

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

Universal
Law Publishing

an imprint of  LexisNexis

Phone : 2362578
KISHORE BOOK DEPOT
OPPOSITE GOVERNMENT PRESS
JAIPUR-302001



This book is a publication of LexisNexis®
(A Division of RELX India Pvt Ltd)
14th floor, Building No 10, Tower-B, DLF Cyber City, Phase-II,
Gurgaon-122002, Haryana, India.
Tel : + 91 124 4774444 Fax: + 91 124 4774100
Website : www.lexisnexis.co.in / E-mail : help.in@lexisnexis.com

© LexisNexis (A division of RELX India Pvt Ltd) 2016

All rights including copyrights and rights of translations etc. reserved and vested exclusively with LexisNexis (A Division of RELX India Pvt Ltd). No part of this publication may be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, or stored in any retrieval system of any nature without the written permission of LexisNexis.

The Universal Law Publishing logo is a trademark of RELX India Private Limited. LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Properties Inc., used under license.

This book can be exported from India only by the publisher. Infringement of this condition of sale will lead to civil and criminal prosecution.

Printed by: Saurabh Printers Pvt. Ltd., Greater Noida - 201306

Note: Due care has been taken while editing and printing this book. Neither the author nor the publisher of the book hold any responsibility for any mistake that may have inadvertently crept in.

The publisher has taken all care and effort to ensure that the legislative provisions reproduced here are accurate and up to date. However, the publisher takes no responsibility for any inaccuracy or omission contained herein for advice, action or inaction based hereupon. Reference must be made to the Official Gazette issued by the Government of India for the authoritative text of any Act, Rule, Regulation, Notification or Order.

The publisher shall not be liable for any direct, consequential, or incidental damages arising out of the use of this book.

In case of binding mistake, misprints, or missing pages etc., the publisher's entire liability, and your exclusive remedy, is replacement of this book within one month of purchase by similar edition/reprint of the book.

Printed and bound in India.

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).

11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.—Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, 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.

COMMENTS

There is no limit as to number of instances to make out the factum of habit

(i) In order to make out the habit, it is necessary to make out a number of instances of bribery spread over a reasonable period. The Legislature has not, in relation to the proof of the habit required for this new offence, imposed any limit as to the number of instances or the period to be covered as being sufficient or necessary for proof, which it might well have done; *Biswabhusan Naik v. State*, AIR 1952 Ori 289.

(ii) Where the charge is of habitually accepting bribe, it is not necessary that the various instances should have been mentioned. No particulars need be set out in the charge in such a case because the offence under section 13 does not consist of individual acts of bribe as the offence in section 161 of the Indian Penal Code but is of a general character. Individual instances may be useful to prove the general averment in particular cases, but it is by no means necessary because of the presumption which section 13 requires the court to draw; *Biswabhusan Naik v. State*, AIR 1952 Ori 289.

12. Punishment for abetment of offences defined in section 7 or 11.—

Whoever abets any offence punishable under section 7 or section 11 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 ¹[three years] but which may extend to ²[seven years] and shall also be liable to fine.

13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,—

- (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or
- (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or
- (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

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).

- (d) if he,—
- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
- (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than ¹[four years] but which may extend to ²[ten years] and shall also be liable to fine.

COMMENTS

Abetment of crime by co-accused

Co-accused proved to have played significant role in negotiating on the figure of amount and having notes exchanged at the dictate of main accused. It was held that he substantially abetted the crime and his acquittal could not be sustained; *Rambhau v. State of Maharashtra*, AIR 2001 SC 2120.

Conviction – prayer for leniency in sentence

It is difficult to accept the prayer for leniency in sentence. The corruption by public servants has become gigantic problem. Large scale corruption retards the nation building activities and every one has to suffer on that count. The efficiency in public service would improve only when the public servant does his duty truthfully and honestly; *State of Madhya Pradesh v. Shambhu Dayal Nagar*, (2006) 8 SCC 693.

Dishonest intention

Dishonest intention is essence of offence under section 13(1)(d); *C.K. Jaffer Sharief v. State*, AIR 2013 SC 48.

