

CHAPTER VI

PENAL PROVISIONS PERTAINING TO BRIBERY AND CORRUPTION AMONG PUBLIC SERVANTS

General

1.1. The Prevention of Corruption Act, 1988 (No.49 of 1988) has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. It received the assent of the President on 9th September, 1988 and has come into force from that date in terms of Section 5 of the General Clauses Act, 1897. The new Act repeals the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952. It also omits Sections 161 to 165-A (both inclusive) of the Indian Penal Code. However, notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897, anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed, in so far as it is not inconsistent with the provisions of the new Act, shall be deemed to have been done or taken under or in pursuance of the corresponding provisions of the new Act.

1.2 Some of the major changes brought into the Prevention of Corruption Act, 1988, are as under:-

- a) The definition of 'public servant' has been enlarged ;
- b) A new concept of public duty has been introduced for the first time [Section 2 (c)(viii);
- c) Minimum sentence of six months has been prescribed for the offences committed under the Act. The Courts have been denied any discretion, either for special or adequate reasons, to reduce the sentence from six months;
- d) The State Government or as the case may be, the Central Government has now the power to make an application to the District Judge for the attachment of the money or property which is believed to have been acquired by the public servant by corrupt means;
- e) The concept of "known sources of income" has undergone a

radical change. This now means not only the income received from any lawful sources but also that such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time-being applicable to the public servant.

2. Definition of Public Servant

2.1 The definition of public servant has been enlarged so as to include the office-bearers of the registered co-operative societies receiving any financial aid from the government, of from a Government Corporation/ Company, the employees of universities, Public Service Commissions, and Banks etc. Section 2 (c) of the Prevention of Corruption Act, 1988, defines the public servant as under:-

- i) Any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- ii) Any person in the service or pay of a local authority;
- iii) Any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;
- iv) Any judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicator functions;
- v) Any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver of commissioner appointed by such court;
- vi) Any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
- vii) Any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- viii) Any person who holds an office by virtue of which he is authorised or required to perform any public duty;

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- ix) Any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;
 - x) Any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
 - xi) Any person who is a vice-chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
 - xii) Any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority;

Explanation 1 - Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2 - wherever the words "Public Servant occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation"

3. Public Servants taking gratification other than legal remuneration

neration and abetment thereof - offences and penalties.

Section 7 to 12 of the PC Act, 1988, correspond to Section 161 to 165-A of the Indian Penal Code and relate to the offence pertaining to taking gratification, in cash or kind, other than legal remuneration in respect of an official act, or to influence public servants or for exercise of personal influence with public servant, and/or abetment thereof, and the punishments for such offences. These sections are discussed in the succeeding paragraphs.

3.1. Public servant taking gratification other than legal remuneration in respect of an official act.

3.1.1 Section 7 of the PC Act, 1988, corresponds to repealed Section 161 IPC with the modification that the minimum punishment has been prescribed as imprisonment of six months and the maximum punishment has been increased from three years to five years. The relevant section is reproduced below:-

“7 Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (C) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine”.

Explanations

- a) “*Expecting to be a public servant*” - If a person not expecting to be in office obtains a gratification by deceiving others into a be-

lief that he is about to be in office, and that he will then serve them he may be guilty of cheating, but he is not guilty of the offence defined in this section.

- b) "*Gratification*" - The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.
- c) "*Legal remuneration*" - The words "Legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves to accept.
- d) "*A motive or reward for doing.*" - A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.
- e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

3.1.2. A public servant or a person expecting to be a public servant renders himself guilty of an offence under Section 7 of the PC Act, 1988:-

- (i) if he accepts or obtains, or agrees to accept, or attempts to obtain from some person a gratification;
- (ii) if such gratification is not a legal remuneration due to him;
- (iii) if he accepts such gratification as a motive or reward;

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- a) doing or forbearing to do, an official, act, or
 - b) showing, or forbearing to show, favour or disfavour to someone in the exercise of his official functions;
or
 - c) rendering or attempting to render any service or dis-service to any person with the Central or any State Government or Parliament or the Legislators of any State or with any local authority, corporation or Government company or with any public servant.

3.1.3. It is not necessary that the public servant must himself have the power or must himself be in a position to perform the act, or show favour or disfavour, for, doing or showing, which the bribe has been given to him nor is it necessary that the act for doing which the bribe is given should actually be performed. It is sufficient if a representation is made that it has been or that it will be performed and a public servant, who obtains a bribe by making such representation renders himself guilty under this Section even if he had or has no intention to perform and has not performed or does not actually perform that act. It is not necessary that favour was in fact shown to the person who offered the bribe. It is sufficient if the person giving the gratification is led to believe that the matter would go against him if he did not give the gratification [Bhimrao, A.I.R. (1925) Bombay 261].

