

Interpretation of Article 13(6) of the Constitution of Sri Lanka in relation to the Bribery Act and the Anti-Corruption Act, No. 9 of 2023

1. Text of Article 13(6) of the Constitution

Article 13(6) of the Constitution of Sri Lanka states:

“No person shall be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence and no penalty shall be imposed for any offence more severe than the penalty in force at the time such offence was committed.”

Exception: This does not prejudice punishment for acts that were crimes under general principles of law recognized by the community of nations.

2. Applicability to the Bribery Act and the Anti-Corruption Act (2023)

A. If an offence was committed *before 2023*:

- **The Anti-Corruption Act No. 9 of 2023** is *not* applicable retrospectively to acts committed before its enactment, *unless it is explicitly stated otherwise* (which it is not).
- **Only the Bribery Act (Consolidated), Prevention of Money Laundering Act, and Financial Transactions Reporting Act**, as in force *at the time of the offence*, are applicable.

B. Implications of Article 13(6):

- This constitutional provision enshrines the principle of **non-retroactivity of criminal law** and **protection against ex post facto laws**.
- Therefore, **no person can be prosecuted or punished under the Anti-Corruption Act of 2023** for acts done before its commencement, if those acts were not offences under the prior applicable laws.
- Even if an act was an offence under prior law (e.g., the Bribery Act), the **penalty imposed must be the one that existed under that earlier law**, not the potentially more severe penalties introduced in 2023.

3. Conclusion

Any alleged bribery, corruption, or related misconduct **committed before the Anti-Corruption Act of 2023 came into force** must be **investigated and prosecuted under the laws in force at the time**—primarily the **Bribery Act, Prevention of Money Laundering Act, and Financial Transactions Reporting Act**. The **Anti-Corruption Act, No. 9 of 2023**, cannot be applied retrospectively to impose liability or enhanced punishment, as doing so would violate Article 13(6) of the Constitution of Sri Lanka

Additional Note:

Interpret article 13, subsection 6 of the attached constitution of Sri Lanka to determine the applicability in relation to the attached Bribery and Corruption act (consolidate) and recently past Anti corruption act as attache. Can under the constitution of Sri Lanka be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence and no penalty shall be imposed for any offence more severe than the penalty in force at the time such offence was committed. See the applicability of the article 13(6) of the constitution if the offence was committed before 2023 in which Anti Corruption Act was enacted and the only applicable law that was effective was the bribery act, prevention of money laundering Act, Financial transaction Reporting Act and declaration of asset and liabilities Act (as attached).

Drawing on the provided sources, let's interpret Article 13, subsection (6) of the Constitution of Sri Lanka and its applicability to offences under the Bribery Act, the Declaration of Assets and Liabilities Law, and the Anti-Corruption Act, No. 9 of 2023.

First, let's examine Article 13(6) of the Constitution. According to the source, Article 13(6) states that "No person shall be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence and no penalty shall be imposed for any offence more severe than the penalty in force at the time such offence was committed". It also includes a proviso that nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, when committed, was criminal according to the general principles of law recognized by the community of nations. This fundamental constitutional principle prohibits the retrospective creation of offences and the imposition of increased penalties for past actions.

The sources mention several laws related to bribery, corruption, and asset declarations:

- The Anti-Corruption Act, No. 9 of 2023.
- The Bribery Act (Chapter 26).
- The Declaration of Assets and Liabilities Law, No. 1 of 1975.
- The Prevention of Money Laundering Act, No. 5 of 2006.

The sources provided do not include information about a "Financial Transaction Reporting Act".

The Anti-Corruption Act, No. 9 of 2023, which was certified on August 8, 2023, repeals the Bribery Act (Chapter 26), the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994, and the Declaration of Assets and Liabilities Law No. 1 of 1975. Section 1 of the new Act came into operation on the date of the Speaker's certificate, while other provisions were to come into operation on a date appointed by the Minister, but not later than eighteen months from the date Section 1 came into operation.

Now, let's consider the applicability of Article 13(6) to acts or omissions that occurred before the Anti-Corruption Act, No. 9 of 2023, came into effect, when the Bribery Act and the Declaration of Assets and Liabilities Law were in force.

Based on the constitutional principle in Article 13(6):

- If an act or omission occurred at a time when it did not constitute an offence under the law then in force (i.e., the Bribery Act or the Declaration of Assets and Liabilities Law), a person cannot be held guilty of an offence under the new Anti-Corruption Act solely on account of that past act or omission.
- If an act or omission constituted an offence under the law in force at the time it occurred (i.e., the Bribery Act or the Declaration of Assets and Liabilities Law), and a penalty was prescribed for that offence, any penalty imposed for that offence under a later law (such as the Anti-Corruption Act, 2023) cannot be more severe than the penalty that was in force at the time the offence was committed.

The Anti-Corruption Act, No. 9 of 2023, includes transitional provisions in Section 163 that support this principle. Specifically, Section 163(1) lists the repealed Acts. Section 163(f) states that "all contraventions or proceedings initiated under the provisions of the repealed Acts... prior to the commencement of this Act, shall be offences committed or proceedings initiated under the repealed Acts and be tried accordingly". This provision explicitly indicates that for acts or omissions that occurred under the old laws, those repealed laws are the ones that determine whether an offence was committed and how it should be tried. While the new Commission may handle inquiries and investigations commenced under the repealed Act, the substantive law (what constitutes an offence, the applicable penalty) for past actions is tied to the repealed Acts as per Section 163(f).

Furthermore, Section 163(4) states that every reference to the repealed Acts in any other written law shall be construed as referring to the corresponding provisions contained in the Anti-Corruption Act. This addresses how other laws should interpret references to the old Acts after the new Act comes into force, but Section 163(f) directly governs the trial of past contraventions under the repealed Acts.

Regarding the Prevention of Money Laundering Act, No. 5 of 2006, this Act is not repealed by the Anti-Corruption Act, 2023. The Anti-Corruption Act allows for charging an offender under the Money Laundering Act in addition to an offence under the Anti-Corruption Act if the offence under the latter constitutes an unlawful activity under the former. Article 13(6) of the Constitution would apply independently to offences under the Prevention of Money Laundering Act, meaning liability and penalties for money laundering offences would be determined by the provisions of that Act as they existed at the time the offence occurred.

In summary, Article 13(6) of the Constitution is applicable in relation to the attached laws. It safeguards against retrospective criminalization and increased penalties. For acts or omissions that occurred before the Anti-Corruption Act, No. 9 of 2023, came into effect, a person's guilt for an offence and the maximum penalty they face would be determined by the law that was in force at the time of the act or omission, namely the Bribery Act and the Declaration of Assets and Liabilities Law. The transitional provisions of the Anti-Corruption Act, 2023, specifically Section 163(f), support this by mandating that contraventions under the repealed Acts prior to the commencement of the new Act shall be tried under the repealed Acts. The Prevention of Money Laundering Act operates separately, and Article 13(6) applies to it based on the date the offence occurred.