

**YOU CAN BRIBE**

The practicalities of implementing legal immunity  
for the bribe giver



By

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## Table of Contents

Abstract.....	3
Introduction.....	4
Methodology.....	4
The Proposal.....	5
International Experience.....	5
Corruption in India.....	7
Literature Review.....	8
Arguments and Counter-arguments.....	9
The Problem with Implementation.....	12
Possible Solution.....	14
Conclusion.....	16

## **Abstract**

This paper sets out to clarify and discuss some of the assumptions embedded within Dr. Kaushik Basu's controversial proposal in 2011 to implement legal immunity for the bribe-giver in the Indian context. In doing so, it takes into account international experience, and addresses some of the various arguments that have been put forward against the proposal. A potential problem in implementing the policy is identified, and a possible solution - a generalised application of the policy across problematic sectors in government, coupled with conditional immunity – is put forward and discussed.

## **Introduction**

This paper will be exploring the practicalities of implementing legal immunity for the bribe-giver. Kaushik Basu, Chief Economist of the IMF, in 2011 made a policy suggestion which caused a great deal of controversy in India. The policy change he proposes will, in his view, lead to a significant reduction in the number of ‘harassment bribes’ in the country, by providing immunity from prosecution for the bribe-giver, doubling the punishment for the bribe-taker, and making the bribe-taker repay the bribe amount.

Will this policy proposal result in a significant reduction in harassment bribery, and can it be practically implemented? The objective of this paper is to evaluate the efficacy of this policy proposal in the Indian context and judge whether its implementation is

- a) Feasible, and
- b) Likely to deliver a significant reduction in harassment bribery.

In answering these questions, this paper makes the argument that there are potential problems in the implementation of this policy, which will likely not result in a significant reduction in harassment bribery. These problems, however, can be solved in two ways, resulting in a policy which could be more effective in real world application, and which will be discussed further in the paper.

## **Methodology**

To achieve the paper’s objectives, I have considered international experience in anti-bribery legislation, considered the arguments made against the proposal, questioned the relevant stakeholders, conducted a survey to ascertain the feasibility of the proposal, and sought to develop conclusions that would aid in its implementation and success.

### **International Experience**

I have looked at international experience regarding anti-bribery legislation in countries where bribery is not endemic, and in countries where it is – from the United States, to Brazil. These international experiences have given the paper grounding from which to analyse and appraise the efficacy of the proposed policy suggestion.

### **Stakeholders**

The stakeholders involved in this policy change include government officials, anti-corruption regulatory bodies, and ordinary citizens. I have canvassed two of the stakeholders (anti-corruption regulatory bodies and ordinary citizens), however due to the sensitive nature of the legislation, I was not able to interview government officials directly about the issue.

The anti-corruption regulatory bodies gave me valuable information regarding the processes by which bribes are reported, and in clarifying jurisdictions and responsibilities shared by each of the bodies. I have spoken to Ms. Dharini Mishra, spokesperson for the Central Bureau of Intelligence, and Mr. N. Vittal, ex-chief of the Central Vigilance Commission, who both gave me insights into how the regulatory bodies are set up and function, and their shortcomings.

## Survey

In my survey of 40 respondents, gathered and requested to take the survey via social media, I asked eight questions pertaining to their experiences with bribery, their thoughts on legalising bribe-giving, and their self-reported predictions regarding what they would do in certain circumstances outlined by me, relating to the policy suggestions. Some of these included “Would you report a bribe, if bribe giving was made legal?”, “Would you report a bribe if bribe-giving was made legal and you were entitled to your bribe amount back?” and “Would you report a bribe if bribe-giving was legal, you were entitled to your bribe amount back, but the process of reporting was time-consuming?”.

Their responses gave me indications about what ordinary citizens consider important when thinking about issues of harassment bribery that they face in daily life.

