

# History of Development of Anti-Corruption Laws in India

1. Corruption is as old as humanity. Today, corruption has become a global phenomenon despite efforts by many countries to control and prevent it.

2. In our country, the problem of corruption is not a product of the modern India in the 20th Century. We find Koutilya's Ardhasasthra that corruption existed in India even as early as 2400 years ago.

\* He emphasized the need for keeping a strict watch on persons who run the administration and suggested several ways and means to detect corruption in administration as well as in trade and commerce.

### **3.HISTORY OF CORRUPTION**

\* During the early stages of British Rule in India, Corruption was quite rampant among the officers of the East India Company and of the British Government. Warren Hastings, the Governor-General and Robert Clive the Governor had faced impeachment on charges of corruption and maladministration.

\* The Bengal Regulation of 1793 required the Judges of the East India Company to take oath to avoid corrupt practices. The Indian Penal Code, which was enacted in the year 1860, contained a Chapter relating to offences by or relating to public servants under Sec.161 to 171.

## **4.IMPACT OF SECOND WORLD WAR AND LEGISLATIVE MEASURES TO COMBAT THE EVIL**

- \* Prior to the year 1939, corruption was mainly prevalent amongst reserve police, excise and public works department.
- \* The immense war efforts during 1939 to 1945 and expenditure of hundreds of crores of rupees for procuring essential supplies, created unprecedented opportunities for dishonest officers and unscrupulous contractors to acquire wealthy by corrupt and illegal means.

5. To meet this situation, the Delhi Special Police Establishment was created in the year 1941, by means of an executive order of the Government of India for investigating into cases of bribery and corruption relating to Defense and supply departments of the Government of India.

6. In 1942 the activities of this Establishment were extended to cases of corruption in the Railways also. The Superintendent of this Police Force was vested in the war department of the Government of India. In the year 1943 the DSPE ordinance was passed thereby giving legal status to this organisation.

7. In the year 1944, the Criminal Law Amendment Ordinance 1944 was promulgated to prevent the disposal or concealment of money or other property procured by means of offences committed under Section 161, 165, 406, 408, 411, 414, 417 and 420 IPC.

\* Under this ordinance Courts were empowered to attach the properties of the accused pending investigation and prosecution and to confiscate the same on conviction of the accused.

8. In the year 1946 another Cr.Law Amendment Ordinance was promulgated by which special rules of evidence were formulated for drawing a presumption against an accused public servant who could not satisfactorily account for disproportionate assets and also against a person committing offences under Section 161 and 165 of IPC by accepting gratification other than legal remuneration.

\* Special provisions were also made regarding punishment to be imposed on the accused.

\* The scope of this ordinance of 1944 was extended to offences under the Hoarding and profiteering Prevention Ordinance 1943 and contravention of the rules made under the Defense of India Act 1939.

9. The DSPE ordinance of 1943 was replaced by another ordinance in 1946, which was later replaced during the same year by the DSPE Act of 1946.

\* The superintendence of this establishment was transferred from the War Department to the Home Department and its jurisdiction was also enlarged to cover all Departments of the Government of India.

\* The Act has provided for the investigation of certain offences in Union Territories and for extension of the powers and jurisdiction of the members of the said force to other States.

10. The Special Police Establishment is a specialised agency for making enquiries and investigation into certain specified offences.

\* It is supplementary to the State Police forces and has concurrent powers of investigation in respect of the offences notified under Sections 3 and 5 of the DSPE Act 1946.

\* With a view to avoid duplication of effort an administrative arrangement has been arrived at between the Central Government and the State Governments regarding the types of cases to be taken up for investigation by the Special Police Establishment. The Officers of the DSPE can investigate the following categories of cases.

11.1 The Special Police Establishment shall take up cases, which substantially and essentially concerned Central Government employees or its affairs even though involving certain State Government employees.

11.2 The State Police shall take up cases, which substantially and essentially concerned State Government employees or its affairs even though involving certain Central Government employees.

11.3 The Special Police Establishment is also authorised to take up cases against employees of statutory bodies or public undertakings set up and financed by the Central Government.

12. Under sub-section 3 of the Section 2 and sub-section 3 of Section 5 of the Act, members of the Delhi Special Police Establishment Sub-Inspector or above the rank of Sub-Inspector are empowered to exercise the powers of the Officer Incharge of Police Station under the Criminal Procedure Code in the area in which they are appointed and when exercising such powers they shall be deemed to be officers incharge of a Police Station discharging the functions of such an officers within the limits of his station.

13. Section 5 of the Act empowers the Central Government with the concurrence of the State Governments, to extend the jurisdiction of the DSPE to all States (except Jammu and Kashmir).

\* The DSPE Act to be extended to Jammu and Kashmir with the concurrence of the State government vide Notification No.25/3/6 AVD I dated 01.04.1961.

\* The DSPE ACT 1946 was extended to the Union Territories of Dadra and Nagar Haveli, Goa, Daman, Diu and Pondicherry on 27.12.1962 and 01.10.1963 respectively.

14. Under Section 6 of the DSPE Act, no member of the said Establishment can exercise powers and jurisdiction in any area in a State without the consent of the Government of the State.

\* The notifications issued by the Government of India from time to time under Section 3 and 5 of the Act enumerate the various categories of offences, which can be investigated by the members of the DSPE.

## **15. Enactment of the Prevention of Corruption Act in 1947:**

Another landmark in the crusade against corruption is the enactment of the P.C.Act of 1947.

