

The Prevention of Corruption Act, 1988

(49 of 1988)

as amended by
The Lokpal and Lokayuktas Act, 2013
(1 of 2014)
(w.e.f. 16-1-2014)

along with
SHORT NOTES

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THE PREVENTION OF CORRUPTION ACT, 1988

CONTENTS

| | Page |
|---|----------|
| Amendments to the Prevention of Corruption Act, 1988 (49 of 1988) by the Lokpal and Lokayuktas Act, 2013 (1 of 2014) | ii 1 |
| Introduction | 1 |
| Sections | |
| CHAPTER I | |
| PRELIMINARY | |
| 1. Short title and extent | 2 |
| 2. Definitions | 2 |
| CHAPTER II | |
| APPOINTMENT OF SPECIAL JUDGES | |
| 3. Power to appoint special Judges | 4 |
| 4. Cases triable by special Judges | 4 |
| 5. Procedure and powers of special Judge | 5 |
| 6. Power to try summarily | 6 |
| CHAPTER III | |
| OFFENCES AND PENALTIES | |
| 7. Public servant taking gratification other than legal remuneration in respect of an official act | 6 |
| 8. Taking gratification, in order, by corrupt or illegal means, to influence public servant | 8 |
| 9. Taking gratification, for exercise of personal influence with public servant | 8 |
| 10. Punishment for abetment by public servant of offences defined in section 8 or 9 | 8 |
| 11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant | 9 |
| 12. Punishment for abetment of offences defined in section 7 or 11 | 9 |
| 13. Criminal misconduct by a public servant | 9 |
| 14. Habitual committing of offence under sections 8, 9 and 12 | 11 |
| 15. Punishment for attempt | 11 |
| 16. Matters to be taken into consideration for fixing fine | 11 |
| CHAPTER IV | |
| INVESTIGATION INTO CASES UNDER THE ACT | |
| 17. Persons authorised to investigate | 11 |
| 18. Power to inspect bankers' books | 12 |
| CHAPTER V | |
| SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS | |
| 19. Previous sanction necessary for prosecution | 13 |
| 20. Presumption where public servant accepts gratification other than legal remuneration | 14 15 |
| 21. Accused person to be a competent witness | 15 |
| 22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications | 16 16 |
| 23. Particulars in a charge in relation to an offence under section 13(1)(c) | 17 |
| 24. Statement by bribe giver not to subject him to prosecution | 17 |
| 25. Military, Naval and Air Force or other law not to be affected | 17 |
| 26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act | 17 17 |
| 27. Appeal and revision | 17 |
| 28. Act to be in addition to any other law | 17 |
| 29. Amendment of the Ordinance 38 of 1944 | 18 |
| 30. Repeal and saving | 18 |
| 31. Omission of certain sections of Act 45 of 1860 | 18 |

IMPORTANT

ALL AMENDMENTS HAVE BEEN INCORPORATED IN THE MAIN ACT AT APPROPRIATE PLACES.
TEXT OF THE AMENDING ACT IS REPRODUCED BELOW FOR REFERENCE.

AMENDMENTS TO THE PREVENTION OF
CORRUPTION ACT, 1988 (49 of 1988)
BY
THE LOKPAL AND LOKAYUKTAS ACT, 2013
(1 of 2014)

PART I
PRELIMINARY

1. Short title, extent, application and commencement.—(1) This Act may be called the Lokpal and Lokayuktas Act, 2013.
(2) It extends to the whole of India.
(3) It shall apply to public servants in and outside India.
(4) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

- * * * * *
58. Amendment of certain enactments.—The enactments specified in the Schedule shall be amended in the manner specified therein.
* * * * *

THE SCHEDULE
(See section 58)
AMENDMENT TO CERTAIN ENACTMENTS

PART III
AMENDMENTS TO THE PREVENTION OF CORRUPTION ACT, 1988
(49 of 1988)

1. Amendment of sections 7, 8, 9 and 12.—In sections 7, 8, 9 and section 12,—
(a) for the words "six months", the words "three years" shall respectively be substituted;
(b) for the words "five years", the words "seven years" shall respectively be substituted.
2. Amendment of section 13.—In section 13, in sub-section (2),—
(a) for the words "one year", the words "four years" shall be substituted;
(b) for the words "seven years", the words "ten years" shall be substituted.
3. Amendment of section 14.—In section 14,—
(a) for the words "two years", the words "five years" shall be substituted;
(b) for the words "seven years", the words "ten years" shall be substituted.
4. Amendment of section 15.—In section 15, for the words "which may extend to three years", the words "which shall not be less than two years but which may extend to five years" shall be substituted.
5. Amendment of section 19.—In section 19, after the words "except with the previous sanction", the words "save as otherwise provided in the Lokpal and Lokayuktas Act, 2013" shall be inserted.

