

# THE PREVENTION OF CORRUPTION ACT, 1988

(Act 49 of 1988, dt. 9-9-1988)

[As amended by the Prevention of Corruption (Amdt.) Act, 2018 (16 of 2018), dt. 26-7-2018, w.e.f. 26-7-2018 vide SO 3664(E), dt. 26-7-2018 and the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), dt. 9-8-2019, w.e.f. 31-10-2019]

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

Be it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

## CHAPTER I PRELIMINARY

### 1. Short title and extent

- (1) This Act may be called the Prevention of Corruption Act, 1988.
- (2) It extends to the whole of India <sup>1</sup>[xxx] and it applies also to all citizens of India outside India.

## COMMENTS

**Act—Validity of** : Section 8 of the General Clauses Act, cannot override a constitutional provision, namely, Article 254 of the Constitution of India.—*Indra Narayan Ganguly v. State of West Bengal (1997) 4 Crimes 334 (Cal)*

The Prevention of Corruption Act, 1988 being a Central legislation and subject-matter relates to concurrent list of Schedule VII of the Constitution which was enacted by the Parliament will prevail and have an over-riding effect over any existing law.—*Indra Narayan Ganguly v. State of West Bengal (1997) 4 Crimes 334 (Cal)*

**Parliament—Intention of** : While deciding the case of *L.K. Advani v. Central Bureau of Investigation (1997) 4 Crimes 1*. Mr. Mohd. Shamim, J. of the Delhi High Court highlighted the laudibility of the Prevention of Corruption Act, 1988 thus:

“Statement of Objects and Reasons behind the enactment of the Prevention of Corruption Act, 1988 reveals that the legislators wanted to amend the existing anti-corruption laws with a view to making them more effective by extending the scope and ambit of the definition of ‘public servant’ and to bring within its sweep each and every person who held an office by virtue of which he was required to perform any public duty.

It is well known that when the words of a statute are wide and clear then a restrictive meaning cannot be given to them. The purpose of the Act is clear and unambiguous, i.e., the eradication of corruption. Hence a construction which would enhance the object of the Act and curb the mischief is to be put.

A purposive interpretation should be put on the relevant provisions of law so as to fulfil the intention of the Legislature and eschew an interpretation which defeats the object of the Act.

Parliament is presumed to intend that in construing an Act the court, by advancing the remedy which is indicated by the words of the Act for the mischief being dealt with, and the implications

<sup>1</sup> Words “except the State of Jammu and Kashmir” omitted by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), dt. 9-8-2019, w.e.f. 31-10-2019 vide SO 2889(E), dt. 9-8-2019.

arising from those words, should aim to further every aspect of the legislative purpose. A construction which promotes the remedy Parliament has provided to cure a particular mischief is now known as a purposive construction.

Where a public interest is affected an interpretation is preferred which favours the public. A narrow construction should not be permitted to undermine the public policy sought to be served. This is especially so where a narrow construction discourages rather than encourages the specific action the Legislature has sought to foster and promulgate. The founding fathers of the Constitution envisioned the legislators as men of character, rectitude and moral uprightness whose sole object was to serve the public with dedication, to be open, truthful and legal".

**Complainant—Evidence of :** The law is well settled that in bribery cases, the complainant is an interested witness and his evidence must be considered with great caution as also it can be accepted only when it is corroboration material particulars by other evidence adduced by the prosecution.—*Hari Shankar Vajpai v. State of MP (1998) 1 Crimes 549 (MP)*

## 2. Definitions

In this Act, unless the context otherwise requires,—

(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;

<sup>1</sup>[(aa) “prescribed” means prescribed by rules made under this Act and the expression “prescribe” shall be construed accordingly;]

(b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest.

