



सत्यमेव जयते

NTIPRIT

Prevention of Corruption Act 1988



National Telecommunication Institute for Policy Research, Innovation and Training
Ghaziabad - 201002. www.ntiprit.gov.in

Evolution

- IPC came into force w.e.f. 01.01.1862
 - ❖ Chapter IX, Section 161 to 165
 - ❖ Offences by public servants
 - ❖ Silent on misconduct or abuse of power

- Special Act (PC Act 1947) w.e.f. 11.03.1947 came into existence to make more effective provisions for prevention of bribery and corruption.
 - ❖ Criminal misconduct was made an offence.

e-learning

Evolution

■ PC Act 1947 expanded in 1988

- ❖ Defined public servant, various offences etc.
- ❖ Criminal misconduct defined in detail (Sec 13)
- ❖ Repealed IPC sections and PC Act 1947

■ PC Act 1988 Amended in July 2018

- ❖ Criminal misconduct was narrowed down
- ❖ New term “**Undue Advantage**” is defined
- ❖ Gratification not limited to pecuniary only

- ❖ Public servants included all persons whether appointed by Govt or not, who are in actual possession of the situation



Dimensions of Corruption

- **Klitgaard's Equation:** Corruption happens if,

Corrupt Gain > Penalty x Probability of getting Caught
or Prosecuted

- **Stephan's Equation:**

Degree of Corruption = Monopoly +
Discretion-Transparency-Morality



Corruption

- Corruption can be basically divided into three categories.
 1. bribery and its abettors.
 2. Abuse of official position
 3. Possession of disproportionate assets.



What is Considered as Bribe

- The receiver must be a **public servant**
- He must solicit or receive **illegal gratification**
- He must have received the same as a motive or reward
 - ❖ **Motive** is for doing a future act
 - ❖ **Reward** is for a past act
- It should be other than legal remuneration
- **Mere demand** of bribe by a public servant is an offence.
- Gratification is not restricted to pecuniary gratification or estimable in money

Abuse of Official Position

- Abuse means misuse or using his **position** for something for which it is not intended.
- The abuse of official position is wider than the offence of bribery.
- The abuse may be by corrupt or illegal means .
- To obtain **pecuniary advantage** or any valuable thing for himself or for any other person without any public interest



Abuse of Official Position

- All bribery cases squarely fall under “**obtaining any pecuniary advantage**“ in addition to section 7 of the PC Act, 1988 .
- Causing **wrongful loss to the Govt** to obtain pecuniary advantage for a third party falls under abuse of Power
- Issue of contracts to the bidders **at higher rates** would also fall under abuse of powers



Disproportionate Asset

- Large numbers of public servants indulge in corrupt activities on regular basis.
- It would be difficult to catch them while accepting the bribe by laying a trap.
- The ill-gotten money so collected by them are converted into assets.
- Hence, to detect such officer, disproportionate asset was made as an offence in PC Act.



DA (SC Observations)

- K. Veera Swami v/s Union of India (1991):
 - ❖ If one possesses assets beyond his legitimate means, it goes without saying that the excess is out of ill-gotten gain. The assets are not drawn like Nitrogen from the air.
- P. Nallamal v/s State (TN) 1999
 - ❖ The abettor can also be prosecuted for aiding to acquire disproportionate assets by the public servant.
 - ❖ Every public servant is legally bound to inform the receipt of income otherwise the same cannot be treated as income.

Who is Public Servant

- **Section 2(c) of the PC Act, 1988 defines “Public Servant”.** It says “ any person” who is :
- In the service or pay of the Government or remunerated by the Government;
- In the service or pay of a Local Authority;
- In the service or pay of a corporation established by or under a Central, Provincial or State Act;



Who is Public Servant

- Any Judge, delivering adjudicating functions;
- Authorized by a Court of Justice
- Any arbitrator ;
- Empowered to prepare, publish, maintain or revise an electoral roll or to conduct elections;
- Authorized to perform public duty;
- President, Secretary or other office bearer of a registered co-operative society



Who is Public Servant

- Chairman, member or employee of any Service Commission or Board
- Public authority conducting examinations (Professor, lecturer)
- An office-bearer or an employee of an educational/scientific/social/cultural or other institution which receives aid from the Government/ local or other public authority.



Case Laws for PC Act 1988

- MPs/ MLAs
- Ministers
- Ex-Public servants



Special Judges

- Section 3 – 6 : Appointment, Procedure and Powers
- The Central/ State Governments empowered to appoint Special Judges.
- Any offence under this Act to be tried by special judges.
- A Special Judge, under this Act exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944.
- CrPC provisions will apply to proceedings before special judge.



