The Prevention of Corruption Act, 1988

Initially, within the Indian Justice System, the Indian Penal Code dealt with the offenses of bribery and corruption in cases of Public Servant. But during the 1945s it came into notice that the then-existing law was not adequate to meet the exigencies and a need was felt to introduce special legislation to eradicate bribery and corruption, it was thus that the Prevention of Corruption Act, 1947 was enacted for the first time.

The 1947 Act was later amended at two instances by the Criminal Law Amendment Act, 1952 and by the Anti-Corruption Laws (Amendment) Act, 1964 based on the recommendations of the Santhanam Committee. The 1947 Act became a pilot to the Prevention of Corruption Act, 1988 which came in force on 9th September 1988. It was aimed at making anti-corruption laws more effective by widening their coverage and by strengthening the provisions to make the overall statute more effective.

In order to develop a much deeper understanding about **The Prevention of Corruption Act, 1988**; we attempt to answer the following questions:

1. What is the Statement of Object and Reasons for the enactment of the Prevention of Corruption Act, 1988?
2. What are the salient features of the Act?
3. What are the Constitutional Provisions related to Prevention of Corruption Act?
4. What are the Investigating Agencies constituted for Implementing Anti-Corruption Policies in India?
5. What are the various statutes that have been enacted with the aim to curb corruption and what are the key features of such statutes?

Acts covered include:

I. Indian Penal Code, 1860

II. The Benami Transactions (Prohibition) Act, 1988

III. The Prevention of Money Laundering Act, 2002

IV. The Prevention of Corruption Act, 1988

6. Who is a “Public Servant” as per the Prevention of Corruption Act and what constitutes “Public Duty”? **[Section 2 (b) and Section 2 (c)]**
7. What are some of the offences covered under the Prevention of Corruption Act, 1988 related to bribing of a public servant and what is the penalty prescribed?

Section 7: Offence relating to public servant being bribed

Section 8: Offence relating to bribing of a public servant

8. What constitutes criminal misconduct by a Public Servant and what is the relevant penalty prescribed? **[Section 13]**
9. What is the Investigation procedure prescribed under the Prevention of Corruption Act, 1988? **[Section 17 and Section 17A]**
10. What is the legal provision and position concerning sanction requirement under the Prevention of Corruption Act for Prosecution? **[Section 19]**
11. What is the presumption under the Prevention of Corruption Act regarding public servant accepting any undue advantage? **[Section 20]**
12. What other Laws are not to be affected by the Prevention of Corruption Act? **[Section 25]**
13. What are the key changes brought about by The Prevention of Corruption (Amendment) Act, 2018?
14. What are some of the problems and challenges faced while tackling the menace of corruption?
15. What all changes have been brought about by the Prevention of Corruption (Amendment) Act, 2018 in comparison to the older Act?

In ***State of M.P. v. Ram Singh*, (2000) 5 SCC 88**, the Supreme Court held that the object of the Prevention of Corruption Act, 1988 was to make effective provisions for prevention of bribe and corruption amongst public servants. It has been further held that it is a social legislation to curb illegal activities of public servants and should be liberally construed so a sto advance its object and not liberally in favour of the accused.

WHAT IS THE STATEMENT OF OBJECT AND REASONS FOR THE ENACTMENT OF THE PREVENTION OF CORRUPTION ACT, 1988?

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.

WHAT ARE THE SALIENT FEATURES OF THE ACT?

Some of the salient features of the Act are:

1. It incorporates the Prevention of Corruption Act, 1947, the Criminal Law Amendment Act, 1952, and Sec. 161 to 165-A of the Indian Penal Code with certain tweaks in the original provisions.
2. It has enlarged the scope of the definition such as Public Duty and Public Servant under the definition clause, Section 2, of the act.
3. It has shifted the burden of proof from the prosecution as mentioned in the CrPC to the accused who is charged with the offense.
4. The provisions of the Act clearly state that the investigation is to be made by an officer, not below the rank of Deputy Superintendent of Police.
5. The 1988 Act enlarged the scope of the term 'public servant' which now includes employees of the central government, union territories, nationalized banks, employees of the University Grants Commission (UGC), vice-chancellors, professors, and the like.
6. The Act covers 'corrupt' acts as bribe, misappropriation, obtaining a pecuniary advantage, possessing assets disproportionate to income and the like.

WHAT ARE THE CONSTITUTIONAL PROVISIONS RELATED TO PREVENTION OF CORRUPTION ACT?

Statutory and Legal Provisions regarding corruption are also specified under the codified Laws. The Supreme law i.e. The Constitution of India, is also consist the provision of Writ Jurisdiction. To control the offences related to money as well as economy, Office of Comptroller and Auditor General (CAG) is constituted, besides these there are certain authorities at Central level and State level such as CVC (Central Vigilance Commission), CPA (Committee on Parliament Account), CBI (Central Bureau of Investigation), ACBS (Anti-Corruption Bureau of State).

The Supreme Court is the guardian of the Constitution. The Constitution has empowered the Apex Court to safeguard the fundamental rights enshrined in Part III of the Constitution. Fundamental Rights are the rights against the mighty powers of the State. The State is defined in Art. 12 of the Constitution.

Under Art. 32 and 226 of Indian Constitution following "Writs" are provided as well as facility of Public Interest Litigation (PIL) available.

i. Writ of Habeas Corpus

ii. Writ of Mandamus

iii. Writ of Prohibition

iv. Writ of Certiorari

v. Writ of Quo-Warranto

All these writs are having their own impact and power in different fields, and actually these are nothing but "Powers in Hands of Judiciary to control the Administrative discretion".

Preamble of the Constitution of India gives guaranty of 'Justice' to the citizens of India. Constitution adopted federal government which consist Union Government at Central level and State Government at State level. Crime is in a list of state subject whereas, law and order is in a concurrent list. There are number of provisions made under Constitution for eradication of corruption in the society. Art. 311 of the Constitution of India and judicial Reform process aims to eradicate corruption from the society.