1. Came into force on 16-1-2014, vide S.O. 119(E), dated 16th January, 2014, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), No. 114, dated 16th January, 2014.

THE PREVENTION OF CORRUPTION ACT, 1988

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. In spite of the 1947 Act being amended on the recommendations of the Santhanam Committee it was found to be inadequate to deal with the offence of corruption effectively. 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.

STATEMENT OF OBJECTS AND REASONS

1. The bill is intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions.

2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.

3. The bill, *inter alia*, envisages widening the scope of the definition of the expression 'public servant', incorporation of offences under sections 161 to 165A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.

4. Since the provisions of section 161A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the Indian Penal Code. Consequently, it is proposed to delete those sections with the necessary saving provision.

5. The notes on clauses explain in detail the provisions of the Bill.

ACT 49 OF 1988

The Prevention of Corruption Bill having been passed by both the Houses of Parliament received the assent of the President on 9th September, 1988. It came on the Statute Book as THE PREVENTION OF CORRUPTION ACT, 1988 (49 of 1988) (*Came into force on 9-9-1988*).

AMENDING ACT

The Lokpal and Lokayuktas Act, 2013 (1 of 2014) (w.e.f. 16-1-2014).

THE PREVENTION OF CORRUPTION ACT, 1988

(49 of 1988)

[9th September, 1988]

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 except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

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;

(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);

(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);

(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;

- (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);
- (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.

COMMENTS

A contractor is not a public servant

A mere contractor is not a public servant although his contract may be with the Government and he is paid on the commission basis; *A.R. Puri v. State*, 1988 Cri LJ 311.

Expression 'person in the pay of the Government' explained

A Minister or a Chief Minister is covered by the expression 'person in the pay of the Government'. They are in the pay of the Government in as much as they receive their salaries, remuneration or wages from the Government; *M. Karunanidhi v. Union of India*, AIR 1979 SC 878.

Expression 'or' is not disjunctive

The use of the expression 'or' in the context in which it is found in sub-clause (i) of clause (c) of section 2 does appear to be disjunctive. There are three independent

categories in this clause and if a person falls in any one of them he would be a public servant. The three categories are (a) a person in the service of the Government, (b) a person in the pay of the Government, (c) a person remunerated by fees or commission for the performance of any public duty by the Government. One can be in the service of the Government and may be paid for the same. One can be in the pay of the Government without being in the service of the Government, in the sense of manifesting master-servant or command-obedience relationship; *R.S. Nayak v. A.R. Antulay*, AIR 1984 SC 684.

Term "election" embraces the whole procedure necessary to take a poll

The term "election" may be taken to embrace the whole procedure whereby an elected member is returned, whether or not it be found necessary to take a poll; *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, AIR 1952 SC 64.

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.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.

COMMENTS

Jurisdiction of Special Judge

It has been held that all the special Judges, in case there are more than one appointed for the area, shall have jurisdiction to try the case. Even if without being specified as required under sub-section (2) of section 4 a special Judge of the area tries an accused for an offence specified under sub-section (1) of section 3, then the trial shall not be vitiated

and the accused will have to show that as a result of trial by a special Judge without being so specified by the State Government, his case has been prejudiced; *State of Rajasthan v. J.P. Sharma*, 1988 Cri LJ 858.

Magistrate cannot take cognizance in offences specified in sec. 3(i) of the Act

Sub-section (1) of section 4 provides that only special Judge shall try the offences specified in sub-section (1) of section 3. Offences specified therein and conspiracy in relation to them are triable only by a special Judge and he alone can take the cognizance and, therefore, complaint filed in the Court of the Magistrate is not maintainable; *People Patriotic Front, New Delhi v. K.K. Birla*, 1984 Cri LJ 545.

Special Judges are appointment for a particular area

There can be no appointment of special Judge for particular cases but the appointment can be for particular area; *Dewan Chand v. State*, 1976 Cri LJ 1823.

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 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 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 (Ord. 38 of 1944).