## The Proposal

Kaushik Basu’s aims to achieve a significant reduction in the incidence of ‘harassment bribery’ in India by changing the current anti-bribery laws so that the interests of the bribe-giver and bribe-taker are at a divergence. Right now, both bribe-giver and bribe-taker are at equal fault in the eyes of the law, and both are equally liable for punishment (6 months to 5 years imprisonment and a fine). He deals specifically with the case of ‘harassment bribery’, as opposed to collusive bribery, which he defines as “bribes that people often have to give to get what they are legally entitled to”. He suggests that in such cases, bribe-giving should be considered legitimate, and the bribe-giver should be immune from punishment as well as entitled to their bribe amount back if reported, whereas the bribe-taker should be liable for double the current punishment. Where under current law, both the bribe-giver and bribe-taker have an incentive to keep the bribe confidential for fear of punishment, under the new proposal, the interests of the bribe-giver and bribe-taker diverge. It is now possible for the bribe-giver to pay the bribe in order to get her work done, and then report the bribe-taker and potentially get her bribe money back, after having received the service she was after. Importantly, the policy will not apply retrospectively to bribe--givers and takers, as the key to the deterrent effect of this policy lies in the fact that both parties are aware that the case is one of harassment bribery, and therefore the bribe-giver can report with no legal repercussions, as explained by Basu here:

*“What is being argued is that the law should be changed, so that, at the time of committing harassment bribery, both parties know that the giver has immunity and that the taker not only has a heftier penalty but also has to return the bribe. If we simply grant clemency to the bribe giver after the crime has been committed, none of the benefits being talked about here will be achieved.”* (Basu, 2011, 7)

## International experience

At present, India follows a system of *symmetric liability*. This means that both the bribe-giver and the bribe-taker face the same punishments if caught. Under the Prevention of Corruption Act, three sets of offences are covered; bribe-taking by a public servant, bribe-giving (under ‘abetment to an offence’), and influence/bribing of a public servant by middlemen. Punishments for these offences range between 6 months to 5 years and a fine. (The Prevention of Corruption Act, Chapter III)

Across the world, there are differing legal regimes to deal with the problem of corruption and bribery. Some utilise symmetric liability, and some asymmetric liability. To get a better picture of the kinds of incentive structures and punishment regimes that exist, we can examine the bribery laws of a few countries.

In countries like the United States, the United Kingdom, and France, symmetric liability is practiced.

In the United Kingdom, the 2010 Bribery Act provides that any individual, upon conviction on indictment is liable to not more than 10 years imprisonment, or a fine, or both. This clearly makes no distinction between bribe-giver and bribe-taker, and is truly symmetrical liability (Engel et al., 2012, 29).

In the French penal code, it is provided that both the individual and the public official are punishable by imprisonment of up to 10 years, and a fine of 150,000 francs as of 2010, making this also a case of symmetric liability (Engel et al, 2012, 29).

In the United States, the punishment for giving or accepting a bribe in the case of ‘violation of official duty’ is a fine of “not more than 3 times the monetary value of the thing of value”, and up to 15 years imprisonment, or both. In the case of ‘discharge of official duty’, the fine remains the same, with imprisonment of up to 2 years, or both. However, the 2010 Federal Sentencing Guidelines Manual distinguishes between officials and non-officials when awarding the base-level punishment, with this being 14 years for public officials, and 12 years for non-officials. This suggests some level of asymmetry in the perception of the crime (Engel, Georg, & Yu, 2012, 29).

*Asymmetric liability* is practiced in countries like Japan, Russia, and China, where the bribe-giver and bribe-taker are not given equivalent punishments.

In Japan (Article 197 of the Penal Code), a public official involved in bribery is punished with not more than 7 years imprisonment with work, whereas the bribe-giver is punished with not more than 3 years imprisonment with work, OR a fine of not more than 2,500,000 yen. (Engel et al, 2012, 30)

China provides different levels of punishment depending on the severity of the crime, with the highest being the death penalty for the public official involved in bribery, and lifetime in prison for the corresponding bribe-giver. Like Japan, this shows a difference in the way that corrupt officials and corrupt citizens are perceived (Engel et al, 2012, 30).

Germany practices a mixed system, where ‘violation of duty’ bribes are punished asymmetrically (higher punishments for bribe-giver) and ‘discharge of duty’ bribes are punished symmetrically (same punishments for giver and taker) (Engel et al, 2012, 29)

It can be seen that different countries have very different regimes to deal with the problem of bribery.

Let us look at countries that are more similar in composition, levels of corruption and

strength of institutions to India. Brazil offers a good example of this. It was ranked 69<sup>th</sup> (a few places above India) in the Global Corruption Perceptions Index, and is known to have corrupt institutions.

