

The Prevention of Corruption Act, 1988

Act No. 49 of 1988

An Act to consolidate and amend the law relating to the prevention of corruption and for matter connected therewith.

Total Section- 30

Total Chapter- 5

Section-1. Short Title and extent

- 1) The act may be called **The Prevention of corruption Act, 1988**.
- 2) It extends to the whole of India (**From 31.10.2019**) and it applies also to all citizens of outside of India.
- 3) It come into force from **09th September, 1988**.

Section-2. Definitions

- (a) “**Election**” means any election, by whatever means held under any law for the purpose of selecting members of Parliament or of any Legislature, local authority or other public authority.
- (b) “**Public duty**” means a duty in the discharge of which the State, the public or the community at large has an interest.
- (c) “**Public servant**” means
- (i) any person in the service or pay of the Government or local authority or any corporation aided by Govt.
 - (ii) any judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions.
 - (iii) any person authorized by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court.
 - (iv) Any arbitrator and any person who is the president, secretary or other office-bearer of a registered co-operative society.
 - (v) any person who is a chairman, member or employee of any Service Commission or Board
 - (vi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee
 - (vii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution financial assistance from any Government.

(Asked in AAO Exam-2022)

- (d) “**Undue advantage**” means any gratification whatever, other than legal remuneration.
- (a) the word “**gratification**” is not limited to pecuniary gratifications or to gratifications estimable in money;

- (b)** The expression "legal remuneration" is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organization, which he serves, to receive.

Chapter II- Appointment of Special Judges

Section-3. Power to appoint special judge

- 1) The Central Government or the State Government may appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases to try the following offences, namely-
 - (a) any offence punishable under this Act
 - (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a)
- 2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the CrPC, 1973 (2 of 1974).

Section-4. Cases triable by special Judges.

- 1) Case related to corruption and under this act should be tried by special Judge only.
- 2) Every offence related to corruption under section 3 shall be tried by the special Judge for the area within which it was committed, or by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.
- 3) The trial of an offence shall be held, as far as practicable, on day-to-day basis and an endeavor shall be made to ensure that the said trial is concluded within a period of two years.
 - Provided further that the said period may be extended but not exceeding six months at a time. That the said period together with such extended period shall not exceed ordinarily four years in aggregate.

Section-5. Procedure and powers of special Judge

- 1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the CrPC, 1973 (2 of 1974), for the trial of warrant cases by Magistrates.
- 2) The Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.
- 3) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment.
- 4) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944.

Section-6. Power to try summarily

- 1) In the case of any conviction in **a summary trial** under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term **not exceeding one year**.
- 2) If any case where the special Judge to pass a sentence of imprisonment for a **term exceed one year** in any offence, the special judge re-hears the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases **by Magistrates**.
- 3) There is no appeal by convicted person if in any case tried summarily, in which the special Judge passes a sentence of imprisonment not exceeding **one month**, and of fine not exceeding **two thousand rupees**. An appeal may prefer if sentence is exceedingly more than mentioned above.

Chapter III-Offences and Penalties

Section-7. Offence relating to public servant being bribed

Any public servant who,

- (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by **himself or by another public servant**.
- (b) Imprisonment not less than **3 years** extended up **to 7 years**

Illustration-A public servant, '**S**' asks a person, '**P**' to give him an amount of **Rs.5000/-** to process his routine ration card application on time. '**S**' is guilty of an offence under this section.

Section-7A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.

- Shall be punishable with imprisonment for a term which shall not be **less than three years** but which may extend to **seven years** and shall also be liable to fine.

Section-8. Offence relating to bribing of a public servant

Any person who gives or promises to give an undue advantage to another person or persons, with intention—

- (a) to induce a public servant to perform improperly a public duty
- (b) to reward such public servant for the improper performance of public duty

shall be punishable with imprisonment for a term which may extend to **seven years** or with fine or with both.

Illustration.—A person, '**P**' gives a public servant, '**S**' an amount of **ten thousand rupees** to ensure that he is granted a license, over all the other bidders. '**P**' is guilty of an offence under this sub-section.

Section-9. Offence relating to bribing a public servant by a commercial organization

- 1) Where an offence under this Act has been committed by a commercial organization, such organization shall be punishable with fine, if any person associated with such commercial organization gives or promises to give any undue advantage to a public servant intending—
 - a) to obtain or retain business for such commercial organization
 - b) to obtain or retain an advantage in the conduct of business for such commercial organization.
- 2) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under section 8, whether or not such person has been prosecuted for such offence.
- 3) “Commercial organization” means— any trade, business, partnership firm or professional service providing firm, etc. in India or Outside of India.
- 4) Notwithstanding anything contained in the CrPC, 1973 (2 of 1974), the offence under sections 7A, 8 and this section shall be cognizable.

Section-10. Person in charge of commercial organization to be guilty of offence.

- Where an offence under section 9 is committed by a commercial organization, and such offence is proved in the court to have been committed with the consent of any director, manager, secretary or other officer shall be of the commercial organization, such director, manager, secretary or other officer shall be guilty of the offence.

Punishment

- Imprisonment for a term min.3 years max. 7 years and also with fine.

Section-11. Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant. (6+5=11)

Minimum= 6 Months Maximum= 5 years.

Section-12. Punishment for abetment of offences.

Minimum- 3 years Maximum- 7 years.

Section-13. Criminal misconduct by a public servant.

- 1) A public servant is said to commit the offence of criminal misconduct, —
 - (a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do.
 - (b) if he intentionally enriches himself illicitly during the period of his office.
- 2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.

Section-14. Punishment for habitual offender

- Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall not be less than **5 years** but which may extend to **10 years** and shall also be liable to fine.

Section-15. Punishment for attempt.