WHAT ARE THE INVESTIGATING AGENCIES CONSTITUTED FOR IMPLEMENTING ANTI-CORRUPTION POLICIES IN INDIA?

To eradicate the evil of corruption and for implementing anticorruption policies and raising awareness on corruption issues, the Central Government has enacted Anti-Corruption Laws to deal with the prevention of corruption and constituted commissions namely Central Vigilance Commission, Central Bureau of Investigation, Enforcement Directorate and Anti-Corruption Bureau to enforce the Law of Prevention of Corruption Act. No doubt these anti-corruption agencies are doing best to combat corruption through implementing and enforcing anti-corruption policies adopted by government.

At the federal level various bodies are constituted. Out of which key institutions are the Supreme Court (S.C), the Central Vigilance Commission (CVC) the Central Bureau of Investigation (CBI) the office of the Comptroller and Auditor General (CAG) and the Chief Information Commission (CIC), Enforcement Directorate (ED) and at the State level there are the Anti-corruption Bureau (ACB) for each State.

Above investigating agencies are specialized bodies to form anti-corruption strategies. Its main function is to enforce the anti-corruption legislature and detect the corruption. These agencies have a power to investigate and prosecute corrupt persons who have committed an offence under the provision of anti-corruption laws. In addition to these, anti- corruption agencies are also responsible for awareness campaign, mobilizing and educating citizens about corruption.

As per recommendation of Santhanam Committee, Government of India vide resolution dt.11/2/84 establish Central Vigilance Commission (CVC), the Central Bureau of Investigation (CBI), the office of the Comptroller and Auditor General (CAG) and Anti-corruption Bureau (ACB) which are the main nodal investigating agencies for each State.

A) **Supreme Court and High Courts:** Any citizen can file a petition, known as Public Interest Litigation, before the Hon'ble High Courts and Hon'ble the Supreme Court, alleging corruption in the public sector. If the Hon'ble High Courts and the Supreme Court find the allegations credible, they can refer such cases to the Central Bureau of Investigation for further enquiry or investigation. Many big cases of corruption have been successfully investigated by the agency in the past on such references from these courts.

B) **Central Vigilance Commission (CVC):** Central Vigilance Commission is an apex Indian governmental watchdog body created in 1964 to address governmental corruption constituted under the provision of Central Vigilance Commission Act, 2002. It has the status of an autonomous body i.e. free from executive control. The Central Vigilance Commission set up by

the Government of India to advise and guide central government agencies, as well as it also have special power to analysis of complaints of corruption, professional misconduct, misuse of power by administrative bodies.

The Central Vigilance Commission Act provides for constitution of a Central Vigilance Commission, to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central government, corporation established by or under any Central Act, government companies, societies and Local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto.

C) **Central Bureau of Investigation (CBI):** The Central Bureau of Investigation is an investigating agency set up by the Government of India to investigate crime, especially corruption cases in Union Territories, which are directly administered by the Government of India. Over a period of time, it has become the premier corruption investigation agency in the country. It enjoys high credibility amongst the people of India. As a result even the States also refer sensitive and large-scale corruption cases to the Central Bureau of Investigation for investigation. The High Courts of various States and the Supreme Court of the country have powers under the Indian Constitution to entrust investigation of any crime to the Central Bureau of Investigation for investigation.

D) **Comptroller and Auditor General of India (CAG):** Comptroller and Auditor General is supreme constitutional audit authority of India. Comptroller and Auditor General is the 'watchdog' on each and every financial transaction of Central or State department such as railway, telecom, public sector, organizations etc. Every department/ organization is subject to internal audit as well as of statutory audit. Comptroller and Auditor General is one of the institutions to prevent the corruption in government department. Art.148 of the Constitution deals with Comptroller and Auditor General. In democratic form every department is accountable to the people. Role of Comptroller and Auditor General in democracy is as prejudiciary. Main function of the Comptroller and Auditor General is to see that, money sanction by parliament must be spent only for that purpose for which it is sanction.

E) **Anti-Corruption Bureau (ACB):** These police agencies of the States are meant mainly for investigating corruption cases within the States under the Corruption Act. They are responsible for the prevention, detection and investigation of corruption crime only and are not engaged in conducting other police duties such as handling conventional crimes and law and order. After investigating a crime, they file the investigation reports in a court of law to launch prosecution.

WHAT ARE THE VARIOUS STATUTES THAT HAVE BEEN ENACTED WITH THE AIM TO CURB CORRUPTION AND WHAT ARE THE KEY FEATURES OF SUCH STATUTES?

Public servants in India can be penalized for corruption under the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988. The Benami Transactions (Prohibition) Act, 1988 prohibits benami transactions. The Prevention of Money Laundering Act, 2002 penalises public servants for the offence of money laundering. India is also a signatory (not ratified) to the UN Convention against Corruption since 2005. The Convention covers a wide range of acts of corruption and also proposes certain preventive policies.

Key Features of the Acts related to Corruption:

I. Indian Penal Code, 1860:

- The IPC defines "public servant" as a government employee, officers in the military, navy or air force; police, judges, officers of Court of Justice, and any local authority established by a central or state Act.
- Section 169 pertains to a public servant unlawfully buying or bidding for property. The public servant shall be punished with imprisonment of upto two years or with fine or both. If the property is purchased, it shall be confiscated.
- Section 409 pertains to criminal breach of trust by a public servant. The public servant shall be punished with life imprisonment or with imprisonment of upto 10 years and a fine.

II. The Benami Transactions (Prohibition) Act, 1988:

- The Act prohibits any benami transaction (purchase of property in false name of another person who does not pay for the property) except when a person purchases property in his wife's or unmarried daughter's name.
- Any person who enters into a benami transaction shall be punishable with imprisonment of upto three years and/or a fine.
- All properties that are held to be benami can be acquired by a prescribed authority and no money shall be paid for such acquisition.