Article 333 of the Brazilian Penal Code “prohibits offering or promising an undue advantage to a public official to induce him or her to perform, omit, or delay an official act. Persons in violation of this provision face two to twelve years of imprisonment and a fine. The Brazilian Penal Code also prohibits so-called “passive bribery” on the part of public officials. Article 317 holds public officials criminally liable for soliciting, receiving, or accepting the promise of an undue advantage, for themselves or other persons, either directly or indirectly” (Goel, 2012, 111-112). The same penalty applies for passive corruption (Lovitt & Smith, 2012, 5).

Here, the principle of symmetric liability is applied, but it appears that bribe-givers are implicitly considered more at fault than bribe-taking public officials, by being categorised as ‘active’ rather than ‘passive’.

We can see, therefore, that although there are distinctions made between public officials and non-officials, and regarding different kinds of bribery in the various international legal regimes, there is no distinction made between ‘harassment’ and ‘non-harassment’ bribery in international experience as of yet. None of these legal regimes have taken into account the kind of bribery that is made necessary or inevitable by the system itself.

Kaushik Basu in his policy suggestion, offers a way to deal with this particular kind of bribery, which is rampant in India.

### **Corruption in India**

In 2012, India ranked 94<sup>th</sup> out of 174 on the Transparency International Corruption Perception Survey (Transparency International, 2012) in the company of Colombia, Mongolia and Greece, among others. Transparency International also reports that 54% of Indians have paid a bribe.

India Today reports that the bribe economy costs the country Rs. 6,29,675 crore annually, equivalent to 6.3% of India’s total GDP. Statistics by the Janaagraha Centre for Citizenship and Democracy, based on reports on the website ipaidabribe.com, show that by far the most corrupt government department is the police, with 30% of reported bribes being for passport verifications, and 25% for traffic offences (Datta, 2013). These worryingly high incidences of corruption and bribery in this country led to the proposal of Basu’s “small, but radical” policy change. It has come under a lot of criticism, which will be evaluated in the rest of this paper.

## **Literature Review**

A game-theoretic analysis by Abbink, Dasgupta, Gangatharan and Jain (2012) on the efficacy of leniency for the bribe-giver as described by Basu finds his leniency policy results in fewer bribe-demands and more bribe-reporting than the current symmetric liability policy, with a few caveats. They find that “bolstering institutional set-up is important to realise the full benefits of this leniency policy” (pp. 29). Specifically, they find that when officials are able to retaliate against bribe-givers, the incidence of reporting goes back down to the same low levels as before the policy enactment, rendering the policy ineffective. They also suggest implementing whistle-blower protection to cut down the possibility of retaliation. However, it must be noted that in his policy proposal, Basu takes pains to leave out ‘repeated game’ interactions, where bribe-givers must come into contact with the bribe-takers on a regular basis, and he concedes that this policy would have no effect in such situations, as the bribe-giver will know that retaliation is possible, and will thus be deterred from reporting the bribe. So we can see that in the situations carefully prescribed by Basu, this analysis shows that the incentive structures would function correctly, resulting in increased bribe-reporting and decreased bribe-demands.

Another similar game-theoretic analysis of Basu’s policy proposal conducted by Dufwenberg and Spagnolo (2012) finds that the effectiveness of the policy would succeed in reducing harassment bribes, but that the success of the policy “largely depend on the quality of the institutions of the country in which it is introduced” (pp. 19). They find that the policy may be counter-productive in situations where institutions are weak, and where the bribe-givers are fearful of being harassed by the corrupt official. The authors find that improving enforcement mechanisms and legal institutions are of central relevance to implementing the policy, and should take precedence over all other measures. However, it must be noted that cleaning up enforcement agencies and legal institutions will not be a quick-fix, and is not feasible as a policy reform in the near future. Of course legal institutions and enforcement mechanisms must be made efficient, however, if they were efficient to start with, the problem the policy aims to solve would be a lot less complicated. Therefore, the aim of the proposed policy is to change the current incentive-structure to encourage people to report, without having to first change the enforcement mechanisms and legal institutions. Compared to the current situation, where bribe-reporting is not incentivised, even in the absence of stronger enforcement and institutions, the proposed policy change would be an improvement, simply by removing the disincentive to report (the current illegality of bribe-giving) and providing an incentive (retrieving bribe amount).