Goods purchased on credit does not amount to obtaining a thing without consideration

Clause (b) of sub-section (1) of section 13 does not contemplate the case of a purchase on credit accepted as a valid promise by the giver or the creditor. It cannot be said that an officer, if he obtains goods on credit, even if he does not intend to pay, is obtaining a valuable thing without consideration. The case may be different if it is proved that there was an agreement with the trader that the trader would not demand the money and the officer would not pay, and the bill and the reminders sent would be merely a formality; *Delhi Administration v. S.N. Khosla*, 1971 Cri LJ 1151.

Income – meaning and scope

Travelling allowance (TA) is not a source of income to the Government Servant but only a compensation to meet his expenses. However, it is open to the Government Servant to lead evidence to show that he had in fact saved something out of TA. The question of automatically considering entire TA as a source of income does not arise; *R. Janakiram v. State, represented by Inspector of Police, CBI, SPE, Madras*, (2006) 1 SCC 697.

Ingredients that must be proved to substantiate a charge under section 13(1)(e)

To substantiate a charge under section 13(1)(e), the prosecution must prove the following ingredients, namely (1) the prosecution must prove that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which are found in his possession, (3) it must be proved as to what were his known sources of income *i.e.*

1. Subs. by Act 1 of 2014, sec. 58 and Sch., Part III, for “one year” (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 “seven years” (w.e.f. 16-1-2014, *vide* S.O. 119(E), dated 16th January, 2014).

known to the prosecution, (4) it must prove quite objectively that the resources or property found in possession of the accused were disproportionate to his known source of income. Once the above ingredients are satisfactorily proved, the offence of criminal misconduct under section 13(1)(e) is complete, unless the accused is able to account for such resources or property and it is only thereafter the burden shifts to the accused to prove his innocence; *M. Krishna Reddy v. State, Deputy Superintendent of Police, Hyderabad*, AIR 1993 SC 313.

Non-receiving bribe money and absence from spot

Non-receiving bribe money and absence from spot cannot be said to be material, when the prosecution tried to connect the appellant with the offence on basis of certain paper allegedly written by him; *Keshav Dutt v. State of Haryana*, (2010) 9 SCC 286: JT 2010 (9) SC 25: (2010) 8 SCALE 609.

Pecuniary advantage need not be connected with official duty

As distinguished from section 7 of the Act, in order to be a criminal misconduct under section 13(1)(d) of the Act, the action of a public servant deriving pecuniary advantage need not necessarily be connected with the performance of his official duty; *State of U.P. v. Kanhaiya Lal*, 1976 Cri LJ 1230.

Possession of disproportionate assets

The prosecution has to establish that the pecuniary assets acquired by the public servant are disproportionately larger than his known sources of income. Thereafter, accused, the public servant has to account for such excess. Offence becomes complete on the failure of the public servant to account or explain such excess; *Ashok Tshering Bhutia v. State of Sikkim*, AIR 2011 SC 1363: (2011) 4 SCC 402: JT 2011 (2) SC 512: (2011) 2 SCALE 735.

Reduction in sentence

The case is pending before court since long time is not a special ground for reducing the minimum sentence; *Madhukar Bhaskarrao v. State of Maharashtra*, AIR 2001 SC 147.

14. Habitual committing of offence under sections 8, 9 and 12.—Whoever habitually commits,—

- (a) an offence punishable under section 8 or section 9; or
- (b) an offence punishable under section 12,

shall be punishable with imprisonment for a term which shall be not less than ¹[five years] but which may extend to ²[ten years] and shall also be liable to fine.

15. Punishment for attempt.—Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term ³[which shall not be less than two years but which may extend to five years] and with fine.

16. Matters to be taken into consideration for fixing fine.—Where a sentence of fine is imposed under sub-section (2) of section 13 or section 14, the court is fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

CHAPTER IV

INVESTIGATION INTO CASES UNDER THE ACT

17. Persons authorised to investigate.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974); no police officer below the rank,—

1. Subs. by Act 1 of 2014, sec. 58 and Sch., Part III, for "two year" (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 "seven years" (w.e.f. 16-1-2014, vide S.O. 119(E), dated 16th January, 2014).
3. Subs. by Act 1 of 2014, sec. 58 and Sch., Part III, for "which may extend to three years" (w.e.f. 16-1-2014, vide S.O. 119(E), dated 16th January, 2014).

- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
- (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;
- (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

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

COMMENTS

Fulfilment of Statutory requirements – burden of proof

When the authority of a person to carry out investigation is questioned on the ground that he did not fulfil the statutory requirements laid down thereof in terms of the Second proviso, the burden undoubtedly, was on the prosecution to prove the same; *State Inspector of Police, Vishakhapatnam v. Surya Sankaram Karri*, (2006) 7 SCC 172.