- Whoever attempts to commit an offence referred to in clause (a) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which shall **not be less than two years** but which may **extend to five years** and with fine.

Section-16. Matters to be taken into consideration for fixing fine.

- **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, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

Chapter IV- Investigation into cases under The Act

Section-17. Persons authorized to investigate

Notwithstanding anything contained in the CrPC, 1973 (2 of 1974), **no police officer below the rank, —**

- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police
- (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area, of an Assistant Commissioner of Police.
- (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant.
- **Provided that if** a police officer **not below the rank of an Inspector of Police** is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest **therefor without a warrant**.
- **Provided further that** an offence criminal misconduct shall not be investigated without the order of a police officer not below **the rank of a Superintendent of Police**.

(State J & K)

Section-17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.

No police officer shall conduct any enquiry or inquiry or investigation, **without the previous approval—**

- (a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government.



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- (b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government.
- (c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed.
- No such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person.
- Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

Section-17B. Establishment of Anti-Corruption Bureau for the UT of J & K

- 1) The Government of Union territory of Jammu and Kashmir shall, by notification in the Official Gazette, establish a Bureau for investigation of offences under this Act under the name of 'Anti-Corruption Bureau'.
- 2) The **Anti-Corruption Bureau** shall consist of the Director and such other officers and staff subordinate to him as the Government of Union territory of J & K may from time-to-time think fit to appoint.

Section-17C. Powers of attachment of property

- 1) If an officer (not below the rank of Deputy Superintendent of Police) of the ACB, investigating an offence committed under this Act, with the prior approval in writing of the Director of the Anti-Corruption Bureau, make an order seizing/ attachment any property who have committed criminal misconduct under the act or where it is not practicable to seize such property, make an order of attachment/ seizing without prior permission of designated authority.
- 2) The Investigating officer shall inform the Designated Authority, within 48 hours, of the seizure or attachment of such property together with a report of the circumstances occasioning the seizure or attachment of such property, as the case may be.
- 3) It shall be open to the Designated Authority before whom the seized or attached properties are produced either to confirm or revoke the order of seizure or attachment so issued within 30 days.
- 4) Any person aggrieved by an order under the proviso to sub-section (1) may apply to the Designated Authority for grant of permission to transfer or otherwise deal with such property.
- 5) The Designated Authority may either grant, or refuse to grant, the permission to the applicant.

Section-17D. Appeal against the order of Designated Authority

- 1) Any person aggrieved by an order made by the Designated Authority under section 17-C may prefer an appeal, within one month from the date of receipt of the order, to the Special Judge and the Special Court may either confirm the order of attachment of

property or seizure so made or revoke such order and release the property or pass such order as it may deem just and proper within a period of **60 days.**

- 2) Where any property is seized or attached under section 17-C and the Special Court is satisfied about such seizure or attachment, it may order **forfeiture of such property.**

Section-17E. Issue of show-cause notice before forfeiture of the property

Section-17F. Appeal

- Any person aggrieved by order of the Special Court under section 17D may within **one month** from the date of the receipt of such order, appeal to the High Court of Jammu and Kashmir.

Section-17G. Order of forfeiture not to interfere with other punishments

Section-18. Power to inspect bankers' books

- No power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a **Superintendent of Police**, unless he is specially authorized in this behalf by a police officer of or above the rank of a Superintendent of Police.

CHAPTER V

Sanction For Prosecution and Other Miscellaneous Provisions

Section-19. Previous sanction necessary for prosecution

- 1) No court shall take cognizance of an offence punishable under sections 7, 11, 13 and 15 alleged to have been committed by a public servant, **except with the previous sanction-**
- (a) in the case of a person who is employed at the time of commission of the alleged offence employed in connection with the affairs of the Union or state, with the sanction that Government.
- (b) in the case of any other person, of the authority competent to remove him from his office.
- 2) the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, **endeavor to convey the decision** on such proposal within a period **of three months** from the date of its receipt:

Section-20. Presumption where public servant accepts any undue advantage

- Unless it is proved**, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under section 7 for performing or to cause performance of a public duty **improperly or dishonestly** either by himself or by another public servant. **It shall be presumed.**

Section-21. Accused person to be a competent witness

- Any person charged with an offence punishable under this Act, shall be a **competent witness for the defense** and may give evidence on oath in disproof of the charges made

against him or any person charged together with him at the same trial.

Section-25. Military, Naval and Air Force or other law not to be affected

Section-26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act.

- Every special Judge appointed under the Criminal Law Amendment Act, 1952, for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas.

Section-27. Appeal and revision

- The High Court may exercise all the powers of appeal and revision conferred by the CrPc, 1973 (2 of 1974) on a High Court as if the court of the special Judge were a court of Session trying cases within the local limits of the High Court.

Section-29A. Power to make rules

Section-30. Repeal and saving

- The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.


Basic Pay

| Section | Offense | Punishment | |
|---------|--|----------------------------|---------------------------|
| 7 | Offence relating to public servant being bribed | Min-3 Years, Max- 7 years | Cognizable offices |
| 7A | Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence | Min-3 Years, Max- 7 years | |
| 8 | Offence relating to bribing of a public servant | Up to 7 years | |
| 9 | Offence relating to bribing a public servant by a commercial organization | Min-3 Years, Max- 7 years | |
| 10 | Person in charge of commercial organization to be guilty of offence | Min-3 Years, Max- 7 years | |
| 11 | Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant. (6+5=11) | Min-6 Month- Max- 5 years | |
| 12 | Punishment for abetment of offences | Min-3 Years, Max- 7 years | |
| 13 | Criminal misconduct by a public servant | Min-4 Years, Max- 10 years | |
| 14 | Punishment for habitual offender | Min-5 Years, Max- 10 years | |
| 15 | Punishment for attempt. | Min-2 Years, Max- 5 years | |