Both of these studies anticipate that the policy proposal would work, given a few caveats, relating to efficient enforcement mechanisms and efficient legal institutions. However, as will be discussed in the rest of the paper, the policy proposal can function as intended even without reforming legal institutions and enforcement mechanisms. Indeed, the point of the proposal is to create an implementable way of changing incentive-structures to encourage reporting, thus decreasing the demand for bribes.



## **Arguments and counter-arguments**

Developmental economist Jean Dreze captures much of the controversy in his arguments against Basu's proposal. The substantive argument against Basu's suggestion is two-fold, the first a game-theoretic argument, and the second a moral argument:

1. Making bribe-giving legal creates a situation in which a bribe-giver can pay a bribe without feeling as though she has done something wrong, and can get away with not reporting. So, rather than 'don't pay a bribe' or 'pay a bribe and report', a third option is available, which is 'pay a bribe and don't report'. The third option is particularly attractive if the transaction costs of reporting are high. This, he contends, will lead to an increase in the incidence of bribery, which would be counterproductive to the intent of the law (Dreze, 2011).
2. Making bribe-giving legal also serves the purpose of legitimising the act in the eyes of the bribe-giver, which goes against Basu's argument that "if we really want to get at corruption, what we need to build up are values of honesty and integrity in society". Making bribe-giving legal would make it seem moral and absolve the bribe-giver of guilt, he argues. If it does not make it seem more moral, then why would the bribe-giver report and draw attention to her own immorality? Central to this line of argument is his belief that the bribe-giver is not simply a victim of harassment, but a facilitator of corruption by not using other means to resist bribery and instead becoming a part of it (Dreze, 2011).

Let us tackle these arguments.

1. An experiment done by Abbink, Dasgupta, Gangatharan & Jain (2012) at the Indian School of Business yields results that negate this argument. In the experiment, four games were conducted; one under a symmetric liability condition (where bribe-giver and taker are punished equally), one under an asymmetric liability condition (where bribe-giver is immunised and entitled to her bribe money back, and only bribe-taker is penalised), one under a retaliation condition (where the bribe-taker can retaliate against the bribe-giver who reports) and one under a no-refund condition (where the reporting bribe-giver does not get her bribe money back). Their findings were that in the symmetric liability condition, 58% of bribe-givers chose to 'pay quietly', that is, pay the bribe and not report. However, in the asymmetric liability condition, this percentage had shrunk to 29%. This suggests that in an asymmetric liability condition, players are indeed incentivised to report bribes, as per Kaushik Basu's prediction. In all four conditions, the proportion of players who chose not to give a bribe at all remained fairly constant, at 18-20%, suggesting that changes in the incentive structure or law will not necessarily change the morality of citizens.
2. This second argument concerns morality. What Dreze fails to acknowledge, is that in a country where bribery is so endemic as in India, the citizen who pays a bribe because she has no other recourse to obtaining a service she is owed, is less morally culpable than a public official who abrogates his official duty in order to satisfy his greed. Harassment bribes by definition, are bribes that the citizen does not want to pay, but is compelled to in some way. Legalising bribe-giving, therefore, is unlikely to make the bribe-giver see the act as moral, or desirable. The bribe-giver will, however, now be empowered to report the bribe-taker, instead of being equally

implicated in the injustice of being made to pay a bribe. In many cases, the bribe-giver often has no choice but to either pay the bribe, or go without the service she is after. When the service she needs is vital (a tax refund, a passport, a marriage certificate) there is often no feasible way to resist corruption without suffering serious setbacks. In light of this, it is useful to differentiate morally between the bribe-taker and bribe-giver. The bribe-giver is immoral on one level; violating her civic duty to not participate in the corruption of the system. Whereas the bribe-taker is immoral on two levels; violating his civic duty to not participate in a corrupt system, and betraying his obligations as a government agent by refusing to provide a service he is being paid (by the government, and therefore taxpayers) to provide. Therefore, the bribe-taker is more immoral than the bribe-giver, and the justice system must reflect that difference. In this respect, Basu's policy proposal correctly differentiates between bribe-giver and bribe-taker.

