

THE INDIAN PENAL CODE

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

This chapter deals with two classes of offences, of which one can be committed by public servants alone, and the other comprises offences which relate to public servants, though they are not committed by them.

Deletion of provisions.—Sections 161–165A stand omitted by the [Prevention of Corruption Act, 1988, section 31](#) (w.e.f. 9 September 1988).

The relevant portion from the Statement of Objects and Reasons appended to the [Prevention of Corruption Act, 1988](#) relating to the omission of [sections 161 to 165A](#) of [Indian Penal Code, 1860](#) (IPC, 1860) is given below:

3. The Bill *inter alia*, envisages widening the scope of the definition of the expression

"public servant", incorporation of offences under sections 161–165A of the [Indian Penal Code](#), enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.

4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

[s 167] Public servant framing an incorrect document with intent to cause injury.

Whoever, being a public servant, and being, as ⁷ [such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

The preceding section deals generally with the disobedience of any direction of law; this section deals with a specific instance, viz., that of framing an incorrect document with intent to cause injury. It is similar to section 218, which deals also with cases of framing incorrect record or writing with intent to save person from punishment or property from forfeiture, whereas section 167 deals with cases of framing incorrect document only with intent to cause injury. In a case, the allegation that the accused, who is a Deputy Superintendent of Police, suppressed the statement recorded under [section 161 of the CrPC, 1973](#) in a criminal case registered by the police and produced a fabricated statement along with the charge sheet before the Magistrate. The Court held that section 167 is attracted only when a public servant prepares a document in a

manner which he thinks or believes to be incorrect. Essentially, the petitioner's allegation is that the accused suppressed the real statement prepared under [section 161 of the Criminal Procedure Code](#) and produced along with the charge sheet a fabricated statement. That comes only within the purview of section 193. Therefore, section 167 is not attracted to the allegations raised by the petitioner in his complaint.⁸

7. Subs. by the [Information Technology Act](#) (Act 21 of 2000), section 91 and First Schedule for the words "such public servant, charged with the preparation or translation of any document, frames or translates that document", w.e.f. 17-10-2000. The words "electronic record" have been defined in section 29A.

8. *Joseph v State of Kerala*, [2013 Cr LJ 749](#) : [2012 \(4\) KHC 157](#) .

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

[s 168] Public servant unlawfully engaging in trade.

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.

COMMENT—

Public servant engaging in trade.—This section punishes those public servants who are legally bound not to engage in trade. If public servants were allowed to trade they would fail to perform their duties with undivided attention. Being in official position they could easily obtain unfair advantages over other traders.

The word 'trade' covers every kind of trade, business, profession, or occupation.⁹ This proposition of law no longer seems to be correct in view of the Supreme Court's decision in *Mahesh Kumar Dhirajlal's case*¹⁰, wherein their Lordships held that trade in its narrow sense means "exchange of goods for goods or for money with the object of making profit" and in its widest sense means "any business with a view to earn profit". Thus, where a tracer in the office of Sub-divisional Soil Conservation Officer took earned leave and during that period of leave obtained training as an Electrical Signal Maintainer from the Railway Administration, it was held that he could not be convicted under this section as he had not engaged himself in any trade even though he was

receiving stipend from the Railways during the period of his training.¹¹ Following this ruling, it has been held that engaging oneself as an agent of an insurance company on commission basis does not amount to engaging in trade.¹²

[s 168.1] Private Practice of Government Doctors.—

In *Kanwarjit Singh Kakkar v State of Punjab*,¹³ the Supreme Court examined the question whether the indulgence in private practice of Government Doctors would amount to indulgence in 'trade' while holding the post of a government doctor, so as to constitute an offence under [section 168 of the IPC, 1860](#). The Supreme Court held that "in our view, offence under [Section 168 of the IPC, 1860](#) cannot be held to have been made out against the appellants even under this Section as the treatment of patients by a doctor cannot by itself be held to be engagement in a trade as the doctors' duty to treat patients is in the discharge of his professional duty which cannot be held to be a 'trade' so as to make out or constitute an offence under [Section 168 of the IPC, 1860](#)".

