

# **Adjudication of Corruption Offences**

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**Madras High Court**

**National Judicial Academy**

**National Conference For High Court Justices**

**on**

**Prevention of Corruption Act**

**(P-1386)**

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# Scope of Discussion

- Bribery including Corporate Bribery
- Criminal Misconduct
- Misappropriation
- Trading in Influence
- Trap Cases
- Abuse of Position
- Presumption of Corruption in certain cases

# **Prevention of Corruption Act**

- Enacted in 1946 initially**
- Subsequently enacted in 1988**
- Provisions amended in 2018**

# **Distinct Features of PC Act**

- Offences under PC Act are triable by Special Judges. (Sec.4(1))**
- Endeavour to conclude trial within 2 years. (Sec.4(4))**
- If not concluded, Special Judge shall record the reasons. (1<sup>st</sup> proviso to Sec.4(4))**
- Time can be extended, not exceeding 6 months at a time, with sufficient reasons. Aggregate period cannot extend beyond 4 years. (2<sup>nd</sup> proviso to Sec.4(4))**

# **Distinct Features of PC Act...**

- Inspector of Police and above of CBI can investigate cases. (Sec.17(a))**
- ACP in metropolitan area and Dy.SP in other case can investigate. (Sec.17(b), (c))**
- State Government can authorize officer not below Inspector to investigate. (1<sup>st</sup> proviso to Sec.17)**
- Metropolitan Magistrate or JFMC may authorize any other person to investigate cases. (Sec.17)**

# Distinct Features of PC Act...

- Prior Approval of the competent authority is mandatory for enquiry or inquiry or investigation of an offence by a public servant where such offence is relatable to any decision or recommendation made by such public servant in discharge of his official duties. (Sec.17A)
- No such approval for cases involving arrest of a person on the spot on the charge of accepting any undue advantage (trap) (1<sup>st</sup> proviso to Sec.17A)
- No such approval required in respect of DA cases.
- State Government can authorize officer not below Inspector to investigate. (1<sup>st</sup> proviso to Sec.17A)
- 3 months prescribed as maximum period for according such approval, which can be extended by one month, for reasons to be recorded in writing. (2<sup>nd</sup> proviso to Sec.17A)

# **Distinct Features of PC Act...**

- Prior Sanction of the competent authority is mandatory for the Court to take cognizance of the offence in respect of offences punishable u/s. 7, 11, 13 & 15 of the Act. (Sec.19)**
- Request for sanction for prosecution can not be made to the competent authority by a person other than police officer or an officer of an investigative agency or other law enforcement authority, unless such person has not filed a complaint in a competent court and such petition has not been dismissed u/s. 203 Cr.P.C. and the court directed such person to obtain sanction for prosecution. (1<sup>st</sup> proviso to Sec.19(1))**
- Sanction for prosecution can not be accorded by competent authority when request is made by a person other than police officer or an officer of an investigative agency or other law enforcement authority, without providing an opportunity of being heard to the public servant concerned. (2<sup>nd</sup> proviso to Sec.19(1))**

# **Distinct Features of PC Act...**

- Finding or sentence or order of Special Judge cannot be reversed by the court of appeal, confirmation or revision due to absence/error/omission/irregularity in the sanction unless there is failure of justice on that count. (Sec.19(3)(a))**
- Proceedings cannot be stayed by court due to error/omission/irregularity in the sanction, unless there is failure of justice has resulted on that count. (Sec.19(3)(b))**
- No court can stay the proceedings on any other grounds. (Sec.19(3)(c))**



# **Distinct Features of PC Act...**

**–In a trial for offences u/s. 7 or 11, when it is proved that a public servant accepted or obtained undue advantage, presumption that he accepted or obtained the same as a motive or reward can be raised. It is for the accused to prove the contrary. (Sec.20)**

# **Bribery Sec.7(a)**

- Public servant obtaining or accepting or attempting to obtain ;**
- Undue advantage ;**
- Intention to perform or cause to perform;**
- Public duty improperly or dishonestly;**
- Forebear or cause to forebear;**
- By himself or by another public servant**

# **Bribery Sec. 7(b)**

- Public servant obtaining or accepting or attempting to obtain ;**
- Undue advantage ;**
- As reward for the improper or dishonest performance of public duty;**
- Forbearing to perform such duty ;**
- By himself or another public servant**