3.1.4. A public servant arrogating to himself a power which he does not possess, for the exercise of which he receives a bribe is liable to conviction under this Section (Ajudhia Prasad, I.L.R./51 Allahabad 467).

3.1.5. A public servant accepting a donation for a public purpose such as a donation to a public institution or donation for any charitable or religious purpose in which he is interested would amount to an offence under this Section if the motive for such payment was for showing favour to the donor in his official acts or if the donation was made as a reward for a favour shown in the past. Where, however, such donation is made to public servant independently of his doing any official act, no offence is committed. [Emperor Vs. Tyabjee, A.I.R. (1923) Bombay 44].

Rule 12 of the CCS (Conduct) Rules, 1964, however, prohibits Government servants from asking for or accepting contributions or collections in cash or in kind in pursuance of any object, whatsoever, except with the previous sanction of the Government or the prescribed authority.

3.1.6 A public servant cannot justify his acceptance of gift or a bribe by urging that the order passed by him was nevertheless a just one and against the very person the bribe is given is a just and proper one. [A. W. Chandekar, A.I.R. (1925) Nagpur 313].

3.1.7. The word 'motive' refers to a future act while the word 'reward' to a past favour.

3.1.8. The word "gratification" is not defined but its sense is extended by the explanation which says that the word "is not restricted to any pecuniary gratification, or to gratification estimable in money". The word "gratification" is thus used in its larger sense as connoting anything which affords gratification or satisfaction or pleasure to the taste appetite or the mind.

3.2. Section 8 & 9 of the Prevention of Corruption Act 1988

3.2.1 Sections 8 and 9 of the Prevention of Corruption Act, 1988, correspond to repealed Section 162 and 163 of the Indian Penal Code and are reproduced below:-

“8 *Taking Gratification, in order by corrupt or illegal means to influence public* - Whoever accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any per-

son, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament of the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine”.

- “9. *Taking gratification for exercise of personal influence with public servant* - Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any persons with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine”.

3.2.2. Under Sections 8 and 9 of the PC Act, 1988 it is an offence for a person to accept any gratification as a motive or reward for improperly influencing a public servant by corrupt or illegal means or by the exercise of personal influence. Though these Sections cover all person whether or not they are public servants, in effect their provisions will be made use of only when the offender is a person other than a public servant and such cases will not need to be dealt with administrative authorities. If a person committing an offence under these Sections is public servant, the proper Section to convict him will be Section 7.

3.3. Section 10 of the PC Act, 1988

3.3.1 Section 10 of the PC Act, 1988 corresponds to repealed Section 164 of the Indian Penal Code. It is reproduced below:-

“10. *Punishment for abetment by public servants of offences defined in Sections 8 and 9* - Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five year and shall also be liable to fine”.

3.3.2 This Section is intended to punish abetment by a public servant of offences mentioned in Sections 8 and 9 when committed in respect of the public servant himself. This may be illustrated as under:-

“A is a public servant. B, A’s wife, receives a present as a motive for soliciting A to give on office to a particular person. A abets here doing so”.

3.4. Section 11 of the PC Act, 1988

3.4.1. Section 11 of the PC Act, 1988 corresponds to repealed Section 165 of the Indian Penal Code. It is reproduced below:-

“11 *Public Servant obtaining valuable thing without consideration from persons concerned in proceeding or business transacted by such public servant* - Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from

any person whom he knows to have been or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine”.

3.4.2. Under this Section, it is an offence for a public servant to accept or agree to accept or to attempt to obtain for himself or for any other person any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or from any person, he knows to be interested in or related to the person so concerned.

3.4.3. Under Section 7, the gratification is taken as a motive or reward but under Section 11, the question of motive or reward is not material. The mere taking of a valuable thing without consideration or for an inadequate consideration from a person having any connection with the official functions of the public servant constitutes an offence.

3.4.4. This Section prohibits a public servant from taking an unconscionable advantage out of a bargain with a person with whom he comes in contact officially. It does not prohibit a sale or a purchase by a public servant, at a fair price, to or from a person with whom the public servant may be transacting business on behalf of Government in his official capacity.

3.5. Section 12 of the PC Act, 1988

3.5.1 Section 12 of the PC Act, 1988, corresponds to repealed Section 165-A of the Indian Penal Code. It is reproduced below:-

“12 *Punishment for abetment of offences defined in Section 7 or 11.* - Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.”

3.5.2 Under this Section, the offering of a bribe or a valuable thing to a public servant without consideration or for an inadequate consideration is an offence by itself and not merely an offence of abetment.