9. *Mulshankar Maganlal*, (1950) Bom 706 : (1950) 52 Bom LR 648 .

10. *State of Gujarat v Mahesh Kumar Dhirajlal*, AIR 1980 SC 1167 [LNIND 1980 SC 69] : 1980 Cr LJ 919 .

11. *State of Gujarat v Mahesh Kumar Dhirajlal*, AIR 1980 SC 1167 [LNIND 1980 SC 69] : 1980 Cr LJ 919 . See also *Rasik Behari Mathur v State of Rajasthan*, 2007 Cr LJ 3108 (Raj).

12. *State of Maharashtra v Chandrakant Solanki*, (1995) 1 Cr LJ 832 (Bom).

13. *Kanwarjit Singh Kakkar v State of Punjab*, 2011 CrLJ 3360 : SCC 158 : (2012) 1 SCC (Cr) 805.

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

[s 169] Public servant unlawfully buying or bidding for property.

Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

COMMENT—

Buying or holding property.—This section is merely an extension of the principle enunciated in the last section. It prohibits a public servant from purchasing or bidding for property which he is legally bound not to purchase.

It is necessary that there should be some statutory law or rules or regulations framed under the law and not merely some administrative instructions or guidelines prohibiting public servants from purchasing certain property. In this case, a Code of Conduct was issued by the State Government in the exercise of its executive power under [Article 162 of the Constitution](#) under which Ministers were prohibited from buying Government properties. There were no mandatory terms providing for any action in case of non-compliance. It was held that the Code of Conduct did not have the effect of law. Its violation could not generate legal proceedings there being nothing unlawful illegal

within the meaning of section 43. The purchase of property of a Government company by a firm in which the then Chief Minister was a partner did not constitute an offence under section 169 in the absence of any law debarring the Chief Minister from making such a purchase.¹⁴

[s 169.1] TANSI land deal case.—

The allegation was that the Tamil Nadu Chief Minister, Ms. Jayalalithaa, while holding the chief minister's post, had violated the code of conduct and purchased 3.0786 acres of land and buildings to the state-owned Tamil Nadu State Industries Corporation for Jaya Publications. While reversing the conviction passed by the High Court, the Supreme Court held that the offence under [section 169 IPC, 1860](#) is incomplete without the assistance of some other enactment which imposes the legal prohibition required. Therefore, in order to come within the clutches of [section 169 IPC, 1860](#), there should be a law which prohibits a public servant from purchasing certain property and if he does it, it becomes an offence under [section 169 IPC, 1860](#). [Section 481 of the Criminal Procedure Code](#), [section 189 of the Railways Act, 1989](#) and [section 19 of the Cattle Trespass Act, 1871](#) and instances of that nature in several enactments are available in which persons mentioned therein shall not directly or indirectly purchase any property at a sale under those Acts. Similarly [section 136 of the Transfer of Property Act, 1882](#) provides that no Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claims so dealt with by him as stated above. Thus, in these circumstances where a law has prohibited purchase of property or to bid at an auction, the prohibition contained therein will be attracted and will become an offence under [section 169 IPC, 1860](#). The Code of Conduct not having a statutory force and not enforceable in a Court of law, nor having any sanction or procedure for dealing with a contravention thereof by the Chief Minister, cannot be construed to impose a legal prohibition against the purchase of property of the Government so as to give rise to a criminal offence under [section 169 IPC, 1860](#).¹⁵

¹⁴. *R Sai Bharathi v J Jayalalitha*, [AIR 2004 SC 692 \[LNIND 2003 SC 1023\]](#) : 2004 Cr LJ 286 : (2004) 2 SCC 9 [LNIND 2003 SC 1023] .

¹⁵. *R Sai Bharathi v J Jayalalitha*, [AIR 2004 SC 692 \[LNIND 2003 SC 1023\]](#) : (2004) 2 SCC 9 [LNIND 2003 SC 1023] .

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

[s 170] Personating a public servant.

