# IPC Section 168: Public servant unlawfully engaging in trade.

## IPC Section 168: Public Servant Unlawfully Engaging in Trade  
  
Section 168 of the Indian Penal Code (IPC) addresses the issue of public servants unlawfully engaging in trade. This section aims to prevent conflicts of interest and maintain the integrity of public service by prohibiting public servants from participating in commercial activities that could compromise their official duties or exploit their position for personal gain. It emphasizes the principle that public servants should dedicate themselves to their official responsibilities and refrain from engaging in activities that could potentially undermine public trust.  
  
\*\*The Text of Section 168:\*\*  
  
"Whoever, being a public servant, and being legally bound as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."  
  
\*\*Breaking Down the Elements of the Offense:\*\*  
  
1. \*\*Public Servant:\*\* The offender must be a "public servant" as defined under Section 21 of the IPC. This definition encompasses a wide range of individuals working for the government, including government officials, judges, police officers, members of the armed forces, and anyone employed in the service or paid by the government. It also includes those elected to public office and individuals working in government-controlled corporations or entities. The crucial point is that the individual must be acting in their capacity as a public servant while engaging in the prohibited trade.  
  
2. \*\*Legally Bound Not to Engage in Trade:\*\* This is a critical element of the offense. The prohibition on trade must stem from a specific legal obligation. This could arise from various sources, such as:  
  
 \* \*\*Specific statutes or regulations:\*\* Many government departments and organizations have specific rules prohibiting their employees from engaging in certain types of commercial activities.  
 \* \*\*Service rules or codes of conduct:\*\* Government employees are often subject to service rules or codes of conduct that restrict their participation in trade.  
 \* \*\*Implicit prohibitions:\*\* In some cases, the nature of the public servant's duties may implicitly preclude them from engaging in trade. For example, a judge engaging in business activities related to legal proceedings could be considered a violation, even without a specific written prohibition.  
  
 It is essential to establish that the public servant was aware of this legal obligation not to engage in trade. Ignorance of the law, while not a complete defense, might be considered a mitigating factor during sentencing.  
  
3. \*\*Engages in Trade:\*\* The actus reus of the offense is the actual engagement in trade. "Trade" is interpreted broadly and encompasses any commercial activity undertaken with the intent to earn profit. This includes buying and selling goods, providing services, engaging in manufacturing, running a business, or participating in any other commercial venture.  
  
 The level of involvement in trade is also relevant. While actively running a business would clearly constitute engaging in trade, even passive involvement, such as being a sleeping partner or holding shares in a company, could fall within the purview of this section, depending on the specific legal restrictions applicable to the public servant.  
  
 It's crucial to distinguish between "trade" and legitimate investments. Merely holding shares in a publicly listed company or investing in mutual funds is not generally considered "engaging in trade" under this section, unless specifically prohibited by the applicable rules.  
  
  
\*\*Purpose of Section 168:\*\*  
  
The rationale behind Section 168 is multifaceted:  
  
\* \*\*Preventing Conflicts of Interest:\*\* Public servants engaged in trade may face situations where their personal business interests conflict with their official duties. This can lead to biased decision-making, favoritism, and corruption.  
  
\* \*\*Maintaining Impartiality and Objectivity:\*\* Public servants are expected to act impartially and objectively in carrying out their duties. Engaging in trade can compromise this impartiality, especially if the trade involves individuals or entities with whom the public servant interacts in their official capacity.  
  
\* \*\*Protecting Public Trust:\*\* Public servants engaging in trade can erode public trust in the government. It can create the perception that public servants are using their positions for personal gain rather than serving the public interest.  
  
\* \*\*Ensuring Dedication to Public Service:\*\* Public servants are expected to devote their time and energy to their official responsibilities. Engaging in trade can distract them from their duties and hinder their performance.  
  
\*\*Distinguishing Section 168 from related offenses:\*\*  
  
\* \*\*Section 169 (Public servant unlawfully buying or bidding for property):\*\* This section deals with a specific form of trade – buying or bidding for property that the public servant is officially involved with. Section 168 has a broader scope and covers any form of trade prohibited by law.  
  
\* \*\*Prevention of Corruption Act, 1988:\*\* This Act deals with various aspects of corruption, including bribery and abuse of official position. While Section 168 specifically addresses unlawful trade, the Prevention of Corruption Act covers a wider range of corrupt practices.  
  
  
\*\*Punishment:\*\*  
  
The punishment for violating Section 168 is simple imprisonment for a term which may extend to one year, or with a fine, or with both. The severity of the punishment depends on the nature and extent of the trade, the public servant's position, and other relevant factors.  
  
  
\*\*Conclusion:\*\*  
  
Section 168 of the IPC is a crucial provision for upholding the integrity and impartiality of public service. By prohibiting public servants from engaging in unlawful trade, it seeks to prevent conflicts of interest, maintain public trust, and ensure that public servants dedicate themselves to their official responsibilities. The broad interpretation of "trade" reflects the seriousness with which the law views such conduct and the importance of preventing any potential compromise of public service by private commercial interests.