3.5.3 The relevant point to consider is the state of mind of the accused when he offers a bribe or a valuable thing. As soon as there is an instigation to a public servant to commit an offence under Section 7, an offence under Section 12 is complete quite irrespective of the fact whether the public servant did not accept or consent to accept the money or whether he was or he was not a position to do the act or to show a favour or disfavour [Padam Sen Vs. State, AIR (1959) Allahabad 707].

4. Offences of criminal misconduct.

4.1. Section 13, 14, 15 and 16 of the PC Act, 1988 correspond to Sections 5(1), 5(2), 5(3A) and 5(3B) of the repealed Prevention of Corruption Act, 1947, and pertain to the offences of criminal misconducts and the punishments for such offences. The major change brought about in the PC Act, 1988, pertains to withdrawal of the Court's powers to impose a sentence of imprisonment less than the sentence provided in the Act.

4.2. Sections 13(1) (a) and (b) of the PC Act, 1988

4.2.1 Section 13(1) (a) and 13(1) (b) of the PC Act, 1988 correspond to Sections 5(1) (a) and 5(1) (b) of the repealed Act of 1947 and are reproduced below:-

“13(1)A public servant is said to commit the offence of criminal misconduct -

- (a) If he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or regard such as mentioned in section 7; or
- (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned.”

4.2.2 The offences specified under clauses (a) and (b) of Section 13(1) of the Prevention of Corruption Act, 1988, have the same ingredients as those specified in Section 7 and 11 of the Act. The fundamental difference between the two provisions of the two Acts is that offences under Section 13(1) (a) and 13(1) (b) are an aggravated form of those provided for in Sections 7 and 11. Whereas under Section 7 and 11, a prosecution can be laid even in the case of a single act of acceptance of illegal gratification, there must be habitual commission of the offence to attract clauses (a) and (b) of Section 13(1) of the Prevention of Corruption Act. Another point of difference is that, while punishment of imprisonment from minimum of one year and up to maximum of seven years has been prescribed under Section 13(2) for the offence committed under Sections 13(1)(a)

and 13(1) (b) of the Act, the punishment of imprisonment for the office committed under Sections 7 and 11 may vary from a minimum of 6 months to a maximum of five years.

5. Section 13(1)(c) of Prevention of Corruption Act, 1988

5.1. This clause corresponds to Section 5(1) (c) of the repealed PC Act, 1947 and provides that if a public servant dishonestly or fraudulently misappropriates himself or allows any person to misappropriate any property entrusted to him in his official capacity, he is guilty of criminal misconduct.

5.2. The offence mentioned in this clause is analogous to that mentioned in Section 409 of Indian Penal Code. However, whereas under Section 409 of the Indian Penal Code, a public servant is guilty only if he commits the criminal breach of trust himself, under clause 13(1)(c) of the Prevention of Corruption Act, he is guilty, whether he himself misappropriates or allows any other person to misappropriate property entrusted to him in his official capacity. Another difference between the two sections is that while under Section 409 of the Indian Penal Code, no minimum punishment is prescribed and the maximum punishment may be imprisonment for life or imprisonment which may extend to 10 years, the minimum punishment under Section 13 of the Prevention of Corruption Act is one year and the maximum seven years.

5.3. In cases which fall both under Section 409 of Indian Penal Code and under clause (c) of Section 13(1) of Prevention of Corruption Act, prosecuting agency may charge the public servant under the Indian Penal Code or under the Prevention of Corruption Act as it may consider appropriate in each case. The gravity of the offence and other relevant matters will need to be taken into consideration in exercising the discretion. If the facts disclose the commission of a serious offence for which the maximum punishment provided for under the Prevention of Corruption Act is not sufficient, the accused may be charged under Section 409 of Indian Penal Code which provides for severe punishment for the same kind of offence. The public servant

may also be charged simultaneously both under Section 409 of the Indian Penal Code and Section 13(1) (c) of the Prevention of Corruption Act 1988. The advantage of such combination will be that in the event of conviction, the punishment to be awarded by the Court will be subject to a minimum of one year as prescribed in the Prevention of Corruption Act and the maximum may go up to on a term of imprisonment up to ten years as prescribed in the Indian Penal Code.

5.4. In cases in which the alleged offence falls both under Section 409 of the Indian Penal Code and under Section 13(1) (c) of the Prevention of Corruption Act and in which a public servant is charged under the Prevention of Corruption Act only, the question may arise whether on his acquittal of that charge the public servant could be tried again under Section 409 of the Indian Penal Code. The Supreme Court (State of Madhya Pradesh Vs. Veerashwar Rao) has held that there can be no objection to a trial and conviction under Section 409 of Indian Penal Code even if the accused has been acquitted of an offence under Section 5(1) (c) of the Prevention of Corruption Act, 1947 (analogous to Section 13(1)(c) of the PC Act, 1988).

