

Session 1

Prevention of corruption Act

By

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Anti corruption Laws

- IPC: section 161to 165 A
- Crl.Law Amendment Ordinance 1944
- Prevention of Corruption Act, 1947
- Prevention of Corruption Act, 1988 as amended by Act 16 of 2018
- Prevention of Money Laundering Act, 2002

Corruption Perceptions Index - 2023

- According to 'Transparency International report' **India ranks 93/180 in Corruption Perceptions Index 2023** as its overall score is 39/100.
- The index, which ranks 180 countries and territories by their perceived levels of public sector corruption according to experts and business people, uses a scale of 0 to 100, where 0 is highly corrupt and 100 is very clean.

- A study conducted by Transparency International in year 2005 found that more than 62% of Indians had first hand experience of paying bribes or influence peddling to get jobs done in public offices successfully.

Comparative analysis of IPC & PC Act.

- Indian Penal Code Chapter–IX deals with all offences by or relating to public servant.
- Section 21: Definition of public servant.
- Section 161 to 165 A: Taking illegal gratification by public servants.

- **Section 161:** deals with a public servant who accepts or obtains or agrees to accept from any person for himself or for any other person any **gratification other than the legal remuneration.**
- **Section 162:** deals with a person who accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any **gratification by corrupt or illegal means to influence a public servant.**

- **Section 163:** deals with a person who accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any gratification for inducing and by exercise of personal influence with any public servant.
- **Section 164:** deals with **abetment** of offence of section 162 and Section 163 of IPC.
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- **Section 165:** deals with a public servant who accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person **any valuable thing without any consideration** or less consideration.

- Till 1952 abetment of offence under section 161 or 165 was not an offence.
- In 1952, Section 165-A was inserted to make abetment of offences Sec. 161 or 165 of IPC as an offence.
- Chapter IX of IPC silent about misconduct and abuse of the power by the public servant.

Criminal Law Amendment Ordinance, 1944

- Attachment of property which believe to have been procured by means of the schedule offence.
- Disposal of attached property upon termination of criminal proceedings.

- .Prevention of Corruption Act, 1947 came into force from 11th March 1947 to make more effective provision for the prevention of corruption. In addition to IPC Sections 161 to 165, Criminal Misconduct was made an offence as per Section 5.

Object and reasons:

- Bribery and corruption among the public servants had been enormously increased by War conditioned. Now the war is over still the opportunities for corrupt practise will remain for considerable time to come. Since, the post war reconstruction involving disbursement of large sums of Government money will offer wide scope of corrupt practises.

- Initially, the validity of Section 5 was for only 3 years. Then section 1(3) was amended and the validity got extended to 5 years. The the words 5 years got substituted with 10 years. Later, through PC (amendment) Ordinance 1957, sub- section (3) of Section 1 got deleted thereby the Act enacted to tackle the war time became a permanent Act.

IPC

PC Act, 1988

Section 21	Section 2 (c)
Section 161	Section 7
Section 162	Section 8
Section 163	Section 9
Section 164	Section 10
Section 165	Section 11.
Section 165 A	Section 12.
	Section 13 (Section 5 of old PC Act 1947).

PC Act (Amendment) Act, 2018

- Comprehensive definition for the offence of bribery which covers all aspects of passive bribery, including the solicitation and acceptance of bribe through intermediaries and also acts of public servants acting outside their competence.
- Section 2 (d): **UNDUE ADVANTAGE:**
Means any **gratification** whatever, other than **legal remuneration**.

Punishment for bribe giver.

- Section 8: Any person gives or promise to give undue advantage to another person with intention :
 - i) to induce a public servant to perform improperly a public duty
 - ii) to reward such public servant for the improper performance of public duty.
punishable upto 7 years or /and with fine.

- Section 9: Bribing a public servant by a commercial organisation.
- The term Commercial organisation is defined in section 9(3).

- Section 12: Punishment for abetment of all offences under the Act.

(Before amendment)

- Section 10: Punishment for abetment by public servant of offences u/s 8 or 9.
- Section 12: Punishment for abetment of offences in section 7 and 11.

Habitual offender

- Section 14: Punishment for habitual offender of all offences under the Act. Not less than 5 years but may extend to 10 years.
- **(Before amendment)**
- Section 14: Punishment for habitually committing offences under section 8, 9 and 12.

Section 17 A: Prior approval required to enquire/inquiry or investigate Offences relatable to recommendations made or decision taken by public servant:

Section 18 A: provisions of Cr.L.A Ordinance 1944 apply to attachment under the Act.

Proviso to Section 19 (1): Sanction to prosecute in case of private complaint otherwise than a police report.