Provisions of PC Act 1988

- Section 7: Public Servant taking gratification.
- Section 8: Person/Public Servant taking gratification to induce a Public Servant
- Section 9: Person/Public Servant taking gratification for personally influencing a Public Servant
- Section 10: Public Servant abetting Section 8 & 9 offence



Provisions of PC Act 1988

- Section 11: Public Servant accepting valuable thing from a person for nil/ inadequate consideration
- Section 12: Persons/Public Servants abetting offences under Sections 7 & 11
- Section 14: Habitual Offenders of offences under Sections 8, 9 & 12
- Section 15: Attempting offences under Sections 13(1)(c) & 13(1)(d)



e-learning

DOT

Criminal Misconduct

- If a public servant habitually accepts gratification.

Section 13(1)(a)

- If a public servant habitually accepts any valuable thing with nil/ inadequate consideration with whom he transacted business or about to be transacted

Section 13(1)(b)

- Fraudulently misappropriates or converts for his own use any property entrusted to him or under his control or allows any other person to do so.

Section 13(1)(c)

Criminal Misconduct

- By corrupt and illegal means or otherwise by **abusing his official position** as public servant obtains any valuable thing or pecuniary advantage

Section 13(1)(d)(i) & (ii)

- **While holding office, obtains for any person any valuable thing or pecuniary advantage without any public interest**

Section 13(1)(d)(iii)

- Possession of Disproportionate Assets

Section 13(1)(e)

- IPC Sections **161 to 165** repealed by these sections.

Provisions of PC Act 1988

- Section 16: Fines to take into account the pecuniary resources/property involved in all cases including DA cases
- Section 17: Investigating Officers– Inspectors of CBI, ACPs in Metros & Dy SPs in other places
- Section 18: Inspection of Bank Records of accused by Investigating officer of SP rank



Provisions of PC Act 1988

- Section 19: Previous sanction necessary for prosecution.
No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction.
- Section 21: Accused person may act as a competent witness.
- Section 24: Statement by bribe giver not to subject him to prosecution

Amendments in 2018

- Section 13(1)(d)(iii) - Public Servant obtaining any valuable thing or pecuniary advantage for any person without Public Interest.
- This became contentious since a decision by a Public Servant benefiting a Private Party became a Criminal Misconduct being interpreted as without any Public Interest (e.g. in Coal Block Allocation Cases). This led to clamour for amendments to PC Act, 1988.



Amendments in 2018

- Prevention of Corruption Act, 1988 got amended on 26th July, 2018, comprehensively narrowing the definitions of Criminal Misconduct.
- Section 2(d) of the Act defines a new term, “**Undue Advantage**”, to mean any gratification, whatever, other than Legal Remuneration.
- Gratification is not limited to Pecuniary Gratification only.



Amendments in 2018

- Legal Remuneration is the Remuneration permitted by the Government/Organization.
- Public Servant includes all persons whether appointed by Government or not, who are in actual possession of the situation.



Amendments in 2018

- Section 4(4): Provides for **Two years time limit (day to day basis)** to complete the trial of Cases under the Act.
- Special Judge may extend up to another **Two years** in stretch of **Six months** at a time recording **reasons in writing** for each extension.
- The total trial period limited to maximum **Four years**.



Amendments in 2018

- Section 7: Public Servant obtaining/attempting to obtain **Undue Advantage (gratification)** with intention to perform/cause performance of/forbear/cause forbearance of Public Duty by himself/by any other Public Servant.
- Public Servant obtaining Undue Advantage as a reward for improper or dishonest performance of Public Duty. This could be in anticipation of or in consequence of accepting an undue advantage from any person.



Amendments in 2018

- Punishment: 3 – 7 years imprisonment with Fine

Even proper performance of Public Duty with such inducement is an offence.

All cases of corrupt or illegal deals are covered including getting undue advantage through a Third Party.



Amendments in 2018

- **Section 7A:** Any Person obtaining/attempting to obtain from another person for himself or for another person any undue advantage as a motive or reward for inducing a Public Servant by illegal or corrupt means for dishonest/improper performance of Public Duty or forbearance/cause forbearance of Public Duty by himself or by any other Public Servant.
- **Punishment:** 3 – 7 years imprisonment with Fine



Amendments in 2018

- Section 8: Any person who gives/promises to give an undue advantage to another person as a motive or reward to induce a Public Servant for improper performance of Public Duty .
- It does not apply to cases where a person is compelled to give such undue advantage provided he reports the matter to Law Enforcement Authorities within seven days of giving such advantage.