III. The Prevention of Money Laundering Act, 2002

- The Act states that an offence of money laundering has been committed if a person is a party to any process connected with the proceeds of crime and projects such proceeds as untainted property. "Proceeds of crime" means any property obtained by a person as a result of criminal activity related to certain offences listed in the schedule to the Act. A person can be charged with the offence of money laundering only if he has been charged with committing a scheduled offence.
- The penalty for committing the offence of money laundering is rigorous imprisonment for three to seven years and a fine of upto Rs 5 lakh. If a person is convicted of an offence under the Narcotics Drugs and Psychotropic Substances Act, 1985 the term of imprisonment can extend upto 10 years.
- The Adjudicating Authority, appointed by the central government, shall decide whether any of the property attached or seized is involved in money laundering. An Appellate Tribunal shall hear appeals against the orders of the Adjudicating Authority and any other authority under the Act.
- Every banking company, financial institution and intermediary shall maintain a record of all transactions of a specified nature and value, and verify and maintain records of all its customers, and furnish such information to the specified authorities.

IV. The Prevention of Corruption Act, 1988:

- In addition to the categories included in the IPC, the definition of "public servant" includes office bearers of cooperative societies receiving financial aid from the government, employees of universities, Public Service Commission and banks.
- If a public servant takes gratification other than his legal remuneration in respect of an official act or to influence public servants is liable to minimum punishment of six months and maximum punishment of five years and fine. The Act also penalizes a public servant for taking gratification to influence the public by illegal means and for exercising his personal influence with a public servant.
- If a public servant accepts a valuable thing without paying for it or paying inadequately from a person with whom he is involved in a business transaction in his official capacity, he shall be penalized with minimum punishment of six months and maximum punishment of five years and fine.
- It is necessary to obtain prior sanction from the central or state government in order to prosecute a public servant.

WHO IS A "PUBLIC SERVANT" AS PER THE PREVENTION OF CORRUPTION ACT AND WHAT CONSTITUTES "PUBLIC DUTY"?

Section 2(b): Public Duty

It means a duty in the discharge of which the State, the public or the community at large has an interest.

In ***State of Gujarat v. Mansukhbhai Kanjibhai Shah*, 2020 (2) RCR (Criminal) 544**, the Supreme Court observed that evidently, the language of Section 2(b) of the PC Act indicates that any duty discharged wherein State, the public or community at large has any interest is called a public duty.

Section 2(c): Public Servant

It states-

(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;

(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 officer 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 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;

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.

In ***State of Maharashtra & Anr. v. Prabhakar Rao & Anr.*, (2002) 7 SCC 636**, the Supreme Court held that the definition of 'Public Servant' U/s 21 of IPC is of no relevance under the Prevention of Corruption Act, 1988.

In ***Manish Trivedi v. State of Rajasthan*, (2014) 14 SCC 420**, the Supreme Court held that a member of the Municipal Board or a Municipal Councillor per se may not come within the definition of "public servant" as defined U/s 21 of IPC but this does not mean that they cannot be brought in the category of

public servant by any other enactment. In the present case, the Municipal Councillor or the Member of the Board does not come within the definition of "public servant" U/s 21 of IPC, but in view of the legal fiction created by section 87 of the Rajasthan Municipalities Act, 1959 they come within its definition.

In ***C.B.I. v. Ramesh Gelli*, (2016) 3 SCC 788**, the managing director and chair of a private banking company were held to be "public servants" for the purposes of prosecution under the Prevention of Corruption Act 1988.

In ***P.V. Narsimha Rao v. State*, 1998 CriLJ 2930**, the Supreme Court held that MLA is public servants U/s 2(c)(viii) of Prevention of Corruption Act, 1988, as it states 'any person who holds an office by virtue of which he is authorized or required to perform any public duty'.

In ***M. Karunanidhi v. Union of India*, AIR 1979 SC 898**, the Supreme Court held that a Chief Minister or a Minister are in the pay of the Government and are, therefore, public servants.

In ***Ashok Kumar Badola v. State of Rajasthan*, (2011) 4 RLW 3606**, the Rajasthan High Court held that the definition of "public servant" has been expanded including holders of public office, who discharge public duties. The Chairman of Municipal Council holds a public office and discharges public duties, therefore, he would fall under the definition of term "public servant" as defined U/s 2(c) of the Act.

In ***Shankardas Swami v. State of Rajasthan*, (2018) 3 RLW 1881**, the Rajasthan High Court held that the protection U/s 197 CrPC is avaliable to the public servants even after their retirement. The offence complained of is attributable to discharge of public duty or has a direct nexus therewith, therefore, obtaining sanction is pre requisite.

WHAT ARE SOME OF THE OFFENCES COVERED UNDER THE PREVENTION OF CORRUPTION ACT, 1988 RELATED TO BRIBING OF A PUBLIC SERVANT AND WHAT IS THE PENALTY PRESCRIBED?

Section 7: Offence relating to public servant being bribed

Any public servant who-

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

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

Explanation 2-- For the purpose of this section--

(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

It was observed by the Supreme Court in ***Subash Parbat Sonvane v. State of Gujarat*, (2002) 5 SCC 86**, that words like "accepts" and "obtains" has been especially used by the legislature in Sections 7 and 13(1)(*a*) and (*b*) of the Act but in Section 13(1)(d) there is withdraw of the word "accepts" and put

importance on the word "obtains". It has cited its prior decision of ***Ram Krishna* v. *State of Delhi*, AIR 1956 SC 476**, where it observed that:

"We have primarily to look at the language employed and give effect to it. The word "obtains" on which much stress was laid does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver.

One may accept money that is offered, or solicit payment of a bribe, or extort the bribe by threat or coercion; in each case, he obtains a pecuniary advantage, by abusing his position as a public servant. It is enough, if by abusing his position as a public servant, a man obtains for himself any pecuniary advantage entirely, irrespective of motive or reward for showing favour or disfavor".