Investigation by Station Officer of Police Station

The respondent was a Station Officer of Police Station and was promoted as Deputy Superintendent of Police. While digging some land 20 gold bricks were found by some persons which they failed to deposit with the authorities but the respondent seized the gold bricks on information received but misappropriated the gold bricks. The investigation was carried out but the respondent challenged the legality of the investigation by an officer junior in rank to him. Held that the Inspector of Police, Crime Branch who made the investigation had been authorised by the State Government as contemplated by section 17. The investigation was not vitiated in law on the ground that the said Inspector was not higher in rank to the police officer who was alleged to have committed the offence; *State of Uttar Pradesh v. Suriinder Pal Singh*, AIR 1989 SC 811.

Sanction is a pre-requisite to conduct investigation

(i) The provisions of section 17 are mandatory and the sanction by an officer not below the rank of Superintendent of Police, in respect of an offence under clause (e) of sub-section (1) of section 13, is a pre-requisite to conduct the investigation; *H. S. Gotla v. State*, 2001 Cri LJ 2695.

(ii) On three occasions there was demand of money and each constituted an offence by itself to investigate for which permission for investigation was necessary under section 17 and on the third occasion the Inspector had failed to take the permission under section 17 which is mandatory before investigation is launched, the accused appellant is entitled to succeed; *Vishnu Kondaji Jadhav v. State of Maharashtra*, AIR 1994 SC 1670.

18. Power to inspect bankers' books.—If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any

other person suspect to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section:

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation.—In this section, the expressions “bank” and “bankers’ books” shall have the meanings respectively assigned to them in the Bankers’ Books Evidence Act, 1891 (18 of 1891).

CHAPTER V

SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

19. Previous sanction necessary for prosecution.—(1) 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 sanction¹ [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]—

- (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
- (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
- (c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
- (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;
- (c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

1. Ins. by Act 1 of 2014, sec. 58 and Sch., Part III (w.e.f. 16-1-2014, vide S.O. 119(E), dated 16th January, 2014).

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

- (a) error includes competency of the authority to grant sanction;
- (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

COMMENTS

Proper application of mind

Grant or refusal of sanction must be preceded by application of mind on the part of appropriate authority. If the accused can demonstrate such an order to be suffering from non-application of mind, the same may be called in question before a competent court of law; *Ramesh Lal Jain v. Naginder Singh Rana*, (2006) 1 SCC 294.

Provision prohibiting grant of stay admits no exception

The provision prohibiting grant of stay is couched in a language admitting of no exception whatsoever, which is clear from the provision itself. The prohibition is incorporated in sub-section (3) of section 19. The sub-section consists of three clauses. For all the three clauses the controlling non-obstante words are not set out in the commencing portion. Hence none of the provisions in the Code of Criminal Procedure, 1973 could be evoked for circumventing any one of the bows enumerated in the sub-section; *Satya Narayan Sharma v. State of Rajasthan*, AIR 2001 SC 2856.

Sanction granted by an officer not competent to do so

Sanction to prosecute granted by an officer not competent to remove the accused from service. No evidence produced before the court that officer had been conferred delegated powers. Sanction granted by an officer not competent to do so is a nullity; *State Inspector of Police, Vishakhapatnam v. Surya Sankaram Karri*, 2006 (46) AIC 716 (SC).

Sanction of prosecution

As per section 19 of the Act, the authority who is competent to remove the person concerned is competent to grant sanction; *Madhya Pradesh State v. Pradeep Kumar Gupta*, AIR 2011 SC 2334: (2011) 6 SCC 389: JT 2011 (6) SC 46: (2011) 6 SCALE 337.

20. Presumption where public servant accepts gratification other than legal remuneration.—(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward

such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

COMMENTS

Burden of proof

Once the amount is found in the possession of the accused, the burden shifts on him to explain the circumstances to prove his innocence as contemplated under section 20 of the Prevention of Corruption Act; *B. Hanumantha Rao v. State of Andhra Pradesh*, AIR 1992 SC 1201.