Amendments in 2018

- Such undue advantage could be given directly or through a **Third Party**.
- The bribe taker faces 7 years Jail term + Fine
- Person informing Law Enforcement Authorities about giving such undue advantage can give such advantage after informing the Law Enforcement Authorities in order to assist them in investigation.



Amendments in 2018

- Section 9: Bribing a Public Servant by a Commercial Organization (CO), then such organisation is punishable with fine
 - ❖ Any Person associated with a CO who gives/promises to give undue advantage to a Public Servant in order to retain the business of the CO or to obtain or retain business for such a CO.
 - ❖ CO in its defence can indicate the guidelines it has prescribed to prevent its associated persons to undertake such steps.

Amendments in 2018

- ❖ Offences under Sections 7-A, 8 shall be **cognizable**.
- ❖ Commercial Organizations include a body incorporated in India, Partnership Firm, Partnership/Association incorporated abroad, but carrying on business in India.



Amendments in 2018

- Section 9 (Contd.): The capacity in which the person performs services for or on behalf of the CO shall not matter irrespective of whether such a person is an employee, agent or subsidiary of such CO.
 - ❖ All related circumstances to be examined to establish whether the person has performed services on behalf of the CO.
 - ❖ In case the person is an employee of the CO, it shall be presumed that he has performed services on behalf of the CO, unless contrary is established.
 - ❖ Central Government may issue guidelines in this regard for compliance by the CO.

Amendments in 2018

- Section 10: Person in-charge of CO to be guilty of the Offence:
 - ❖ For Offences under Section 9, if such offences are found to have been committed with the consent or connivance of any director, partner, manager, secretary or any other officer of the CO, such officer shall be guilty of the offence and are liable to be proceeded against.
 - ❖ They shall be punishable with Three to Seven years Jail Term + Fine.

e-learning

DOT

Amendments in 2018

- Section 11: Public Servant obtaining undue advantage without consideration/with inadequate consideration, from persons concerned in proceedings or business transacted by such Public Servant or having any connections with official functions or Public Duty of the same Public Servant or his Superiors.
- Punishment for such offence is Six months to Five years Jail Term + Fine.



Amendments in 2018

- Section 12: **Abetment of Offences:**
- Whoever abets any offence under this Act, shall be punishable with a Jail Term which may extend from Three Years to Seven Years + Fine. This is irrespective of whether that offence is committed in consequence of that abetment.
- The Section 12 in the pre-amended Act related to abetment of offences under old Section 7 or Section 11 with punishment of Six Months to Five Years + Fine.



Amendments in 2018

- Section 13(1): Criminal Misconduct by a Public Servant:
- A Public Servant is said to commit the offence of Criminal Misconduct (narrowed down to Two circumstances only)
 - 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 to do so
 - b) If he intentionally enriches himself illicitly during the period of his office.



Amendments in 2018

- All Misappropriation of entrusted Funds or acquiring Disproportionate Assets (which can not be accounted for) by Public Servants will be treated as Criminal Misconduct under Amended Act.
- Punishment for Criminal Misconduct: Jail Term for One to Seven Years + Fine



Amendments in 2018

- Section 14: **Punishment for Habitual Offender:**
 - ❖ Whoever commits an offence under the Act for the second time after being convicted for the first time shall be punishable for a Jail Term of Five Years to Ten Years + Fine.

- Section 15: **Punishment for Attempt:**
 - ❖ Whoever attempts to commit an offence referred to in Section 13(1)(a) i.e. Misappropriation of Funds or Property shall be punishable with a Jail Term up to Three Years + Fine.



Amendments in 2018

- Section 16: Matters to be considered in fixing Fine:
- While imposing punishments under Sections 7, 8, 9, 10, 11, 13(2), 14, 15, the Court shall consider the amount of property acquired by the accused by committing the offence.
- If he is convicted of offence under Section 13(1)(b) i.e. Disproportionate Asset Case, the Court will consider the pecuniary resources or property which the accused is unable to satisfactorily account for.

Amendments in 2018

- Section 17: Persons authorized to investigate:
- Section 17-A: Enquiry/investigation into cases of recommendation made or decision taken by Public Servants in discharge of Official functions or duties:
 - ❖ No Police Officer shall conduct Enquiry/ Investigation into any offence alleged to have been committed by a Public servant relatable to a recommendation made or decision taken by him in discharge of official duties without the previous approval of the concerned Union or State Government.

e-learning

DOT

Amendments in 2018

- Section 17-A: The Public servant must be employed when he took the decision relatable to the alleged offence or was employed when the alleged offence was committed relatable to the decision taken by him.
- In case of any other person, the previous approval of authority competent to remove him from service must be taken.