More scathing criticism of Basu's suggestion came from journalist P. Sainath, in an article for *The Hindu*. In it, he makes two arguments:

1. Basu's policy suggestion deals only with 'harassment bribes', and does nothing to deal with 'scarcity bribes', such as bribes paid to ensure your child's seat at a school, or bribes paid for allotment of land. Raising the stakes as Dr. Basu suggests would result in higher bribes being asked for to cover the increased risk of being reported (Sainath, 2011).
2. The policy suggestion benefits only those who can afford to pay a bribe. Legalising bribe-paying leaves out the poor citizens who cannot afford to pay these bribes, and legitimises bribery (Sainath, 2011).
3. Since the act of successfully reporting a bribe requires certain measures to be taken to prove one's case – secret camera photos, notes marked with special ink – the poor be at a disadvantage because they cannot afford these measures. Therefore, under the policy proposal, where the giver is poor, the law will favour the taker, and when the giver is rich, it will favour the system of bribery (Sainath, 2011).

The counterarguments are as follows:

1. The first part of the first argument can be dispensed with by acknowledging that Basu's proposal is indeed only intended to deal with harassment bribes, where the giver is being denied a service she is legally entitled to, and not collusive bribes, where the giver is trying to gain an advantage. It is a small idea, by Basu's own admission, to deal with a small area of bribery, and it should be judged on its merits within its defined parameters. Such cases as Mr. Sainath specifies would not fall within the parameters of 'harassment bribery', as these are not services that are legally owed to a particular citizen, unlike other services, such as identity documents, marriage certificates, or passport verifications.

Further, it can be argued that premiums going up is a sign that the system is functioning correctly. Consider the case of a country which is strengthening its enforcement mechanisms in a powerful manner to reduce levels of corruption. Even in such a case, there will always be someone who will be willing to take the risk of being caught, for a large enough amount of money, say \$10 million. Would this mean that the measures this a country is taking to discourage corruption are not working?

On the contrary, higher premiums would mean that more people would drop out of the system in choosing not to pay the bribe. Similarly, more bribe-takers would opt out of demanding bribes for fear of the increased risk. The point would be for the premiums to be raised so high through increased risk perception, that the majority of officials and citizens opt out of the bribing game.

Even if premiums do go up, an experimental analysis by Abbink et al (2012) shows that when bribe-amounts go up, so will reporting, because the bribe-giver is then more motivated to retrieve the bribe amount, thereby increasing the risk perception of the bribe-taker and resulting in even higher premiums, ensuring that the system functions as it is supposed to.

2. The citizens who cannot afford to for the measures by which to report bribery, under the proposed policy are no worse off than they are under the current law. In cases where they can, the poor citizen is no worse off in not being able to pay the bribe. Further, they will be in an overall more advantageous position as a result of the incentives created for reporting bribes, resulting in less bribes being asked for. In so far as the bribe-taker cannot distinguish the rich from the poor, the policy proposal affects all parties equally in terms of likelihood of being asked for a bribe.
3. The central assumption in this argument is that the rich benefit from a system in which they can afford to pay bribes and have their services rendered, which makes them unlikely to report. However, in the case of harassment bribes, the citizen is being made to pay more than is legally required. Whether or not the citizen thinks that he is in a better position than poor people seems irrelevant. Websites like [ipaidabribe.com](http://ipaidabribe.com) show that Indians are uniformly disgruntled about the prevalence of corruption and bribery in their daily lives, and have given voice to their frustrations through support of groups like Aam Admi Party. It therefore stands to reason that this is an undesirable state of affairs, even for those who can afford bribes, and they would be willing to take action to curb the practice.

Another argument against the proposed legislation is put forward by Sophia Coles, on the Transparency International website. Her argument rests on pointing out two false assumptions in Basu's proposal.

1. The proposal assumes that bribe-givers don't go to the authorities for fear of getting punished (Coles, 2012).
2. The proposal also assumes that bribe-takers actually get punished when corruption is reported (Coles, 2012).

She argues that law enforcement is too weak to have an effect on constraining behaviour, and that a law without teeth would be of no use at all. She also makes the point that in countries where the enforcement agencies themselves are likely to be corrupt, such a proposal will not have the desired effect (Coles, 2012).