In ***P. Satyanarayana Murthy* v. *State of A.P., (*2015) 10 SCC 152**, it has been settled by the Supreme Court that to convict the accused it is necessary to have adequate proof of demand and acceptance of illegal gratification by the public servants U/s 7 and 13 of the Prevention of Corruption Act, 1988. It also laid down hat without the proof of demand by the accused, mere possession and recovery of currency notes would not establish the offence U/s 7 and 13(1)(d)(i) and (ii) of the Act. The Supreme Court has made the below-mentioned observations:

"*The proof of demand for illegal gratification, thus, is the gravamen, of the offence U/s 7 and 13(1)(d)(i) and (ii) of the Act and in the absence thereof, unmistakably, the charge, therefore, would fail. Mere acceptance of any amount, allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under the two sections of the Act".*

Section 8: Offence relating to bribing of a public servant

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

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

(ii) to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

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

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

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

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

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

In ***Parkash Singh Badal v. State of Punjab*, (2007) 1 SCC 1**, the Supreme Court held that "Gratification" is not restricted to pecuniary gratification. It has been further held that the opening word of Sections 8 and 9 is "whoever". The expression is very wide and would also cover public servants accepting gratification as a motive or reward for inducing any other public servant by corrupt or illegal means. Restricting the operation of the expression by curtailing the ambit of Sections 8 and 9 and confining to private persons would not reflect the actual legislative intention.

WHAT CONSTITUTES CRIMINAL MISCONDUCT BY A PUBLIC SERVANT AND WHAT IS THE RELEVANT PENALTY PRESCRIBED?

Section 13: Criminal Misconduct by a Public Servant

(1) A public servant is said to commit the offence of criminal misconduct, —

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1-- A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2-- The expression "known sources of income" means income received from any lawful sources.".

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

In ***Rajiv Kumar v. State of U.P.,* (2017) 8 SCC 791**, the Supreme Court held that a perusal of Sections 13(1)(d)(i), (ii) and (iii) (prior to substitution) makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of 'criminal misconduct' under Section 13(1)(d). Undoubtedly, all the three wings of clause (d) of Section 13(1) are independent, alternative and disjunctive.

In ***M. Krishna Reddy v. State, Deputy Superintendent of Police, Hyderabad*, AIR 1993 SC 313**, the Supreme Court held that to substantiate a charge U/s 13(1)(e) of the P.C. Act 1988 (prior to substitution) , the prosecution must prove the following ingredients:

i. the prosecution must prove that the accused is a public servant;

ii. the nature and extent of the pecuniary resources or property which are found in his possession;

iii. it must be proved as to what were his known sources of income i.e. known to the prosecution;

iv. it must prove quite objectively that the resources or property found in possession of the accused were disproportionate to his known source of income.

In ***Om Prakash Gupta v. State of U.P.,* AIR 1957 SC 458**, the Supreme Court held that the offence of criminal misconduct punishable U/s 5 (2) of the Prevention of Corruption Act, 1947 (which is equivalent to sec. 13(1)(e) of the Prevention of Corruption Act, 1988, prior to substitution) is not identical in essence, import and content with an offence U/s 409 of the Indian Penal Code. The offence of criminal misconduct is a new offence created by that enactment and it does not repeal by implication or abrogate s. 409 of the Indian Penal Code.

In ***Hindustan Petroleum Corporation Ltd. v. Sarvesh Berry*, AIR 2005 SC 1406**, the Supreme Court held that where a public servant was being tried for offence U/s. 13 of the P.C. Act, 1988 and a departmental enquiry was also going on against him in respect of the same act, it has been held by the Supreme Court that the departmental enquiry and the criminal trial can go on simultaneously except where departmental enquiry would seriously prejudice the delinquent in his defence at the criminal trial and no strait-jacket formula can be laid down in this behalf as each case has to be decided on its facts.

In ***Vasant Rao Guhe v. State of M.P.,* (2017) 14 SCC 442**, the Supreme Court held that held that a public servant facing charge of criminal misconduct, cannot be comprehended to furnish any explanation in absence of the proof of the allegation of being in possession by himself or through someone else, of pecuniary resources or property disproportionate to his known sources of income. The bench held that the primary burden to bring home the charge of criminal misconduct is indubitably on the prosecution to establish beyond reasonable doubt that the public servant either himself or through anyone else had at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known sources of income and it is only on the discharge of such burden by the prosecution, if he fails to satisfactorily account for the same, he would be in law held guilty of such offence.

WHAT IS THE INVESTIGATION PROCEDURE PRESCRIBED UNDER THE PREVENTION OF CORRUPTION ACT, 1988?

Section 17: Persons authorised to investigate

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,-

(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 therefore 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 therefore without a warrant:

Provided further that an offence referred to in [clause (b) 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.

In ***Vinod Kumar Garg v. State (Government of National Capital Territory of Delhi),*** **(2020) 2 SCC 88**, Apex Court has held that if an investigation was not conducted by a police officer of the requisite rank and status required Under Section 17 of the Act, such lapse would be an irregularity, however unless such irregularity results in causing prejudice, conviction will not be vitiated or be bad in law. Therefore, the lack of sanction was found not to be a ground for quashing of the proceedings.

Section 17A: Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties

(1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

In ***Yashwant Sinha and Ors. v. Central Bureau of Investigation and Ors.,*** **(2020) 2 SCC 338**, the Supreme Court observed that:

"In terms of Section 17A, no Police Officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his Office at the time when the offence was alleged to have been committed. In respect of the

public servant, who is involved in this case, it is Clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation".

WHAT IS THE LEGAL PROVISION AND POSITION CONCERNING SANCTION REQUIREMENT UNDER THE PREVENTION OF CORRUPTION ACT FOR PROSECUTION?

Section 19: Previous Sanction necessary for Prosecution

(1) No court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013],—

(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence 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, or as the case may be, was at the time of commission of the alleged offence 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.

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless--

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.-- For the purposes of sub-section (1), the expression "public servant" includes such person--

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

(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.