*Explanation :* In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the government or a government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)<sup>2</sup>;

(c) “public servant” means,—

(i) any person in the service or pay of the government or remunerated by the government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a Corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the government or a government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)<sup>2</sup>;

(iv) 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;

(v) any person authorised 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;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

<sup>1</sup> Inserted by the Prevention of Corruption (Amdt.) Act, 2018 (16 of 2018), dt. 26-7-2018, w.e.f. 26-7-2018 vide SO 3664(E), dt. 26-7-2018.

<sup>2</sup> Now refer section 2(45) of Companies Act, 2013 (18 of 2013).

- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any Corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the government or a government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)<sup>1</sup>;
- (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any university and any person whose services have been availed of by a university or any other public authority in connection with holding or conducting examinations;
- (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

*Explanation 1* : Persons falling under any of the above sub-clauses are public servants, whether appointed by the government or not.

*Explanation 2* : Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

- <sup>2</sup>[(d) "undue advantage" means any gratification whatever, other than legal remuneration.

*Explanation* : For the purposes of this clause,—

- (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 organisation, which he serves, to receive.]

<sup>1</sup> Now refer section 2(45) of Companies Act, 2013 (18 of 2013).

<sup>2</sup> Inserted by the Prevention of Corruption (Amdt.) Act, 2018 (16 of 2018), dt. 26-7-2018, w.e.f. 26-7-2018 vide SO 3664(E), dt. 26-7-2018.

COMMENTS

Interpretation clause is a part of the enactment. It expresses more authoritatively the meaning of words used by the Legislature and prevails over any other construction by any other intrinsic aids.—*Sutherland: Statutory Construction 3rd Edn. Vol. 2, p. 222*

Definition given in the Act is normally to be taken to apply whenever that word occurs in the statute.—*Desraj Santaram v. Karam Chand 1962 Punj. L.R. 758 (FB)*

**Duty—Nature of** : What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the “duty” has been set out. Even if the “duty” is not set out clearly and specifically in the statute, it may be co-relative to a “right”.—*Mansukhlal Vithaldas Chauhan v. State of Gujarat (1997) 3 Crimes 301 (SC)*

**Public servant—MP is** : A Member of Parliament enjoys a status and position. He is also required to perform public duties under the Constitution. He has been adverted to as a person having an “office” in the salary, allowances and pension of Members of Parliament Act, 1954. Thus it can safely be concluded therefrom that a Member of Parliament is holder of an office; and he is a “public servant” within the scope of section 2(c) of the Act.—*L.K. Advani v. Central Bureau of Investigation (1997) 4 Crimes 1 (Del)*

**Executive/Judiciary—Member of** : The law is today that every member of the executive or every member of the judiciary is covered by the provisions of the Prevention of Corruption Act, 1988.—*L.K. Advani v. Central Bureau of Investigation (1997) 4 Crimes 1 (Del)*

**“Office”—Meaning of** : The word ‘office’ has been defined in Black’s Law Dictionary, page 1082, an “assigned duty” or “function”. Synonyms are “post”, “appointment”, “situation”, “place”, “position”, and “office” commonly suggests a position of (especially public) trust or authority.

The term ‘office’ has also been a subject-matter of interpretation in American jurisprudence, 11nd Edn. Vol. 63A, page 1, “...Ordinarily and generally, a public office is defined to be the right, authority, and duty created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public. The position is an office whether the incumbent is selected by appointment or by election, and whether he is appointed during the pleasure of the appointing power or is elected for a fixed term”.

“A public officer is such officer as is required by law be elected or appointed, which has a designation or title given to him by law, and who exercises functions concerning the public, assigned to him by law”.

“When a man becomes a Member of Parliament, he undertakes high public duties. Those duties are inseparable from the position; he cannot retain the honour and divest himself of the duties. The position, independent of the Member, is subsisting, permanent and substantive and will be filled by others after him; this is provided by law; and it is certainly of a more, rather than less, public character”. Erskine May in fact speaks of “Corruption in the Execution of their office as Members”. There is nothing to stop a court, therefore, holding that membership of Parliament constitutes an office...” Thus in *L.K. Advani v. Central Bureau of Investigation (1997) 4 Crimes 1*, it was held that a Member of Parliament holds an office.