The counterarguments are as follows:

1. This may not necessarily be the underlying assumption. The assumption may instead be that bribe-givers are not currently being *sufficiently incentivised* or empowered to report bribery to the authorities. Treating the bribe-giver as on par with the bribe-taker

makes it less likely that the bribe-giver will be willing to own up to her crime of bribe-giving. Offering to return the bribe-giver's bribe amount provides an additional level of incentive to encourage reporting.

2. One can easily dismiss *any* legal proposal using this argument. The policy suggestion leaves out entirely the issue of enforcement. Any law, in any country, if not enforced, would soon cease to have relevance. The point of Basu's proposal is to incentivise the reporting of bribes, to create a situation which could be an improvement upon the current one. As much as the current situation, due to a lack of enforcement, facilitates corruption, this policy suggestion would be an improvement, even in the absence of more robust enforcement, as it would make it possible and desirable for more people to take the trouble of coming forward and reporting the bribe-taker. Moreover, it might only take a few visible cases of a bribe-taker being caught, and bribe-givers getting their money back, to activate the deterrent effect. We must compare the effects of the policy suggestion to the *current* situation, rather than to an ideal one.

Dreze, Sainath and Coles' arguments have captured the majority of objections to Kaushik Basu's proposed policy:

- Making more attractive the option of paying a bribe and not reporting, thereby leading to an increase in the incidence of bribe-giving by removing punishment for the bribe-giver.
- Legitimising bribe-giving in the eyes of the public, leading to more people being willing to pay bribes
- Leading to higher bribes being asked of citizens to cover the risk of being reported in the case of scarcity bribes
- No benefit being conferred to poor citizens who may not be in a position to report or pay bribes
- The rich will have no incentive to report when the system works for them
- Lack of enforcement means that the policy will not work

As shown, all these criticisms can be countered, and the policy proposal stands up to scrutiny. There is, however, another practical issue that may interfere with the incentive mechanism in the policy.

### **The problem with implementation**

The key to the policy's deterrent effect lies in both parties knowing *beforehand* that the case is that of a harassment bribe.

*“What is being argued is that the law should be changed, so that, **at the time of committing harassment bribery, both parties know that the giver has immunity and that the taker not only has a heftier penalty but also has to return the bribe.** If we simply grant clemency to the bribe giver after the crime has been committed, none of the benefits being talked about here will be achieved”* (Basu, 2011, 7).

Knowing the penalties for the bribe-taker and immunity for the bribe-giver is one part of the deterrent, but a more crucial part left unmentioned is *knowing when these punishments are applicable*. To know this, both parties must be aware that what is transpiring is, in fact, a

The definition of a ‘harassment bribe’ is as follows: a bribe given for a service to which the citizen is legally entitled. In a perfect world with perfect information, it is easy to understand that when a bribe is sought for a service that is legally owed, that is a case of harassment. However, real world situations are often not this straightforward.

To clarify the problems with separating harassment bribery from non-harassment bribery; in many cases, a bribe need not be explicitly asked for, yet services may be withheld unless a bribe is paid. These kinds of bribery are very hard to prove, since it is not the bribe-taker who is explicitly coming forward to ask for a bribe. Instead, they are simply withholding a service until the bribe is given. To avoid the inconveniences and costs of having an important service withheld, many citizens may offer the bribe.

To illustrate the difficulty, imagine the case of a railway commuter who needs to buy a ticket. He stands in the queue for hours, making no headway, as he watches tickets being given to touts. He then decides the only way for him to get a ticket is to go through a tout. Is this harassment bribery? No bribe was explicitly asked for, and yet a situation was created in which bribing is the only reasonable way to avail of a service.

Imagine the case of a traveller who needs to renew her passport, but has to obtain a police clearance certificate. She submits all the required documents, but her certificate does not clear for months. She decides to pay a bribe to get her urgently needed passport. Is this a harassment bribe, or collusion? The police could say that they were understaffed, that the lady would simply have to wait her turn. Who would decide in such an instance, whether she was ever going to get her passport had she waited? How long must a citizen be expected to wait before judging that their service will not be given without a bribe?

Even though the reader, given the above information, can see that these are likely to be cases of harassment bribes, it is also clear that an adjudicating third party would be hard pressed to prove that this is the case. Other than services being withheld, there exist more nefarious scenarios, in which a bribe has to be paid to avoid harm. This is also ‘harassment bribery’.

