

All About Prevention of Corruption Act, 1988

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INTRODUCTION

When the Indian Penal Code was enacted it also defined and provided punishment for the offence of bribery and corruption amongst public servants. But later on, i.e. during the World War II it was realized that the existing law in Indian Penal Code was not adequate to meet the exigencies of the time and imperative need was felt to introduce a special legislation with a view to eradicate the evil of bribery and corruption and thereby the Prevention of Corruption Act, 1947 was enacted which was later on amended twice; once by the Criminal Law Amendment Act, 1952 and later in 1964 by the Anti-Corruption Laws (Amendment) Act, 1964 based on the recommendations of the Santhanam Committee. To make the anti-corruption laws more effective by widening their coverage and by strengthening the provisions the Prevention of Corruption Bill was introduced in the Parliament.

Question 1 - When did Prevention of Corruption Act, 1988 came into force, and what is it's extent?

Ans - The Prevention of Corruption Act came into force on the 9th day of September, 1998. It extends to the whole of India, except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

Question 2 - What is 'Corruption'?

Ans - Corruption is dishonest behaviour by those in positions of power, such as managers or government officials. Corruption can include giving or accepting bribes or inappropriate gifts, double dealing, under-the-table transactions, manipulating elections, diverting funds, laundering money and defrauding investors.

Question 3 - How the Prevention of Corruption Act, 1988 and other relevant statutes can help in preventing corruption in India?

Ans - The Prevention of Corruption of Act, 1988 is an important legislation to fight with evil of corruption. It is an effective instrument to curb this evil. The success of movement against the evil of corruption depends upon the performance of this legislation. Hence it becomes

important for us to know about the efficacy of this legislation. We have to find out the lacuna in the legislation if they exist in this legislation. We have to do away with the draconian provisions existing within the Act. Similarly the introduction of new provisions into the Act will also be fruitful.

Question 4 - What are the provisions related to the cases triable by special judges under this act?

Ans - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of Section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.

Question 5 - Is it unlawful for a public servant to take any money other than his salary?

Ans - Yes, it is under the following circumstances:

Crime	Example
Asking for or getting money or gifts, in addition to your salary, in return for doing your official duty.	Ravi gifts Mukesh, a public servant, a house in Andheri in return for Mukesh giving fast approval to Ravi's building construction project.
Asking for or getting money or gifts, in addition to your salary, in return for not doing your official duty.	Mukesh is a tax assessment officer. Ravi gives Mukesh's sons admission for free in the school run by Ravi's family. This is so that Mukesh does not fine Ravi for failing to pay his income tax.

When doing your official duty, being partial to the person who paid you.	Mukesh, a municipality officer is paid Rs. 10,000 by Ravi so that Mukesh will award the project for building a road in the locality to Ravi's company
Doing some service for the person who paid you, during your official duty.	Mukesh is a teacher at the Howrah Railway School. Ravi pays him Rs. 1000 so that he gets a job in the Sealdah Railway Station.

In each of these cases Mukesh can be sent to jail for at 3-7 years and will also pay fine

Question 6 - What is meant by “criminal misconduct” by a public servant, and what is it’s punishment?

Ans – Criminal misconduct is defined under Section 13 of Prevention of Corruption Act 1988, and includes a person taking gratification (who habitually accepts/asks to procure valuable articles free or at low cost in return for official favours, who misappropriates/allows others to misappropriate public assets and resources and who has money and/or property disproportionate to known sources of income. The punishment shall be imprisonment for a period not less than 1 year and up to 7 years and may include a fine.

Question 7 – What are the offences and penalties under this act?

Ans - The following are the offences under the PCA [Prevention of Corruption Act] along with their punishments:- Taking gratification other than legal remuneration in respect of an official act, and if the public servant is found guilty shall be punishable with imprisonment which shall be not less than 6 months but which may extend to 5 years and shall also be liable to fine.