Effect of non-rebuttal of presumption

The appellant is guilty of offence under section 13(1)(d) and (2) as the recovery of currency notes from the appellant proves the guilty conduct of the appellant in view of the presumption arising under section 20 which has not been rebutted; *M. Sunderamoorthy v. State of Tamil Nadu*, AIR 1990 SC 1269.

Presumption – application of

It cannot be said that the presumption under section 20 applies only after a charge is framed against the accused. The presumption is applicable also at the stage when the court is considering the question whether a charge should be framed or not. When the court is considering under section 245(1) of Code of Criminal Procedure whether any case has been made out against the accused which if rebutted would warrant his conviction it cannot brush aside the presumption under section 20; *R.S. Nayak v. A.R. Antulay*, AIR 1986 SC 2045.

Term "shall be presumed" meaning thereof

The term "shall be presumed" means that court is bound to take the fact as proved until evidence is adduced to disprove it and the party interested in disproving it must produce such evidence if he can; *Public Prosecutor v. A. Thomas*, AIR 1959 Mad 166.

Words "gratification" – Meaning thereof

The word 'gratification' must be understood to mean any payment for giving satisfaction to public servant who received it; *Madhukar Bhaskarrao Joshi v. State of Maharashtra*, AIR 2001 SC 147.

21. Accused person to be a competent witness.—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.

22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,—

- (a) in sub-section (1) of section 243, for the words "The accused shall then be called upon", the words "The accused shall then be required to give in writing at once or within such time as the court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;

- (b) in sub-section (2) of section 309, after the third proviso, the following proviso had been inserted, namely:—

"Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 has been made by a party to the proceeding.";

- (c) after sub-section (2) of section 317, the following sub-section had been inserted, namely:—

"(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with enquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.";

- (d) in sub-section (1) of section 397, before the *Explanation*, the following proviso had been inserted, namely:—

"Provided that where the powers under this section are exercised by a court on an application made by a party to such proceedings, the court shall not ordinarily call for the record of the proceedings,—

- (a) without giving the other party an opportunity of showing cause why the record should not be called for; or

- (b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies."

23. Particulars in a charge in relation to an offence under section 13(1)(c).—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when an accused is charged with an offence under clause (c) of sub-section (1) of section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be

deemed to be a charge of one offence within the meaning of section 219 of the said Code:

Provided that the time included between the first and last of such dates shall not exceed one year.

24. Statement by bribe giver not to subject him to prosecution.—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.

25. Military, Naval and Air Force or other law not to be affected.—(1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978) and the National Security Guard Act, 1986 (47 of 1986).

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the court of a special Judge shall be deemed to be a court of ordinary criminal justice.

26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act.—Every special Judge appointed under the Criminal Law Amendment Act, 1952 for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

27. Appeal and revision.—Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the court of the special Judge were a Court of Session trying cases within the local limits of the High Court.

28. Act to be in addition to any other law.—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

29. Amendment of the Ordinance 38 of 1944.—In the Criminal Law Amendment Ordinance, 1944,—

- (a) in sub-section (1) of section 3, sub-section (1) of section 9, clause (a) of section 10, sub-section (1) of section 11 and sub-section (1) of section 13, for the words "State Government", wherever they occur, the words "State Government or, as the case may be, the Central Government" shall be substituted;
- (b) in section 10, in clause (a), for the words "three months", the words "one year" shall be substituted;

- (c) in the Schedule,—
- (i) paragraph 1 shall be omitted;
 - (ii) in paragraphs 2 and 4,—
 - (a) after the words "a local authority", the words and figures "or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or a society aided by such corporation, authority, body or Government company" shall be inserted;
 - (b) after the words "or authority", the words "or corporation or body or Government company or society" shall be inserted;
 - (iii) for paragraph 4A, the following paragraph shall be substituted, namely:—

"4A. An offence punishable under the Prevention of Corruption Act, 1988.";
 - (iv) in paragraph 5, for the words and figures "items 2, 3 and 4", the words, figures and letter "items 2, 3, 4 and 4A" shall be substituted.

30. Repeal and saving.—(1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act.

***31. Omission of certain sections of Act 45 of 1860.**—Sections 161 to 165A (both inclusive) of the Indian Penal Code, 1860 (45 of 1860) shall be omitted, and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply to such omission as if the said sections had been repealed by a Central Act.

•••

*. Repealed by Act 30 of 2001, sec. 2 and First Schedule (w.e.f. 3-9-2001).