Consider the case of a business that is being targeted by the Income Tax Office (ITO), and asked to pay Rs. 2 crore, taxing the business’s capital (investment amount) received as income. This is clearly a case of harassment bribery, but who is to decide whether the business in question is being lawfully taxed, or whether the ITO is unduly taxing their investment?

In this particular case, the business appealed the order, and took the case to the Appeals Division of the ITO. Once there, they were again asked for a bribe of Rs. 10 lakh from the Commissioner couched in the language of, “I know someone who is in very big trouble, and needs Rs. 10 lakh. If you could help him out, that would be nice”. When the money was not given, the Commissioner in question sat on the case, refused to move it forward despite orders from the High Court to do so. To move their case further, if the business had paid up the Rs. 10 lakh, would this be a harassment bribe? Who would be endowed with the power to decide whether the case really deserved to be moved further, or whether it was illegitimately

being stalled by the Commissioner?

Thus we can see that in many real-world situations, it is often very difficult to separate a harassment bribe, from a non-harassment bribe, or even from a legitimate activity. This leads us to the question of who should be the arbiter of what constitutes a ‘harassment’ bribe, what is a collusive bribe, and what is legitimate activity on the part of the official. Are the enforcement bodies (Central Vigilance Commission, Central Bureau of Investigation, state Anti-Corruption Departments) to be tasked with making these judgements? Is this to be done on a case-by-case basis and adjudicated? If that is so, the incentives created by Basu’s suggestion fall apart.

In order for the deterrent effect on the bribe-taker to work, it must be known by all parties *beforehand* that this activity constitutes a ‘harassment bribe’, and if reported, the bribe-taker will have to pay a hefty penalty. If it is to be decided in court or through an adjudication process of some kind, then the outcome could swing either in the bribe giver, or taker’s, way. If there is a good chance that the bribe-giver can lose the case, the incentive to report becomes weaker. If the incentive to report on the part of the bribe-giver is not strong, the bribe-taker then loses the incentive to refrain from asking for a bribe, knowing that if the case goes to adjudication, a favourable outcome is possible if he is careful enough.

### **Possible solution**

To mitigate this problem, we could take a blunt-force approach. We could generalise that certain services or sectors are rife with corruption, and so cases registered in these sectors should be assumed to be ‘harassment bribes’, so that bribe-takers know immediately that if they ask for or accept any bribe, it will be assumed to be a harassment bribe. According to the findings of the Global Corruption Barometer in 2013, worldwide, the sector with the most perceived corruption is the police force (Global Corruption Barometer, 2013). In India particularly, 62% of Indians who came into contact with the police (as cited in Business Standard, 2011) have had to pay a bribe, and 75% believed they were ‘extremely corrupt’ (Global Corruption Barometer, 2013). This sector might therefore be a good candidate for introducing the blanket categorisation of all bribes as ‘harassment’. Certain defined areas within this sector, therefore, could be identified in which to apply the categorisation; such as departments responsible for giving police clearance certificates, or passport and license verifications, or traffic violations.

This could admittedly create a situation in which bribe-givers who have not been harassed but instead offer payment in return for illegitimate services, reap a reward in getting their service done, and getting their bribe money back, without having been harassed. I would argue that this, however, would nevertheless create strong disincentives for officials to take bribes, as they would know that if it is proven that they took a bribe, this would be assumed to be a harassment bribe, and not collusion, and the appropriate penalties would be applied. The uncertainty of adjudication would be removed. The bribe-taker in such an instance, even if he may not have harassed, is still violating both his civic duty, and his occupational obligation, by taking the bribe, and is as such deserving of punishment. If we take a blunt-force approach to certain sectors that are rife with corruption and harassment in this way, bribe-takers will know that it is almost certain that if they are reported, they will face punishment. This solution, however, does make it easier for bribe-givers who are seeking to gain some kind of

illegitimate advantage to continue to bribe if the gains from their bribery outweigh their gains from reporting and retrieving their bribe money.