**Prescribed** : Prescribed means prescribed by rules made under this Act and the expression “prescribe” shall be construed accordingly.

Black’s Law Dictionary defines the expression ‘prescribe’ to lay down authoritatively as a guide, direction, or rule; to impose as a peremptory order; to dictate; to point, to direct; to give as a guide, direction, or rule of action; to give law. To direct; define; mark out.

**Public Servant** : ‘Public servant’ denotes a person falling under any of the descriptions hereinafter following, namely—

- (1) every Commissioned Officer in the Military, Naval or Air Forces of India;
- (2) every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (3) every officer of a court of justice including a liquidator, receiver or Commissioner whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or take charge or dispose of any

- property or to execute any judicial process or to administer any oath, or to interpret, or to preserve order in the court; and every person specially authorized by a court of justice of perform any of such duties;
- (4) every juryman, assessor or member of a panchayat assisting a court of justice or public servant;
  - (5) every arbitrator or other person to whom any cause or matter has been referred for decision or report by any court of justice or by any other competent public authority;
  - (6) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
  - (7) every officer of the government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
  - (8) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the government, or to make any survey, assessment or contract on behalf of the government or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of the government, or to make, authenticate or keep any document relating to the pecuniary interests of the government, or to prevent the infraction of any law for the protection of the pecuniary interests of the government;
  - (9) every officer whose duty it is, as such officer, to take, receive, keep or, expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;
  - (10) every person who holds any office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election; and
  - (11) every person—
    - (a) in the service or pay of the government or remunerated by fees or commission for the performance of any public duty by the government;
    - (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a government company as defined in s. 617 of the Companies Act, 1956 (1 of 1956).

**‘Public servant’** includes any public servant as defined in the Indian Penal Code (45 of 1860) and any servant of any local authority and any person engaged in any employment or class of employment which the State Government may, from time to time, declare to be employment or class of employment essential to the life of the community.

*Public servants are following* : Chief Minister, Minister of a State, officer in charge of a police station, Pradhan of Gram Sabha, Members of Panchayat Adalat, chief officer of Panchayat, and the public prosecutors.

*Following are not public servants* : Headmaster, teachers, principals of aided schools, civil servants working on deputation with co-operative society, president and secretary of co-operative society, an MLA and the Mukhias.

There can be no default that the coverage of s. 2(c) of this Act is far wider than that of s. 21 of the Indian Penal Code.—*P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 Supreme Today 1 (5 JJ)*

A Member of Parliament is a “public servant” within the meaning of s. 2(c)(viii) of the Prevention of Corruption Act, 1988.—*P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 Supreme Today 1 (5 JJ)*

**Undue advantage:** Undue advantage means any gratification other than legal remuneration.

**CHAPTER II**  
APPOINTMENT OF SPECIAL JUDGES

**3. Power to appoint Special Judges**

(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely,—

- (a) any offence punishable under this Act; and
- (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 Code of Criminal Procedure, 1973 (2 of 1974).

**4. Cases triable by Special Judges**

(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 area, by 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 (2 of 1974), be charged at the same trial.

<sup>1</sup>[(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the trial of an offence shall be held, as far as practicable, on day-to-day basis and an endeavour shall be made to ensure that the said trial is concluded within a period of two years:

PROVIDED that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so:

PROVIDED FURTHER that the said period may be extended by such further period, for reasons to be recorded in writing but not exceeding six months at a time; so, however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate.]

COMMENTS

Any offence punishable under the Prevention of Corruption Act, 1988 can be tried only by a Special Judge appointed under section 3 thereof and not by any other court, notwithstanding anything contained in any other law for the time being in force.—*Indra Narayan Ganguly v. State of West Bengal (1997) 4 Crimes 334 (Cal)*

**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

<sup>1</sup> Substituted by the Prevention of Corruption (Amdt.) Act, 2018 (16 of 2018), dt. 26-7-2018, w.e.f. 26-7-2018 vide SO 3664(E), dt. 26-7-2018.

prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.