COMMENTS

Court of a Special Judge is a Court of Original Criminal Jurisdiction

Whether a Court of a Special Judge for certain purposes is a Court of Magistrate or a Court of Session revolves round a mistaken belief that a Special Judge has to be one or the other and must fit in the slot of a Magistrate or a Court of Session. Such an approach

would stragulate the functioning of the Court and must be eschewed. Shorn of all embellishments, the Court of a Special Judge is a Court of Original Criminal Jurisdiction. As a Court of Original Criminal Jurisdiction in order to make it functionally oriented by the statute setting up the Court except those specifically conferred and specifically denied it has to function as a Court of Original Criminal Jurisdiction not being hide-bound by the terminological status description of Magistrate or a Court of Session under the Code it will enjoy all powers which a Court of Original Criminal Jurisdiction enjoys save and except the ones specifically denied; *A.R. Antulay v. R.S. Nayak*, AIR 1984 SC 718.

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

7. Public servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or 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 referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than ¹[three years] but which may extend to ²[seven years] and shall also be liable to fine.

Explanations.—(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

COMMENTS

A mere demand or solicitation amounts to an offence

A mere demand or solicitation by a public servant amounts to the commission of this offence; *Mubarak Ali v. State*, AIR 1958 MP 157.

An act does not cease to become official act, even if it does not come within the scope of the functions of office

A public servant may have power to do certain official acts by virtue of the rank he holds as a public servant. He may get other powers by virtue of the office which he holds. When he exercises either of the powers, his act is official. No line of distinction need be made as between the acts in exercise of a particular office and acts in exercise of his position as a public servant. If the act is done in his official capacity as distinguished from his purely private capacity, it amounts to official act. Even if it does not come within the scope of the functions of his office, the act does not cease to become official act; *Dr. V. Sebastian v. State*, 1988 Cri LJ 1150.

It is not necessary that the act is actually performed

It is not necessary that the act for which the bribe is given, be actually performed. A representation by a public servant that he has done or he will do an act, impliedly includes a representation that it was or is within his power to do that act; *Inder Dayaldas Advani v. State of Bombay*, AIR 1952 Bom 58.

Motive or reward

(i) Once the premise is established, the inference to be drawn is that the said gratification was accepted as motive or reward for doing or forbearing to do any official act; *Madhukar Bhaskararao v. State of Maharashtra*, AIR 2001 SC 147.

(ii) The petitioner demanded Rs. 50,000 as illegal gratification from PW1 and also threatened that if this amount is not paid he would seize the arrack depot and its machinery for supplying arrack in polythene sachets without permission. The petitioner was caught with the amount of Rs. 50,000 and his hands too turned pink on being dipped in sodium carbonate solution. Held that the petitioner accused is guilty of accepting illegal gratification under section 161 of the Indian Penal Code which relates to section 7 of the Prevention of Corruption Act, 1988; *B. Hanumantha Rao v. State of Andhra Pradesh*, AIR 1992 SC 1201.

1. Subs. by Act 1 of 2014, sec. 58 and Sch., Part III, for "six months" (w.e.f. 16-1-2014, vide S.O. 119(E), dated 16th January, 2014).
2. Subs. by Act 1 of 2014, sec. 58 and Sch., Part III, for "five years" (w.e.f. 16-1-2014, vide S.O. 119(E), dated 16th January, 2014).

Requirement to constitute an offence

Demand of illegal gratification is *sine qua non* to constitute the offence under the Act. Mere recovery of currency notes itself does not constitute the offence under the Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe; *C.M. Sharma v. State of Andhra Pradesh*, JT 2010 (12) SC 546: (2010) 12 SCALE 381: 2010 (8) SLT 491.

8. Taking gratification, in order, by corrupt or illegal means, to influence public servant.—Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt 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 referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than ¹[three years] but which may extend to ²[seven years] and shall also be liable to fine.

COMMENTS**The receipt of gratification will complete the offence**

It is not necessary that the person who received the gratification should have succeeded in inducing the public servant. It is not even necessary, that the recipient of the gratification should, in fact, have attempted to induce the public servant. The receipt of gratification as a motive or reward for the purpose of inducing the public servant by corrupt or illegal means will complete the offence. But it is necessary that the accused should have had the animus or intent, at the time when he receives gratification that it is received as a motive or reward for inducing a public servant by corrupt or illegal means; *Dewan alias Vasudevan v. State*, 1988 Cri LJ 1005.

9. Taking gratification, for exercise of personal influence with public servant.—Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt 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 referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than ¹[three years] but which may extend to ²[seven years] and shall also be liable to fine.

10. Punishment for abetment by public servant of offences defined in section 8 or 9.—Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, 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.

1. Subs. by Act 1 of 2014, sec. 58 and Sch., Part III, for "six months" (w.e.f. 16-1-2014, vide S.O. 119(E), dated 16th January, 2014).
2. Subs. by Act 1 of 2014, sec. 58 and Sch., Part III, for "five years" (w.e.f. 16-1-2014, vide S.O. 119(E), dated 16th January, 2014).