winter Session also and the Bill has ultimately lapsed (in May 2014) with the dissolution of the 15th Lok Sabha."

Modi Government revised the Bill and renamed it as Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2015 and sought Law Commission's views. The latter submitted its report in August 2015. It is not yet known when and in which House the Government would introduce updated Bill, incorporating LC recommendations.

According to an official release issued in August 2015, The 2015 Bill has three key parts, dealing with, firstly, the offences; secondly, the processes for investigation and prosecution of the offences; and thirdly, the interrelation of the Bill with other laws and miscellaneous matters.

In line with other countries, the 2015 Bill criminalises the offence of active bribery, that is, the offence of giving bribes to foreign officials. However, unlike most other jurisdictions, the Indian draft law also criminalises the offence of passive bribery, which deals with the acceptance of bribes by foreign officials.

Consider now another anti-corruption bill named the Whistle Blowers Protection Act, 2011 (WBPA), which was notified in the Gazette on 12th May 2014. The Law has not yet been enforced. The rules under WBPA have also not yet been framed.

This status quo is expected to persist till the Government amends the Act to incorporate official amendments, which could not be inserted in The Whistle Blowers Protection Bill, 2011.

As put by the Government in a reply to a Parliament question dated 27th April 2016,

"As the Bill was taken up on the last day of the last Session of the 15th Lok Sabha, the official amendments to the Bill (aimed at safeguarding against disclosures affecting sovereignty and integrity of India, security of State, etc.) were not moved. Since the proposed amendments are of crucial nature, the said Act has not been brought into force. The Act can be brought into force only after necessary amendments are carried out. Further, the Rules under the Act can be notified only after the Act is brought into force."

The Reply continues:

"To address the said inadequacies, Whistle Blowers Protection (Amendment) Bill, 2015 was introduced in the Lok Sabha on 11th May, 2015 and was passed by the said House on 13th May, 2015. Having been passed by the Lok Sabha, the Whistle Blowers Protection (Amendment) Bill, 2015 is presently before the Rajya Sabha."

Similarly, the Lokpal and Lokayuktas Act, 2013 was notified on 1st January 2014. The Act is still in amendment mode. The most eagerly-awaited Lok Pal has thus not yet been constituted.

Keeping in view these facts, the Legislative-Executive Combine should rework sickening slogan - 'Zero Tolerance Against Corruption' as 'Zero Tolerance Against Delay in Anti-Corruption Enactments & Enforcements.'