This problem too can be solved, by tweaking Kaushik Basu's original proposal. His proposal is similar to the principle of asymmetric liability as it is practised in China and Russia, where the bribe-giver is given a mitigated punishment, and the bribe-taker is given the full punishment, he goes one step further in proposing full legal immunity for the bribe-giver, and double the current punishment for the bribe-taker. Tweaking his suggestion, a policy of *conditional immunity* could be enacted (Dufwenberg & Spagnolo, 2012). This would mean that the bribe-giver receives full immunity *if she chooses to report the bribe-taker*. Depending on how strong or weak one wants the incentive to report to be, one could set a time-limit for reporting; 6 months, 1 year, 2 years, allowing the bribe-giver time to avail of the service she paid the bribe for before reporting.

However, an important point that must not be missed in this discussion, is that the robustness of the incentive-structures so proposed depends on a functioning system which keeps transaction costs for reporting low, and ensures that enforcement is visible if not robust. In legalising bribe-giving, the probability of the bribe-giver reporting the bribe goes up, as compared to a situation where bribe-giving is illegal. However, to make this probability even higher, it will be useful to reduce the transaction costs of reporting.

Using a game theoretic approach, Ranganathan & Das (2013) analyse Kaushik Basu's suggestion, and show the following conclusion;

*"In summary, the new legislation could be effective only under conditions of low transaction costs and improved enforcement mechanisms of anti-corruption body under new legislation."*  
(Ranganathan & Das, 2013, 17)

In the online survey I conducted of 40 respondents, it is clear that transaction costs are an important determinant in whether or not bribe-givers choose to report. 48% of respondents answered that they would report if bribe-giving was legal, and 74% answered that they would report if it was legal, and they were entitled to their bribe amount back. However, these numbers sharply reversed when the transaction costs of reporting were made high (ie: reporting was made time-consuming), with just 25% saying they would report in such a situation, despite the incentives of their bribe-amount back.

In the present situation, I judge that the transaction costs of reporting bribery are too high. Having spoken directly to the Delhi Anti-Corruption Department, it became clear that it is a relatively arduous process. To make a complaint against an officer, one needs to submit it in writing to the state anti-corruption department, one needs to submit it in writing to the Central Bureau of Investigation and open a bribery case, one needs to name the officer in question, and one needs to have "complete evidence" on the basis of which to make one's case.

To reduce the transaction costs, one could make it possible to report a case in person at the anti-corruption department, or online, over the phone, instead of in writing. Further, proving that it is a case of a harassment bribe rather than a collusive bribe would be exceedingly difficult. Requiring complete evidence in such an environment stymies the will of citizens to make a case. This problem is solved through my earlier recommendation; a blanket policy statement regarding all bribes in a certain sector or department as 'harassment bribes' would eliminate the need for strong evidence of 'harassment'.

In this way, we could maximise the incentive contained in Kaushik Basu's proposal to report the bribe-taker.

### **Conclusion**

Kaushik Basu's proposal is a novel one. In providing legal immunity for the bribe-giver in the case of harassment bribes, along with the incentive of retrieving one's bribe-amount, the hope is that the practice of harassment bribery will be significantly reduced.

In large part, this change in the incentive structure stands up to scrutiny. Providing legal immunity to the bribe-giver in cases of harassment bribes is likely to result in a reduction of these bribes, however there may be some difficulties in implementing the policy. Without a way to clearly demarcate harassment bribes from non-harassment bribes, the incentive structure falls apart at the practical level. To rectify this problem, it can be possible to issue blanket-generalisations across problematic government sectors, and categorise every case of bribery in this department as a 'harassment bribe' to remove the uncertainty in perception at the time of the act. In doing this, an additional problem may be created, however, of bribe-givers who are *not* genuinely being harassment availing of the legal immunity that should not be theirs. To deal with this problem, we can offer bribe-givers *conditional immunity* instead, making their legally immune status dependent on them reporting the bribe within a given time-frame. This allows us to remove immunity for collusive bribers, and thereby pressure them into reporting the bribe, with the intention of increasing the overall number of reports, and reducing incentives for collusion created by the blanket-statement. The results of my research and survey of respondents show that in order to increase the probability of bribe-givers reporting bribes, the transaction costs for reporting need to be lowered. This is achieved through the blanket-statement approach, allowing bribe-takers who report bribes to forego the need to *prove* categorically that it was indeed a case of harassment, and not collusion. This could be further achieved through making the reporting process easier; allowing one to report by phone, in person at the anti-corruption office, or online.

In this way, the implementability of Basu's policy suggestion will be increased, leading to an even greater reduction in the number of harassment bribes.

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