Amendments in 2018

- Section 17-A (Contd.): No such prior approval will 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.
- Concerned Authority shall convey its decision under this section within a period of **Three Months**. Such period may be extended by a month for reasons to be recorded in writing by the Authority.



Amendments in 2018

- Section 18-A: The Provisions of Criminal Law Amendment Ordinance, 1944 shall, as far as may be, apply to the attachment, administration of attached property and execution of the order of attachment or confiscation money or property procured by means of an offence under this Act.
- References to “District Judge” in the said ordinance shall be construed as references to “Special Judge ” under this Act.



Amendments in 2018

- Section 19: **Previous Sanction Necessary for Prosecution:** Court can not take Cognizance of any case under Sections 7, 11, 13, and 15 of this act, alleged to have been committed by a Public Servant without previous sanction of concerned Central or State Government where the Public Servant is or was employed. Such Public Servant should be removable with the sanction of that Government.
- In the case of any other person, the Authority Competent to remove him from service has to give the sanction.

Amendments in 2018

- Only the concerned Police Officer or an officer of the investigative agency or other Law Enforcement Authority can ask for such sanction from the Concerned Government or the Competent Authority.
- ❖ If a person has filed a complaint in a competent court about the alleged offence for which the Public Servant is sought to be prosecuted, such person can ask for sanction of competent authority.



Amendments in 2018

- Competent Authority shall convey their decision on sanction proposal within a period of **Three Months** from the date of its receipt. If legal consultation is required, such period, for reasons to be recorded in writing, can be extended by one month.
- Central Government may prescribe guidelines on this matter as it considers necessary.
- If a public servant is **retired**, then also, sanction is required to be taken from the Government before filing of charge sheet in court of law.

e-learning

Amendments in 2018

- Section 20: Presumption where the Public Servant accepts any Undue Advantage:
- Where in a trial of offence under Section 7 or 11, it is proved that the Public Servant obtained undue advantage, it shall be presumed that he accepted it as a motive or reward for performing/causing performance of Public Duty improperly or dishonestly either by himself or by another public servant, as the case may be .



Amendments in 2018

■ Section 29-A: Power to Make Rules:

Central Government may make rules for carrying out the provisions of the Act, particularly in the following matters:-

- ❖ Guidelines to be put in place by commercial organizations under Section 9
- ❖ Guidelines for sanction of prosecution under Section 19(1)
- ❖ Any other matter which is required to be prescribed.



Salient Features of Amendment Act

- Salient Features of the Prevention of Corruption (Amendment) Act, 2018:
- **Bribery**: Under the Amendment Act, both Bribe giver and Bribe taker have been made responsible for the offence. There is provision of 7 years jail term for Bribe giver except when he is forced to give Bribe and he reports the same to the authorities.



Salient Features of Amendment Act

- **Criminal Misconduct:** The definition of Criminal Misconduct has been narrowed down to two situations:
 - ❖ (i) Misappropriation of entrusted Property
 - ❖ (ii) Possession of Disproportionate Assets

- **Pre-investigation Approval:** Prior approval of the Competent Authority is necessary except when the accused is caught red handed.



Salient Features of Amendment Act

- **Prosecution Sanction:** Sanction under Section 19(1) is needed for Prosecution for offences under the Act for all serving or **retired** officials.
- **Forfeiture of Property :** Special Court can attach and confiscate property involved in the offence under the Act which was earlier done through Criminal Law Amendment Ordinance through Civil Courts.



Salient Features of Amendment Act

- **Time limit of Trial of Cases:** The Courts have to complete trial of offences within Two years. After recording reasons for the same, the Court could extend this duration six months at a time up to a maximum of Four Years.
- **Commercial Organizations:** The Act prescribes punishment for both Commercial Organizations by levy of fine and its Directors and employees involved in bribery by a Jail Term + Fine.



Salient Features of Amendment Act

- Definition of the term “**Undue Advantage**” makes a generic reference to “Organization” while clarifying the meaning of legal remuneration. Applying this definition to Sections 7-A and 8, it appears that every person involved in the chain of corruption whether working for a private entity or a public enterprise could potentially be prosecuted under the Act.
- If a company contracts with a party which engages in corrupt practices, then the company and its directors/employees become liable for offences under the Act. Hence all companies must develop robust anti bribery guidelines.

THANK YOU