(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.

In ***State through Anti-Corruption Bureau, Government of Maharashtra, Bombay v. Krishanchand Khushalchand Jagtiani*, AIR 1996 SC 1910**, the Supreme Court held that the requirement of obtaining sanction is to ensure that no public servant is unnecessarily harassed. Such protection is however not absolute or unqualified – while a public servant should not be subjected to harassment, genuine charges and allegations should be allowed to be examined by court.

In ***Romesh Lal Jain v. Naginder Singh Rana & Ors.*, (2006) 1 SCC 294**, the Supreme Court held that an order granting or refusing sanction must be preceded by application of mind on the part of appropriate authority on material placed before it.

The Supreme Court in the matter of ***State of Punjab & Anr. v. Mohammed Iqbal Bhatti*, 2010 AIR SCW 1186** has considered the question whether State has any power of review in the matter of grant of sanction in terms of Section 197 of the Code of Criminal Procedure, 1973 and held as under:

"7. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. [See: ***Mansukhlal Vithaldas Chauhan v. State of Gujarat, (1997) 3 SCC 622****".*

In ***Asian Resurfacing of Road Agency Pvt. Ltd. & Ors. v. Central Bureau of Investigation*, AIR 2018 SC 2039**, the Supreme Court observed that:

i. Section 19(3)(b) subsumes all grounds which are relatable to sanction granted. This is clear from the word "any" making it clear that whatever be the error, omission or irregularity in sanction granted, all grounds relatable thereto are covered.

ii. This is further made clear by Explanation (a), which defines an "error" as including competency of the authority to grant sanction.

iii. The words "in the sanction granted by the authority" contained in Sub-clause (b) are conspicuous by their absence in sub-clause(c), showing thereby that it is the proceedings under the Act that are referred to.

iv. The expression "on any other ground", therefore, refers to and relates to all grounds that are available in proceedings under the Act other than grounds which relate to sanction granted by the authority.

v. On the assumption that there is an ambiguity, and that there are two views possible, the view which most accords with the object of the Act, and which makes the Act workable, must necessarily be the controlling view. It is settled law that even penal statutes are governed not only by their literal language, but also by the object sought to be achieved by Parliament. (See: ***Ms. Eera through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi) & Anr.,*** **MANU/SC/0876/2017 at paragraphs 134-140**).

vi. In ***Madhu Limaye v. State of Maharashtra,*** **(1977) 4 SCC 551 at 558**, this Court held, "It has been pointed out repeatedly, vide for example, ***The River Wear Commissioners v. William Adamson,*** **(1876-77) 2 AC 743** and ***R.M.D. Chamarbaugwalla v. The Union of India,*** **AIR 1957 SC 628**, that although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the Legislature". As the Statement of Objects and Reasons extracted hereinabove makes it clear, Section 19(3)(c) is to be read with Section 4(4) and Section 22, all of which make it clear that cases under the Act have to be decided with utmost despatch and without any glitches on the way in the form of interlocutory stay orders.

vii. It has been argued on behalf of the Appellants that Sub-section (4) of Section 19 would make it clear that the subject matter of Section 19, including Sub-section (3), is sanction and sanction alone. This argument is fallacious for the simple reason that the subject matter of Sub-section (4) is only in the nature of a proviso to Section 19(3)(a) and (b), making it clear that the ground for stay qua sanction having occasioned or resulted in a failure of justice should be taken at the earliest, and if not so taken, would be rejected on this ground alone.

viii. Section 19(3)(c) became necessary to make it clear that proceedings under the Act can be stayed only in the eventuality of an error, omission or irregularity in sanction granted, resulting in failure of justice, and for no other reason. It was for this reason that it was also necessary to reiterate in the language of Section 397(2) of the Code of Criminal Procedure, that in all cases, other than those covered by Section 19(3)(b), no court shall exercise the power of revision in relation to interlocutory orders that may be passed. It is also significant to note that the reach of this part of Section 19(3)(c) is at every stage of the proceeding, that is inquiry, trial, appeal or otherwise, making it clear that, in consonance with the object sought to be achieved, prevention of corruption trials are not only to be heard by courts other than ordinary courts, but disposed of as expeditiously as possible, as otherwise corrupt public servants would continue to remain in office and be cancerous to society at large, eating away at the fabric of the nation.

In ***M.P. Special Police Establishment v. State of M.P. & Ors.,*** **(2004) 8 SCC 788 (Constitutional Bench)**, the Supreme Court held that no sanction u/s 19 of the P.C. Act, 1988 for prosecution of a Minister, after his resignation, for offences committed by him during his tenure as Minister is required.

In ***Dr. Subramaniam Swamy v. Dr. Manmohan Singh,*** **AIR 2012 SC 1185**, the Apex Court issued guidelines in following terms with an observation that Parliament should consider the Constitutional imperative of Article 14 enshrining the rule of law wherein 'due process of law' has been read into by introducing a time limit in Section 19 of the P.C. Act 1988 for its working in a reasonable manner.

"(a) All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the concerned authority.

(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed. But the request for consultation is to be sent in writing within the three months mentioned in (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time limit.

(c) At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the chargesheet/ complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit."

In ***CBI v. Ashok Kumar Aggarwal,* 2014 (84) ACC 252**, the Hon'ble Supreme Court has summarized the role of the prosecution and the sanctioning authority before according sanction U/s 19 of the P. C. Act, 1988 as under :

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the Court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

In ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & Ors.,* (2015) 3 SCC 123**, the Supreme Court held that sanction U/s 19(1) of prosecution cannot be granted if the prosecution is simply vexatious nor the court can issue a positive direction to the sanctioning authority to give sanction for prosecution.

In ***Manish Trivedi v. State of Rajasthan,* AIR 2014 SC 648**, The Supreme Court held that power U/s 19 of the P.C. Act, 1988 of sanction to prosecute cannot be delegated by the competent authority. Sanction cannot be granted on the basis of report given by some other officer or authority.