- Taking gratification in order to influence public servant, by corrupt or illegal means, shall be punishable with imprisonment for a term which shall be not less than three year but which may extend to seven years and shall also be liable to fine.
- Taking gratification, for exercise of personal influence with public servant shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

- Abetment by public servant of offences defined in Section 8 or 9, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.
- Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.
- Punishment for abetment of offences defined in Section 7 or 11 shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.
- Any public servant, who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to 7 years and shall also be liable to fine.
- Habitual committing of offence under Section 8, 9 and 12 shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to 7 years and shall also be liable to fine.

Question 8- Can a public servant be prosecuted without the prior permission of his employer?

Ans - The previous sanction of the GoI is required for Central Government employees, of the State Government concerned for state government employees, and in the case of any other public servant the sanction of the authority empowered to remove him from office is required to prosecute a public servant for offences committed under sections 7, 10, 11, 13 and 15 of the Act. This provides safeguards against criminal prosecution on the basis of false or malicious complaints against public servants.

Question 9 - Critically examine various views of the Supreme Court on the precondition of “sanction” for prosecution of a public servant under Section 19 of the Prevention of Corruption (PC) Act, 1988. Also comment how these views have impacted fight against corruption among public servants.

Ans - Section 19 of PCA,1988 imposes a bar on court to take recognition of an offense against a public servant until a sanction is obtained from the Govt.

Supreme Court Judgment on Section 19 of Prevention of Corruption Act

1.Validity of Section -> In Manzoor Ali Khan vs UOI (2015) and Subramanian Swami (2014) case provision for sanction for prosecution in a corruption case is not unconstitutional as mere possibility of abuse cannot be a ground to declare a provision unconstitutional , but executive needs to expedite the sanction process

2.Requirement -> It has healthy objective of protecting an innocent public servant against unwarranted and mala fide prosecution and act applies at threshold itself (Aiyappa vs Anil Kumar (2013) and Narayana Swamy vs State (2016) cases).

Counter-Views

1.In Subramanian Swami vs UOI (2014) case, SC held Section 6A of the Delhi Special Police Establishment Act, which required prior sanction for investigation as invalid (Similar views in Rajasthan vs Raj Kumar-1998 and R.R. Chari vs. State-1951)

2.No tolerance to corruption -> Undermines core constitutional values of justice, equality, liberty and fraternity as status of offender is not relevant during investigation of crime

3.Subjugation of judicial power -> By imposing a restriction on investigation by police at preliminary level itself.

Question 10 - What are the requirements of an Accused person to be used as a competent witness?

Ans - Any person charged with an offence punishable under this Act, shall be a competent witness for the defence 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:

Provided that —

- (a) he shall not be called as a witness except at his own request;
- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless — (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or

(ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or

(iii) he has given evidence against any other person charged with the same offence.

Question 11 - Can a Statement by bribe giver, subject him to prosecution?

Ans – No, A statement given by bribe giver cannot subject him to prosecution.

As per section 24 of PCA (Prevention of Corruption Act 1988), Notwithstanding anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant for an offence under sections 7 to 11 or under section 13 or section 15, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under section 12.

Question 12 - Who has been entrusted with the power to investigate a matter under this act?

Ans - Investigation shall be done by a police officer not below the rank of :

- In case of Delhi, of an Inspector of Police.
- In metropolitan areas, of an Assistant Commissioner of Police.
- Elsewhere, of a Deputy Superintendent of Police or an officer of equivalent rank shall investigate any offence punishable under this Act without the order of a Magistrate of first class, or Metropolitan Magistrate, or make any arrest therefore without a warrant.

Provided further that an offence referred to sec 13 (1) (e) shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. And the

investigation which is made without the order of a SP (Superintendent of Police) of above rank will be dismissed.

If a police officer not below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may investigate such offence without the order of a Metropolitan Magistrate or Magistrate of First class or make arrest therefore without a warrant.