Whoever pretends to hold any particular office as a public servant,¹ knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act² under colour of such office,³ shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[s 170.1] Ingredients.—

The section requires two things—

1. A person (a) pretending to hold a particular office as a public servant, knowing that he does not hold such office, or (b) falsely personating any other person holding such office.
2. Such person in such assumed character must do or attempt to do an act under colour of such office.

COMMENT—

Personating public servant.—Mere personation is not an offence under this section. The person personating must do or attempt to do some act under colour of the office of the public servant whom he personates. Section 140 punishes the person who wears the garb or carries the token used by a soldier. This section punishes a person who does any act in the assumed character of a public servant.

1. 'Pretends to hold any particular office as a public servant'.—It must be an existing office. If it is uncertain who legally fills the office, a person doing an official act, in pursuance of what he honestly believes to be his lawful title to the office, does not come within this section.

2. 'Any act'.—It is not necessary that the act done or attempted to be done should be such an act as might legally be done by the public servant personated. The accused was arrested when he was demanding one *anna's* worth of fruit from a fruit-seller for one pie on the representation that he was a head constable, which in fact he was not. It was held that if he pretended to be a police-officer and tried as such police-officer to extort money or things from a fruit-seller, he was guilty of an offence under this section.¹⁶ A person who poses as a Government servant and by so doing obtains of another's services, which he would not otherwise have obtained and which the other person was bound to give on demand by a Government officer, commits an offence under this section.¹⁷

3. 'Under colour of such office'.—An act is done 'under colour of an office,' if it is an act having some relation to the office, which the actor pretends to hold. If it has no relation to the office, as if A pretending to be a servant of Government, travelling through a district, obtains money, provisions, etc., the offence may amount to cheating under section 415, but is not punishable under this section.¹⁸ The act done under colour of office must be an act which could not have been done without assuming official authority.

Where the accused posed as a police officer and in that garb looted certain articles from the complainant and the stolen articles, one police ballot and monogram were recovered from him, his conviction under the section was held to be proper.¹⁹

[s 170.2] Retired IAS officer using IAS with his name.—

To constitute an offence under section 170, a person must either pretend to hold a particular office as a public servant knowing that he does not hold such office or falsely personate any other person holding such office. Over and above that, that person in such assumed character must do or attempt to do an act under the colour of such office. There must be pretension or false personation to be a particular person, that too a public servant, which he is not, and then doing of or attempt to do some act under colour of such office of that public servant, to proceed against a person under [section 170 of the Indian Penal Code](#). Thus, where a retired IAS officer, had used IAS in his letterhead when he continued as Director of CAPE and also corresponded in that manner, is no ground to impute that he has committed an offence under [section 170 of the Penal Code](#).²⁰

¹⁶. *Aziz-ud-din v State*, (1904) All 294 .

17. *Bashirullakhan*, (1942) Nag 484. *Ajitender Singh v State of Punjab*, [2000 Cr LJ 1827](#) (P&H) : 2000 (2) RCR (Criminal) 34, mere assumption of the character of a public servant is not enough, there must also be an attempt to commit an official act. *Jata Shanker Jha v State of Rajasthan*, [2000 Cr LJ 2108](#) (Raj) : [2000 \(4\) WLC 75](#) , accused personated as secret ASI in the Education Department used forged papers to divert the salary of others to himself. Conviction. *Pratap Singh v State*, [1998 Cr LJ 633](#) (P&H), acting under colour of office as *Lambardar*, offence under the section made out because the accused identified parties in sale deeds as an officer and also had certain sureties arrested.

18. M&M 142.

19. *Karuna Krishna Biswas v State of WB*, [1996 Cr LJ 2823](#) (Cal).

20. *Premachandra Kurup v State*, [2013 Cr LJ 1465](#) .

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[s 171] Wearing garb or carrying token used by public servant with fraudulent intent.

Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

COMMENT—

Wearing garb or token of public servant.—Under this section the offence is complete, although no act is done or attempted in the assumed official character. The mere circumstance of wearing a garb, or carrying a token, with the intention or knowledge supposed, is sufficient. It is not necessary that something should pass in words. If any act is done then the preceding section will apply.

Under [section 140 IPC, 1860](#), wearing the garb or carrying the token of a soldier is made punishable.