(2) A Special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge; and for the purposes of the said provisions, 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.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to the proceedings before a Special Judge and for the purposes of the said provisions, a Special Judge shall be deemed to be a Magistrate.

(5) A Special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) 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 (Ordinance 38 of 1944).

#### COMMENTS

**Accused—Benefit to :** There is no dispute to the proposition that any reasonable doubt appearing in the prosecution case has to be taken in favour of the accused.—*R.S. Simra v. State of Himachal Pradesh (1997) 3 Crimes 237 (HP)*

**Bribe-giver—Evidence of :** The bribe-giver assumes the character of an accomplice.—*R. Rajendran v. DSP, Vigilance and Anti-Corruption (1997) 3 Crimes 175 (Mad)*

As a matter of rule of law, it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon.—*R. Rajendran v. DSP, Vigilance and Anti-Corruption (1997) 3 Crimes 175 (Mad)*

The court should weigh the evidence and then see the standard of corroboration which is required.—*R. Rajendran v. DSP, Vigilance and Anti-Corruption (1997) 3 Crimes 175 (Mad)*. It is the duty of the court to consider and appreciate the evidence in a proper manner.—*R. Rajendran v. DSP, Vigilance and Anti-Corruption (1997) 3 Crimes 175 (Mad)*

It does not call for outright rejection of the complainant's evidence at the threshold. The court has to scrutinise such evidence with great care. A pedantic approach rejecting the complainant's evidence simply on the premise that he was aggrieved against the bribe taker, would only help corrupt officials getting insulated from legal consequences.—*State of UP v. Zakaullah (1997) 10 Supreme Today 522*

**Bail—Grant of :** By now, it is well settled that bail and not jail is the normal rule.—*Anil Sharma v. State of HP (1997) 3 Crimes 135 (HP)*

**Expert—Statement of :** Needless to say that expert's statement is an opinion and it cannot be substantive in nature at all. It is corroborative piece of evidence.—*R.S. Somra v. State of HP (1997) 3 Crimes 237 (HP)*

**Fresh sanction—Order for** : Normally when the sanction is held to be bad, the case is remitted back to the authority for re-consideration of the matter and to pass a fresh order of sanction in accordance with law.— *Mansukhlal Vithaldas Chauhan v. State of Gujarat (1997) 3 Crimes 301 (SC)*

**Trap—Doubt about** : While the trap itself is highly suspicious and the evidence of the decoy witnesses is unbelievable with no support of the trap witness, then, it is very difficult to hold that there was a successful trap.—*Duraisamy v. State of TN (1997) 1 Crimes 412 (Mad)*

The mere claim of the prosecution that on questioning the accused, he seemed to be agitated or frustrated is of no consequence and has no relevancy as such agitated mood or frustrated mood depends upon the mentality of every individual, whether he be an accused or an innocent.—*Duraisamy v. State of TN (1997) 1 Crimes 412 (Mad)*

#### 6. Power to try summarily

(1) Where a special Judge tries any offence specified in sub-section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 (10 of 1955) or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973 (2 of 1974), the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

PROVIDED that 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:

PROVIDED FURTHER that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the Special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by a Special Judge.

### CHAPTER III

#### OFFENCES AND PENALTIES

#### <sup>1</sup>[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

<sup>1</sup> Substituted for existing sections 7, 8, 9 and 10 by the Prevention of Corruption (Amdt.) Act, 2018 (16 of 2018), dt. 26-7-2018, w.e.f. 26-7-2018 vide SO 3664(E), dt. 26-7-2018.

- duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or
- (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or
  - (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,

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.