# **Bribery Sec. 7(c)**

- Public servant performs or induces another public servant ;**
- To perform public duty improperly or dishonestly ;**
- In anticipation of or in consequence of accepting undue advantage from any person ;**

# **Bribery (Sec.7)**

- Whether the public duty was performed improperly or not is immaterial (Explanation 1) ;**
- Obtaining, accepting and attempting to obtain will cover such act done (a) by abusing position as public servant or (b) by using his personal influence over another public servant or (c) by corrupt or illegal means (Explanation 2(i));**
- It is immaterial whether such undue advantage was obtained directly or through third party (Explanation 2(ii)).**

# Corporate Bribery

- Examples of Corporate Bribery include **paying procurement staff to sway their decision in favour of the paying company**, giving an expensive gift to a bank manager to secure a loan, and various forms of kickbacks.
- The Prevention of Corruption Act 1988 (PCA), criminalises, among other things, the taking and giving of 'undue advantage' to 'public servants'. **Both individuals and companies are liable to be punished for an offence under the PCA.**

# Criminal Misconduct

- Criminal misconduct refers to behavior, actions, or activities that violate criminal laws and regulations. It encompasses a wide range of unlawful conduct that can result in criminal charges and potential legal penalties. Criminal misconduct includes actions that are prohibited by statutory law.

# Misappropriation

- **Embezzlement:** When an employee steals money or assets from their employer.
- **Unauthorized use of company funds:** Using company money for personal expenses without permission.
- **Theft of intellectual property:** Stealing or copying [copyrighted](#) material, [patents](#), or [trademarks](#) without authorization.
- **Insider trading:** Using confidential information about a company to make advantageous stock trades.
- **Theft of trade secrets:** Illegally acquiring confidential information from a business to gain a competitive edge.



# Disproportionate Asset

- Disproportionate assets is a term used to describe a situation where an individual's net economic assets significantly exceed the assets he or she should possess after accounting for the assets that he or she previously held and all legal sources of income.
- CBI guidelines require the agency to seek sanction of prosecution against the government servant concerned from the authority competent to remove him/her and mandate that the agency place all the evidence collected during the investigation before the authority for consideration.

# Trading in Influence

- Trading in Influence is the offering or Solicitation of an undue advantage in order to exert an improper, real, or supposed influence with a view of obtaining from a public official an undue advantage for the original instigator of the act or for any other person.
- Examples of influence peddling can be **using contacts in the government to obtain public contracts**, obtaining a job in a company thanks to a personal relationship with someone influential in the company, or the granting of a permit or licence by an authority in exchange for a favour.

# **Difference between Bribery and Trading in Influence**

- **The fundamental difference between these two categories is that, unlike the “corruptee” (i.e., the bribe-taker in corruption schemes), the “influence peddler” (i.e., the bribe-taker in influence peddling schemes) does not have the power to perform the corrupt act, but only acts as an intermediary, using influence.**

# Abuse of Position

- The offence occurs if a person:-
- occupies a position in which he was expected to safeguard, or not to act against, the financial interests of another person
- abused that position
- dishonestly
- intending by that abuse to make a gain/cause a loss

# Presumption

- The presumption, as defined in The Evidence Act, is a *“rule of law that courts and judges shall draw a particular inference from a particular fact or a particular piece of evidence unless and until the truth of such inference is disproved”*.  
Nevertheless, presumptions generally have an evidentiary value which is more than that of the fact.
- Section 4 provides three kinds of presumptions namely ‘may presume’, ‘shall presume’, and ‘conclusive proof’ which could be raised by the court against the accused after guilt is proved ‘beyond reasonable doubt’ by the prosecution. The burden of proof immediately shifts to the accused, when either of the three presumptions is raised by the court. The accused then to remove the presumption must either satisfy a ‘persuasive burden’ or an ‘evidentiary burden’.

# Presumption

- Section 20 of the P.C. Act discusses “Presumption” where public servant accepts gratification other than legal remuneration. The provision states that when in any trial of offence which is punishable under S. 7 or S. 11 or S. 13(1)(a), the prosecution must prove that the accused has accepted or obtained or has agreed to accept or obtain, any gift, gratification either for him or for any other person. Once the acceptance of such gratification is proved, it will allow the courts to raise presumption under this section.

Thank You !!!