In ***State of Maharashtra v. Mahesh G. Jain,* (2013) 8 SCC 199**, the Supreme Court held that grant of sanction U/s 19 (1) of the P.C. Act, 1988 for prosecution is administrative function. Only prima facie satisfaction of the sanctioning authority is needed.

In ***Anil Kumar v. M.K. Aiyappa,* (2013) 10 SCC 705**, the Supreme Court relying upon its earlier decisions reported in (i) ***State of UP v. Paras Nath Singh,* (2009) 6 SCC 372 (Three-Judge Bench)** and (ii) ***Army Headquarters v. CBI,* (2012) 6 SCC 228** and (iii) ***Subramanian Swamy v. Manmohan Singh,* (2012) 3 SCC 64**, it has been held by the Hon'ble Supreme Court that Special Judge cannot order registration of FIR U/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority U/s 19 (1) of the P.C. Act, 1988.

In ***Romesh Lal Jain v. Naginder Singh Rana & Ors.*, (2006) 1 SCC 294**, the Supreme Court observed that:

"Test to determine for sanction order to amount to a composite order, there must be an immediate or proximate connection between the P.C. Act and the IPC offences for which accused is charged. The test to be applied in such a case would be whether the offences under IPC are also required to be prove in relation to the offences under the P.C. Act, 1988".

In ***R.S. Nayak v. A.R. Antulay*, AIR 1984 SC 684 (Constitutional Bench)**, the Supreme Court held that if the public servant has ceased to be a public servant on the date of cognizance of the offence by the court, sanction for his prosecution is not required.

WHAT IS THE PRESUMPTION UNDER THE PREVENTION OF CORRUPTION ACT REGARDING PUBLIC SERVANT ACCEPTING ANY UNDUE ADVANTAGE?

Section 20: Presumption where public servant accepts any Undue Advantage

Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11.

In ***C.M. Girish Babu v. CBI*, (2009) 3 SCC 779**, the Apex Court has held as follows:

"It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.

It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt".

In ***N. Sunkanna v. State of Andhra Pradesh*, (2016) 1 SCC 713**, the Apex Court held as follows:

"It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine qua non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1) (d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow".

In ***Selvaraj v. State of Karnataka*, (2015) 10 SCC 230**, the Supreme Court with respect to corroboration and burden of proof observed as follows:

"The allegation of bribe taking should be considered along with other material circumstances. Demand has to be proved by adducing clinching evidence. Recovery of tainted money is not sufficient to convict the accused. There has to be corroboration of the testimony of the complainant regarding the demand of bribe."

The Apex Court further observed as follows: *"The prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case".*

WHAT OTHER LAWS ARE NOT TO BE AFFECTED BY THE PREVENTION OF CORRUPTION ACT?

Section 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.

In ***Union of India & Ors. v. Ranjit Kumar Saha & Ors.*, (2019) 7 SCC 505**, with respect to the applicability of Section 25 to Assam Rifles Act the Hon'ble Apex Court observed as follows:

"Section 4 of the PC Act provides that an offence punishable under the PC Act shall be tried only by a special Judge. A special Judge under the Act is appointed by a notification issued Under Section 3 of the PC Act either by the Central Government or the State Government. According to the Section 5 of the PC Act, the Court of the special Judge shall be deemed to be a Court of Sessions. It is also necessary to refer to Section 28 of the PC Act which provides that the provisions of the PC Act shall be in addition to, and not in derogation of, any other law for the time being in force. As per Section 25 of the PC Act, the jurisdiction exercisable by and the procedure applicable to any Court or authority under the Army Act, 1950; the Air Force Act; 1950, the Navy Act, 1957; the Border Security Force Act, 1968; the Coast Guard Act, 1978 and the National Security Guard Act, 1986 shall not be affected by the PC Act. For the removal of doubts, it was declared in Section 25(2) of the PC Act that for the purposes of any laws mentioned in Section 25(1), the Court of a special Judge shall be deemed to be a Court of ordinary criminal justice.

The point answered against the Appellants by the High Court is that the Assam Rifles Act 2006 is not included in Section 25(1) of the PC Act and that the criminal court under the 2006 Act has not been declared to be a Court of special Judge. Therefore, the High Court decided that the cases triable under the PC Act even against the members of the Assam Rifles have to be necessarily tried by a special Judge under the PC Act. There is no doubt that the 2006 Act is not included in Section 25(1) and exemption from applicability of the provisions of the PC Act cannot be claimed by the Appellants. We are not in agreement with the submission made by the learned Additional Solicitor General that the Appellants are entitled to a relief on the basis of Section 25 of the PC Act."

In ***S. Chaoba Singh v. Union of India & Ors.*, (2003) 2 GLR 455**, the Court held that the requirement of sanction U/s 19 of the P. C. Act will not be applicable when the offences under the P. C. Act are tried by the security force court of the B.S.F Act.

WHAT ARE THE KEY CHANGES BROUGHT ABOUT BY THE PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2018?

2.1. Key changes to the definitions

The Amendment Act includes the following definitions:

a. The term **"Prescribed"** has been introduced to mean rules that may be drafted by the Central Government under the Act. Given that, we anticipate the following rules:
    - Rules for organizations and companies to form internal guidelines and procedures to prevent its employees from affording undue advantage to public servants; and
    - Rules for prosecution of a public servant under the Act.

b. The term **"Undue Advantage"** has been defined to mean any gratification other than legal remuneration. The term **"Gratification"** has been clarified to *include all forms of gratifications* estimable in money besides pecuniary gratification.

c. The term **"Legal remuneration"** has been clarified to include all remuneration a public servant is permitted to receive by the concerned authority.

