

19 – 11 – 2021

News: Bribery Risk Matrix

Bribery Risk Matrix 2021

- Bribery Risk Matrix 2021 was released by **TRACE, an anti-bribery standard setting organisation.**
- The matrix **measures business bribery risk in 194 countries, territories, and autonomous and semi-autonomous regions.**
- It was **originally published in 2014** to meet a need in the business community for more reliable and nuanced information about the risks of commercial bribery worldwide.
- It aggregates relevant data obtained from leading public interest and international organisations, including the **United Nations, World Bank, V-Dem Institute at the University of Gothenburg and World Economic Forum.**
- Score is calculated on the **basis of four factors: Enforcement and anti-bribery deterrence, Business interactions with the government, Government and civil service transparency and Capacity for civil society oversight which includes the media's role.**

Performance of the Countries

- India has slipped to 82nd position (with 44 points scored) in 2021, five places down from 77th rank last year (with 45 points scored).
- India fared better than its neighbours – Pakistan, China, Nepal and Bangladesh. Bhutan, meanwhile, secured 62nd rank.
- North Korea, Turkmenistan, Venezuela and Eritrea pose the highest commercial bribery risk while Denmark, Norway, Finland, Sweden and New Zealand present the lowest.
- Over the past five years, the business bribery risk environment in the United States worsened significantly when compared with global trends.
- From 2020 to 2021 all of the Gulf Cooperation Council (GCC), countries saw an increase in commercial bribery risk.

News: SC sets aside Bombay High Court judgment, says skin Contact not necessary to be taken as sexual assault

- The Supreme Court set aside a controversial Bombay High Court judgment which had held that the 'skin-to-skin' contact was necessary to be taken as 'sexual assault' under Section 7 of the Protection of Children from Sexual Offences (POCSO) Act.

- Ingredient of the offence of 'sexual assault' under POCSO is sexual intent and skin to skin contact in such incidents is not relevant.
- The Bench underscored that the law has to be given an interpretation that gives effect to the intention of legislature instead of defeating it.
- The Apex Court added that mandating 'skin to skin' contact would amount to a narrow and absurd interpretation.

The Protection of Children from Sexual Offences Act, 2012

- The Protection of Children from Sexual Offences Act, 2012 is an act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.
- The Ministry of Women and Child Development is the enforcing ministry of POCSO Act.

Features of the Act

- “Children” according to the Act are individuals aged below 18 years. The Act is gender-neutral.

- Different forms of sexual abuse including but not limited to **sexual harassment, pornography, penetrative & non-penetrative assault** are defined in the Act.
- Sexual assault is deemed to be “aggravated” under certain circumstances such as when the child is mentally ill. Also when the abuse is committed by the person in a position of trust such as a doctor, teacher, policeman, family member.
- Adequate provisions are made to avoid re-victimization of the Child at the hands of the judicial system. The Act assigns a policeman in the role of child protector during the investigation process.
- The **Act stipulates that such steps must be taken which makes the investigation process as child-friendly as possible and the case is disposed of within one year** from the date of reporting of the offence.
- The Act provides for the **establishment of Special Courts for the trial of such offences** and matters related to it.
- Under section 45 of the Act, the **power to make rules lies with the central government.**
- To monitor the implementation of the Act, the **National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs)** have been made the designated authority.

- Section 42 A of the Act provides that **in case of inconsistency with provisions of any other law, the POCSO Act shall override such provisions.**
- The Act calls for **mandatory reporting of sexual offences.** A **false complaint with intent to defame a person is punishable under the Act.**
- The recent amendments **extend the punishment for aggravated penetrative sexual assault from a minimum of 10 years to a minimum of 20 years, up to a maximum of life imprisonment and even the death penalty** under Section 6 of POCSO Act.
- The maximum punishment of death will also be applicable **when sexual assault victims are children with mental or physical disabilities, in cases of repeat offenders, rape and attempt to murder, and rape during communal violence.**

General Principles

- The Protection of Children from Sexual Offences Act, 2012 mentions **12 key principles which are to be followed by anyone,** including the State Governments, the Child Welfare Committee, the Police, the Special Courts, NGOs or any other professional present during the trial and assisting the child during the trial.

These include:

- **Right to life and survival** – A child must be shielded from any kind of physical, psychological, mental and emotional abuse and neglect.
- **Best interests of the child** – The primary consideration must be the harmonious development of the child.
- **Right to be treated with dignity and compassion** – Child victims should be treated in a caring and sensitive manner throughout the justice process.
- **Right to be protected from discrimination** – The justice process must be transparent and just; irrespective of the child's cultural, religious, linguistic or social orientation.
- **Right to special preventive measures** – It suggests, that victimised children are more likely to get abused again, thus, preventive measures and training must be given to them for self-protection.
- **Right to be informed** – The child victim or witness must be well informed of the legal proceedings.
- **Right to be heard and to express views and concerns** – Every child has the right to be heard in respect of matters affecting him/her.
- **Right to effective assistance** – financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's healing must be provided.

- **Right to Privacy** – The child's privacy and identity must be protected at all stages of the pre-trial and trial process.
- **Right to be protected from hardship during the justice process** – Secondary victimisation or hardships for a child during the justice procedure must be minimised.
- **Right to safety** – A child victim must be protected before, during and after the justice process.
- **Right to compensation** – The child victim may be awarded compensation for his/her relief and rehabilitation.

News: No consensus on limiting Speaker's powers

- The **All India Presiding Officers' Conference (AIPOC)** ended on Thursday with the delegates failing to reach a consensus on whether the Speaker's powers under the anti defection law should be limited.

Anti-Defection Law

- The Anti-defection law **punishes individual Members of Parliaments /Member of Legislative Assemblies** for leaving one party for another.
- Parliament added it to the **Constitution as the Tenth Schedule in 1985** (during the tenure of Rajiv Gandhi).

- Its purpose was to bring stability to governments by discouraging legislators from changing parties.
- The Tenth Schedule - popularly known as the Anti-Defection Act - was included in the Constitution via the 52nd Amendment Act, 1985 and sets the provisions for disqualification of members of legislatures on the grounds of defection to another political party.
- It was a response to the toppling of multiple state governments by party-hopping MLAs after the general elections of 1967.
- However, it allows a group of MP/MLAs to join (i.e. merge with) another political party without inviting the penalty for defection.
- And it does not penalise political parties for encouraging or accepting defecting legislators.
- As per the 1985 Act, a 'defection' by one-third of the elected members of a political party was considered a 'merger'.
- But the 91st Constitutional Amendment Act, 2003, changed this and now at least two-thirds of the members of a party have to be in favour of a "merger" for it to have validity in the eyes of the law.
- The decision on questions as to disqualification on ground of defection are referred to the Chairman or the Speaker of such House, which is subject to 'Judicial review'.

- However, the law does not provide a time-frame within which the presiding officer has to decide a defection case.

Grounds of Disqualification

- If an elected member voluntarily gives up his membership of a political party.
- If he votes or abstains from voting in such House contrary to any direction issued by his political party or anyone authorised to do so, without obtaining prior permission.
- As a pre-condition for his disqualification, his abstention from voting should not be condoned by his party or the authorised person within 15 days of such incident.
- If any independently elected member joins any political party.
- If any nominated member joins any political party after the expiry of six months.

Unregulated powers of Presiding Officers in Anti Defection Law

- In many instances, the Speaker (usually from the ruling party) has delayed deciding on the disqualification.