*Explanation 1* : For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

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

*Explanation 2* : For the purpose of this section,—

- (i) the expressions “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;
- (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

#### COMMENTS

**Charge—Framing of** : A close scrutiny of section 7 of the Act reveals that the prosecution must show, *prima facie*, the following ingredients for framing a charge thereunder,—

- (a) that a public servant accepted or obtained for himself or for any other person any gratification other than legal remuneration;
- (b) that the said acceptance or obtaining of the gratification must be as a motive or reward for doing or for bearing to do any official act;
- (c) that the alleged acceptance or obtaining of the gratification must be as a motive or reward for showing or forbearing to show, in the discharge of his official functions any favour or disfavour to any person;
- (d) that the act of acceptance or obtaining of the illegal gratification should be as motive or reward for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or government company adverted to in clause (c) of section 2, or with any public servant, whether named or otherwise.

A duty has been cast on the shoulders of the prosecution, for framing of a charge under s. 7 of the Act, to *prima facie* show that a public servant accepted or obtained any gratification other than legal remuneration as a motive or reward for doing or forbearing to do any official act by way of favour or disfavour to any person in the discharge of his official duties.

The meaning of the word “accept” as per Oxford English Dictionary, Vol. I page 70 is “to take or receive (a thing offered) willingly, or with consenting mind; to take formally (what is offered) with contemplation of its consequences and obligations”. On the other hand, the word “obtain” as per Oxford English Dictionary, Vol. X (page 669) would mean (a) “to come into possession or enjoyment of (something) by one’s own effort, or by request; (b) to procure or gain, as the result of purpose and effort; hence, generally, to acquire, get”. Thus both the words “accept” and “obtain” signify an active conduct on the part of the person in accepting or obtaining a thing. Thus if something is thrust into the pocket of a person without his consent and without a request from his side it would not be an acceptance or obtainment of the said thing on the part of the person in whose pocket the same is inserted or thrust, within the meaning of section 7 of the Act.—*L.K. Advani v. Central Bureau of Investigation (1997) 4 Crimes 1 (Del)*

“Accept” means to take or receive with a “consenting mind”. [Shorter Oxford Dictionary]

Such a “consent” can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement.—*C.K. Damodaran Nair v. Government of India (1997) 1 Crimes 75 (SC)*

It cannot be said as an abstraction of law that without prior demand there cannot be ‘acceptance’.—*C.K. Damodaran Nair v. Government of India (1997) 1 Crimes 75 (SC)*

When an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, offers any gratifications and if the public servant willingly takes or receives such gratification it would certainly amount to ‘acceptance’.—*C.K. Damodaran Nair v. Government of India (1997) 1 Crimes 75 (SC)*

Sec. 7 defines the offence of a public servant taking gratification other than legal remuneration in respect of an official act and the penalty therefor.—*P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 Supreme Today 1 (5 JJ)*

‘Previous sanction’ under s. 19 is necessary.

Under section 7, any public servant who obtains or accepts or attempts to obtain an undue advantage from any person for the improper performance of a public duty shall be punishable as prescribed, and the expression “obtains” or “accepts” or “attempts to obtain” have been defined.

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

Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, 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.

#### COMMENTS

This section provides that whoever obtains or attempts to obtain or accepts from any other person any undue advantage to induce a public servant by illegal means or by his personal influence shall be punishable with imprisonment and fine as prescribed.

#### **8. Offence relating to bribing of a public servant**

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

- (i) to induce a public servant to perform improperly a public duty; or
- (ii) 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:

PROVIDED that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

PROVIDED FURTHER that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

PROVIDED ALSO that when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

*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.

*Explanation :* It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the <sup>1</sup>[latter].

#### COMMENTS

This section provides that any person who induces a public servant to perform improperly or gives or promises to reward for the improper performance of public duty shall be punishable as prescribed. If such person is compelled to do so, then the provisions of this section shall not apply.

#### **9. Offence relating to bribing a public servant by a commercial organisation**

(1) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending—

- (a) to obtain or retain business for such commercial organisation; or
- (b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

PROVIDED that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

(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.

<sup>1</sup> As corrected vide corrigendum, dt. 1-8-2018.