2.2. Key amendments

1. **Time Extensions:** Under Section 4 (4), the courts no longer have complete trails for offences under the Act within 2 years, failing which the judges will need to record the requirement for extension in time. A trial can now be extended by 6 months at a time for up to a maximum of 4 years.
2. **Exemptions for Compulsion:** Section 8 prescribes punishment for persons abetting a bribe or attempting to indulge in corruption with a public servant. The Amendment Act exempts those acts committed out of compulsion, provided a person so compelled files a compliant with the police or investigating agency within 7 days of giving a bribe under compulsion.
3. **Commercial Organizations:** Section 9 now specifically deals with commercial organizations and persons associated with commercial organizations. The term commercial organization is clarified to include all forms of business structures and the phrase 'persons associated with commercial organization' is wide enough to include employees and vendors.
4. **Punishment:** Section 10 now imposes specific terms for imprisonment and a fine where the commercial organization's directors, officers in default or a person with control over the organization has consented to the corrupt act violating the provisions of the Act. It may be useful to note that when amendments to Section 10 and Section 9 are read together – the amended Act seems to penalize both the commercial organisations for violation of the Act by levying of a fine and the officers in charge of such commercial organization under Section 10 for criminal liability.
5. **Corruption by Public Servants:** The Amendment Act seems to have diluted the instances where a public servant can be accused of alleged criminal misconduct. The amended Section 13 of the Act only refers to the misuse of property and unjust enrichment as grounds for misconduct (which is assessed by disproportionate assets). Earlier, Section 13 accounted for general tendencies to seek bribes or indulge in corrupt practices as grounds of criminal misconduct.
6. **Permission to prosecute by an investigative authority:** The Amendment Act appears to make it more difficult to prosecute government employees. The amendment under Section 19 states that for prosecution of a public servant under Sections 7, 11, 13 and 15 of the Act, firstly, a sanction must be obtained from an authority that has the right to dismiss them. Secondly, an investigative authority (such as a police officer) must seek an application for permission, or else there are multiple layers of compliances that need to be cleared before the court can take cognizance of the offence.

WHAT ARE SOME OF THE PROBLEMS AND CHALLENGES FACED WHILE TACKLING THE MENACE OF CORRUPTION?

Despite adequate laws to fight corruption in the public sector, it is still one of the biggest menaces Indian society must deal with. The Indian criminal justice system has been facing many problems and challenges in its fight against corruption, some of which are highlighted below.

A) **No Law to tackle Corruption in the Private Sector:** The Prevention of Corruption Act 1988 is the existing law in India dealing with offences relating to corruption. This law, however, was essentially enacted to take care of corruption cases in the public sector and by public servants, whereas in fact, there is widespread corruption in the private sector also which seriously hampers the overall growth and development of the country.

After the liberalization of the Indian economy in the early 1990s, the private sector has expanded greatly. The problem of corruption in the private sector is increasing with the expansion of the private sector. Today it has assumed alarming proportions. It has become the single biggest menace to Indian society. Efforts are underway to enact laws to deal with corruption in the private sector as envisaged in the UNCAC.

B) **Inherent Delays in the Criminal Justice System:** The system is painfully slow and punishments are not swift. As explained earlier, sec. 19 of the Corruption Act requires prior permission of the authority competent to remove a public servant from his or her post before launching prosecution against him or her in court. This often delays the launch of a prosecution. Upon receiving reports from the investigating agencies seeking approval for a prosecution, the

concerned authorities often take considerable time to grant such permission. Also, permission is sometimes denied on political and other grounds.

The Corruption Act provides for trial of corruption cases under the act exclusively by the Special Judges. The number of Special Judges is highly insufficient compared to the number of corruption cases filed in their courts. As a result, these courts are overburdened and there is a large discrepancy in the number of cases disposed by the investigating agencies and the number of cases disposed by the courts, adding to the backlog each year. During trial of offences, adjournments are often taken or granted on various grounds. Further, the proceedings in the trial court are challenged at various stages by parties filing petitions in the same court as well as in higher courts. Appeals and revisions filed in higher courts against the order of the trial court often take years to be concluded.

C) **Hostile Witnesses:** In order to convict a corrupt public servant, the prosecution has to prove its case beyond doubt. This is a strict legal requirement as per the Indian Evidence Act, the general law on evidence in India. There is no exception to this requirement even for corruption cases. Prosecution has to depend heavily on the testimony of witnesses to prove its case beyond doubt. However, witnesses often do not support the prosecution case because of influence, allurement and intimidation from the other side. There is no witness protection scheme, nor are there provisions for quick and effective action against witnesses who become hostile. As a result, witnesses frequently become unco-operative and spoil the prosecution case. Punishments are, therefore, not swift and effective under the Corruption Act and don't deter corrupt public servants.

D) **Ineffective Asset Recovery:** Though there are legal provisions for confiscation and recovery of property acquired as proceeds of crime, such recovery is not easy. Corrupt public servants often acquire properties with the proceeds of crime in the names of their friends, relatives, family members and other acquaintances. Therefore, it is not easy to prove in court that such properties are the proceeds of crime. Such properties are quite often held offshore under strict privacy laws and it is not easy to trace and recover them, especially in the absence of desired international co-operation.

WHAT ALL CHANGES HAVE BEEN BROUGHT ABOUT BY THE PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2018 IN COMPARISON TO THE OLDER ACT?