PUBLIC SERVANT

- Person who gets any remuneration for the performance of any public duty.
- Public duty means a duty in the discharge of which the State, public or the community in large has an interest.
- State includes corporation established under State or central Act or an authority or body controlled or aided by the Government or a Government Company.

Public servant:

- The provisions of Section 2 (c) of the Prevention of Corruption Act, 1988 which defines the term —public servant, have been procured from Section 21 of the Indian Penal Code and new provisions have also been incorporated to make it more comprehensive and broad.

Public servant

- By reading the concerned provisions from both the enactments (Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988), we can find that the provisions (i), (ii), (iii), of Section 2 (c) of the Prevention of Corruption Act corresponds to Clause (12) of Section 21 of the Indian Penal Code and

Public servant

- Clauses (iv), (v), (vi), (vii) of Section 2 of the Prevention of Corruption Act, 1988 relate to Clause (3), (4), (6), (11) of Section 21 of the Indian Penal Code.
- The Clauses (vii), (ix), (xi), (xii) of Section 2 of the Prevention of Corruption Act, 1988 are new provisions.

In Central Bureau of Investigation, Bank Securities & Fraud Cell v. Ramesh Gelli & Others and Ramesh Gelli v. Central Bureau of Investigation through Superintendent of Police, BS & FC & Anr

- the Hon'ble Supreme Court of India has widened the definition of 'public servants' by taking help of the term 'public duty'. SC held that every chairman who is appointed on a whole-time basis, managing director, director, auditor, liquidator, manager and any other employee of a banking company shall be deemed to be a public servant for the purposes of the Indian Penal Code.

- In an another case, Dadaji v. State of Maharashtra, the Hon'ble Supreme Court has held that public duty means a duty in the discharge of which the State, public or community at large has an interest. This definition should be extended to semi-Government authorities, bodies and their Departments where the employees are entrusted with public duty.

A.Sreenivasa Reddy –vs- Rakesh Sharma.

- . There is a material difference between the statutory requirements of Section 19 of the PC Act, 1988 on one hand, and Section 197 of the CrPC, on the other. In the prosecution for the offences exclusively under the PC Act, 1988, sanction is mandatory qua the public servant. In cases under the general penal law against the public servant, the necessity (or otherwise) of sanction under Section 197 of the CrPC depends on the factual aspects. The test in the latter case is of the “nexus” between the act of commission or omission and the official duty of the public servant.

To commit an offence punishable under law can never be a part of the official duty of a public servant. It is too simplistic an approach to adopt and to reject the necessity of sanction under Section 197 of the CrPC on such reasoning. The “safe and sure test”, is to ascertain if the omission or neglect to commit the act complained of would have made the public servant answerable for the charge of dereliction of his official duty. He may have acted “in excess of his duty”, but if there is a “reasonable connection” between the impugned act and the performance of the official duty, the protective umbrella of Section 197 of the CrPC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts.

- Grant of sanction is only an administrative function.
- The prima facie satisfaction of the sanctioning authority matters and need not be penned down in great detail mentioning all the evidence collected.
- Order of refusal to grant sanction may be reviewed and sanction be granted, provided fresh material or new material is placed to show to grant sanction refusal is perfunctory.

- Prior sanction is a protection for the public servant from malicious prosecution. It is a shield. Sub section (3) of Section 19, says, no order of conviction and sentence can be reversed or altered by the court of appeal or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction, unless in the opinion of the court, such error or omission has resulted in a failure of justice.

Test for validity of sanction order

- Sanction order by competent authority.
- All relevant evidence both for and against should be placed before the sanctioning authority.
- The sanctioning authority should apply his mind to conclude that the public servant is to be prosecuted.
- Application of mind should be objective and impartial.

- **Application of mind:**
- Assessment and weighing of the accusation in a dispassionate and responsible manner.
- The sanction order should reflect the understanding of the facts by the sanctioning authority in his own way.
- The point of time: By the authority who is competent to remove the public servant at the time the court take cognizance.

- Prosecution can prove application of mind by two ways:
- i) By placing the original sanction order which itself contains the facts constituting the offences and the grounds of satisfaction.
- ii) by adducing evidence *aliunde* to show the facts placed before the sanctioning authority and the satisfaction arrived at.

Section 19: Sanction

- Section 19 of the Prevention of Corruption Act, 1988 describes that where a criminal act is done under the guise of power but in reality, it is done for such public servant's own pleasure or advantage then such acts shall not be made immune as per the Doctrine of State Immunity. Where the act is performed under the shade of office for the advantage or pleasure of such officer Section 19 (1) will be applicable. In this way, Section 19 (1) is related with the time and type of the offence concerned.

- CBI –vs- Ashok kumar Aggarwal (2014) 14 SCC 295.
- SC had summarised the role of the prosecution and the sanctioning authority before according sanction under section 19 of the PC act.