6. **Clause (d) of Section 13(1)**

6.1. This clause corresponds to Sections 5(10)(d) of the repealed PC Act, 1947, and provides that if a public servant by corrupt or illegal means or by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, he is guilty of criminal misconduct. This offence has not been provided for in the Indian Penal Code. 'motive or reward' has no relevance for an offence under this clause. It is enough if it is proved that the public servant has obtained a valuable thing or a pecuniary advantage either for himself or for any other person by abusing his official position, or by corrupt or illegal means.

7. **Clause (e) of Section 13(1)**

7.1. This clause corresponds to Section 5(1) (e) of the repealed PC Act,

1947, and provides that if a public servant or some person on his behalf is or has at any time during the period when the public servant was in office, been in possession of assets disproportionate to his known source of income for which the public servant cannot satisfactorily account, he is guilty of criminal misconduct.

8. Presumption of the guilt of the accused

8.1 The normal rule of jurisprudence is that it is the duty of the prosecution to prove beyond a shadow of doubt all the ingredients of the offence. The accused is not required to prove that he is not guilty.

8.2 Section 20 of the Prevention of Corruption Act, 1988 makes it obligatory for the court to make certain presumptions against the accused. When it has been provided that the accused who is charged of an offence under Section 7 or 11 or 12 has received any gratification other than legal remuneration or any valuable thing without adequate consideration, the court is bound to presume under Section 20 (1) of the Prevention of Corruption Act that the gratification or the valuable thing was received with a motive or as a reward as is mentioned in Section 7, or for an inadequate consideration as is mentioned in Section 11 of the Act. All that the prosecution has to prove is the mere receipt of gratification or the valuable thing by the accused, for when receipt of such gratification or valuable thing is admitted by the accused, the prosecution is not required to prove affirmatively anything more to show that the gratification was received as a bribe or illegal gratification. If the accused wants to suggest that he had not accepted the gratification or the valuable thing with the motive or as a reward for exercising any official favour or disfavour, it would be for him to establish that.

8.3 To raise the presumption under Section 20 (1) of Prevention of Corruption Act, the prosecution has to prove that the accused has received “gratification other than legal remuneration”. When it is shown that the accused has received a certain sum of money which was not his legal remuneration, the condition prescribed by the Section is satisfied and the presumption must be raised. Further mere

receipt of “money” is sufficient to raise the presumption (V.D. Jhingan Vs State of U.P., A.I.R. 1966 S.C. 1672).

8.4 An impression may be created in some quarters that in view of the presumption under Section 20 (1) of the Prevention of Corruption Act, the task of prosecution has become very easy inasmuch as whenever receipt of money is proved, the authority deciding to launch a prosecution or great sanction under Section 19 of the Prevention of Corruption Act, need not concern itself with the probable defence of the accused person. Nothing could be further clarified that the burden of proof lying upon the accused under Section 20 (1) of the Prevention of Corruption Act will be satisfied if he establishes his case by a preponderance of probability as is done by a party in civil proceedings. It is not necessary that he should establish his case by the test of proof beyond a reasonable doubt. Consequently, before launching prosecution one has to rule out a possibility of defence put up by the accused person which, if proved, may amount to preponderance of probability in his favour and it must be clearly understood that the quantum of proof expected of the accused is less than that expected from the prosecution which has to prove the case beyond a reasonable doubt. The Supreme Court in Harbhajan Singh Vs State of Punjab has reiterated this principle thus :-

“There is a consensus of judicial opinion in favour of the view that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. This, however, is the test prescribed while deciding whether the prosecution has discharged its onus of proving the guilt of the accused”.

8.5 Under Section 20 (2) of the Prevention of Corruption Act, a similar presumption is to be made against the accused charged under Section 12 or 14(b) of the Prevention of Corruption Act, 1988 as soon as it is proved that any valuable thing had been given or attempted to be given to a public servant.

8.6 The only exception when such presumption may not be drawn by the court is provided for in sub-section (3) of Section 20 of the Prevention of Corruption Act, 1988, which lays down that the court may de-

cline to draw the presumption if the gratification in its opinion is so trivial that no inference of corruption could fairly be drawn.

8. Accused to be competent witness

Under Section 21 of the Prevention of Corruption Act, 1988, a person charged under the Act, is a competent witness for his defence and can give evidence on oath in disproof of the charges made against him or against a co-accused.

10. Matters to be taken into consideration for fixing fine

Section 16 of PC Act 1988 provides that where a sentence of fine is imposed under sub-section (2) of section 13 or section 14, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.