Comparative Analysis

Prevention of Corruption Act, 1988 (Before Amendment)	**Prevention of Corruption Act, 1988 (After Amendment)**
	Section 2(*aa*) ''prescribed'' means prescribed by rules made under this Act and the expression ''prescribe'' shall be construed accordingly;
	Section 2 (*d*) "undue advantage" means any gratification whatever, other than legal remuneration. *Explanation.*—For the purposes of this clause,— (*a*) the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money; (*b*) the expression "legal remuneration" is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive. *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.
4. Cases triable by Special Judges (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.	**4. Cases triable by Special Judges** (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the trial of an offence shall be held, as far as practicable, on day-to-day basis and an endeavour shall be made to ensure that the said trial is concluded within a period of two years: Provided that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so: Provided further that the said period may be extended by such further period, for the reasons to be recorded in writing but not exceeding six months at a time; so, however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate.
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 [three years] but which may extend to [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.	**7. Offence relating to public servant being bribed**.—Any public servant who,— (*a*) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or. (*b*) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or; (*c*) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in ancitipation of or in consequence of accepting an undue advantage from any person, shall be punishable, with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. *Explanation 1*.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitutes an offence even if the performance of a public duty by public servant, is not or has not been improper. *Illustration.*—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section. *Explanation 2*.—For the purpose of this section,— (*i*) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any

(*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.	other corrupt or illegal means; (*ii*) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the advantage directly or through a third party.
	7-A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage of a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.
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 [three years] but which may extend to 5[seven years] and shall also be liable to fine.	**8. Offence relating to bribing of a public servant**.—(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention— (*i*) to induce a public servant to perform improperly a public duty; or (*ii*) to reward such public servant for the improper (*ii*) to reward such public servant for the improper performance of public duty; shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both: Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage: Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage: Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisations shall be punishable with fine. *Illustration.*—A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section. *Explanation.*—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through

	a third party. (2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the later.
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 six months but which may extend to five years and shall also be liable to fine.	**9. Offence relating to bribing a public servant by a commercial organisation**.—(1) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisations gives or promises to give any undue advantage to a public servant intending— (*a*) to obtain or retain business for such commercial organisation; or (*b*) to obtain or retain an advantage in the conduct of business for such commercial organisation: Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct. (2) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under Section 8, whether or not the person has been prosecuted for such offence. (3) For the purposes of Section 8 and this section,— (*a*) "commercial organisation" means— (*i*) a body which is incorporated in India and which carries on a business, whether in India or outside India; (*ii*) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India; (*iii*) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or (*iv*) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India; (*b*) "business" includes a trade or profession or providing service; (*c*) a person is said to be associated with the commercial organisation, if, such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitute an offence under sub-section (1). *Explanation 1*.—The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation. *Explanation 2*.—Whether or not the person is a person who performs services for or on behalf of the commercial

	organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation. *Explanation 3.*—If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who has performed services for or on behalf of the commercial organisation. (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under Sections 7-A, 8 and this section shall be cognizable. (5) The Central Government shall, in consultation with the concerned stakeholders, including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary which can be put in place for compliance by such organisations.
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.	**10. Person in charge of commercial organisation to be guilty of offence**.—Where an offence under Section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer shall be of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. *Explanation*.—For the purposes of this section, ‘‘director’’, in relation to a firm means a partner in the firm.
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.	**11. Public servant obtaining *undue advantage*, without consideration from person concerned in proceeding or business transacted by such public servant**.—Whoever, being a public servant, accepts or obtains [* * *] or attempts to obtain for himself, or for any other person, any *undueadvantage* 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 or public duty* 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.
12. Punishment for abetment of offences defined	**12. Punishment for abetment of offences**.—Whoever

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 six months but which may extend to five years and shall also be liable to fine.	abets any offence punishable under this Act, 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 three years, but which may extend to 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 (*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.	**13. Criminal misconduct by a public servant**.—(1) A public servant is said to commit the offence of criminal misconduct,— (*a*) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or (*b*) if he intentionally enriches himself illicitly during the period of his office. *Explanation 1.*—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for. *Explanation 2.*—The expression ''known sources of income'' means income received from any lawful sources.
14. Habitual committing of offence under	**14. Punishment for habitual offender**.—Whoever

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 two years but which may extend to seven years and shall also be liable to fine.	convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to 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 which may extend to three years and with fine.	**15. Punishment for attempt**.—Whoever attempts to commit an offence referred to in *clause (a)* of sub-section (1) of Section 13 shall be punishable with imprisonment for a term 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 in 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.	**16. Matters to be taken into consideration for fixing fine**.—Where a sentence of fine is imposed under *Section 7 or Section 8 or Section 9 or Section 10 or Section 11 or sub-section (2) of Section 13 or Section 14 or Section 15*, the court in 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 (b)* 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.
17. Persons authorised to investigate.— 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.	Provided further that an offence referred to in *clause (b) 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.
	17-A. Enquiry or inquiry investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—(1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval— (*a*) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government; (*b*) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government; (*c*) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed: Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue

	advantage for himself or for any other person: Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.
	18-A. Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act.—(1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002 (15 of 2003), the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act. (2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall have effect, subject to the modification that the references to "District Judge" shall be construed as references to "Special Judge
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 sanction,— (*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.	**19. Previous sanction necessary for prosecution.**—(1) No court shall take cognizance of an offence punishable under *Sections 7, 11, 13 and 15* alleged to have been committed by a public servant, except with the previous sanction,(save as otherwise provided in the Lokpal and Lokayuktas Act,2013), (*a*) in the case of a person *who is employed, or as the case may be, was at the time of commission of the alleged offence 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, or as the case may be, was at the time of commission of the alleged offence 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: *Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—* *(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and* *(ii) the court has not dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973 and directed the complainant to obtain the sanction*

	for prosecution against the public servant for further proceeding: *Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:* *Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:* *Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:* *Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribed such guidelines as it considers necessary.* *Explanation.—For the purposes of sub-section (1), the expression "public servant" includes such person—* *(a) who has ceased to hold the office during which the offence is alleged to have been committed; or* *(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.*
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	**20. Presumption where public servant accepts any undue advantage**.—Where, in any trial of an offence punishable under Section 7 or under Section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, *any undue advantage* from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under Section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under Section 11.

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 inference of corruption may fairly be drawn.	
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.	**23. Particulars in a charge in relation to an offence under *Section 13(1)(A)***.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when an accused is charged with an offence under *clause (a)* 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.
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.	Omitted
	29-A. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:— (*a*) guidelines which can be put in place by commercial organisation under Section 9; (*b*) guidelines for sanction of prosecution under sub-section (1) of Section 19;". (*c*) any other matter which is required to be, or may be, prescribed. (3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter

	have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.