16. The Act came into force on 11.03.1947. A new offence of Criminal misconduct by a public servant was created for the first time.

17. The following are some of the important features of this Act.

a. For the purposes of this Act the definition of the term 'public servant' was adopted from Section 21 of the Indian Penal Code 1860.

b. Offences under Section 161, 165 and 165-A IPC were made cognizable offences under the Criminal Procedure Code for the purpose of investigation and prosecution under this Act .

c. In regard to trial of offences under sections 161, 165 and 165-A, IPC and offences under Sec.5 subsection (1) clause (a) and (b) or sub-section (3) of this Act, a statutory presumption could be raised under Section 4 of this Act, against the accused under certain circumstances.

d. Only Police Officers of the rank of Inspector of Police in case of SPE and DSP/ASP in other cases are empowered to investigate the offences under the Act.

e. Previous sanction of the competent authority is necessary for the prosecution of the accused.

## **18. THE CRIMINAL LAW AMENDMENT ACT, 1952**

This was enacted with the object of further amending the IPC and CrPC and to provide for a more speedy trial of certain offences.

19. Section 6 of the Act provides for the appointment of Spl. Judges for such area or areas as may be specified by the State Government by notification in the official gazette, to try offences under Section 161, 165 and 165-A IPC and sub section 2 of section 5 of the PC Act 1947 and Criminal conspiracies, attempt and abetment to commit these offences.

20. A person who is or has been a Sessions Judge, Additional Sessions Judge or Asst. Sessions Judge is to be appointed as Special Judge. When trying a case the Special Judge may also try any offence.

21. The Special Judge may take cognizance of an offence without the accused being committed to him for trial.

\*The Special Judge shall try the case adopting the procedure for the trial of warrant cases by Magistrates under the CrPC.

\*The Special Judge is empowered to tender pardon to an accused and such a pardon shall be deemed to have been tendered under Section 338 CrPC (Sec.307 of the CrPC of 1973).

22. For the purpose of appeals and revisions the Special Judge's Court is a Court of Session.

### **23. Recommendations of the Santhanam Committee**

\*The Government of India appointed a Committee chaired by Shri K. Santhanam, MP with specific terms of reference which inter alia included: 'to suggest changes which would ensure speedy trial of cases of bribery, corruption and criminal misconduct and make the law otherwise more effective'.

24. Recommended amendment of the definition of the expression 'Public servant' in Section 21 IPS so as to include Ministers of Central and State level and Parliamentary Secretaries in the definition of 'Public Servant'.

\* The Committee separately dealt with the MsLA in Section 11 of the Report.

25. Based on the recommendations of the Santhanam Committee the Prevention of Corruption Act, the Indian Penal Code, the Criminal Procedure Code and other related Acts have been amended.

## **26. THE ANTI-CORRUPTION LAWS (AMENDMENT) ACT 1964**

\*By this legislation several radical changes were brought about in the existing anti-corruption laws based on the recommendation of the Santhanam Committee.

27. A new section had replaced section 5-A of the Act. This section empowers and inspector of police of DSPE to investigate an offence under Sec.5 of the Act, without the order of a Magistrate.

28. A new Sec.6-A was added to the PC Act. It provides that in respect of an offence under Sec.5(1)© of the Act, there can be a single charge in respect of several items during the period of one year.

29. Section 251-A Cl.(8): The accused is required to give in writing a list of defence witnesses when he enters on the defence.

30. Suitable amendments were made to Cr.P.C. irrespective of sections: 344(1-A), 435(1) and 540-A.

# **The Prevention of Corruption** **Act, 1988**

- \*The prevention of corruption Act 1988 Received the assent of the president on 9th September 1988, and was published in the Gazette of India on 12th September 1988.
- \* The Act came into force w.e.f. 9th September 1988.
- \* It extends to the whole of India and it applies to all citizens of India outside India.

## **SECTION: 1**

The words except “Jammu & Kashmir” are omitted by Jammu & Kashmir Reorganisation Act,2019(Act 34 of 2019) w.e.f. 31-10-2019.

## SECTION: 2

### DEFINES THE FOLLOWING:

- A. Election:** - selecting members of Parliament or of any Legislature, Local Authority or other Public Authority.
- B. Prescribed:** - means Prescribed by rules made under this Act and the expression “Prescribed” shall be construed accordingly.

(Inserted by prevention of corruption (Amendment))  
Act,2018(16 of 2018) w.e.f. 26-7-18).

- C. Public duty:** - means a duty in the discharge of which the Public or the community at large has an interest.

Explanation to the section explains what does “State” include.

**D. Public Servant:** - means: clauses (i) to (xii) coupled with explanations 1 and 2 defines a 'Public Servant':

**Section :21 Of IPC Defines Public Servant. Twelve Categories of Public Servants Have Been Mentioned.**

**Sec:21 OF IPC corresponds to sec: 20 the BNS 2023.**

While the definition retains the core, it has been updated for modern Governance, replacing outdated colonial terminology like Militarily with Army etc.

The Government has accepted some more recommendations of Santhanam Committee and they have been incorporated in sec: 2(c) of the P.C. Act,1988.

The first clause of section 21 of IPC was omitted by Authorization of laws order 1950.

Now as per judgments of constitutional courts we will examine the law as under:

- I. Chairman of Municipal Council is a Public Servant (Ashok Kumar -vs - State of Rajasthan, 2012 (2) Crimes 343 Rajasthan)
- II. Senior Assist in Prakasam District milk producers manually Cooperative Union Limited is not a Public Servant (Ravuri Siva Prasad -vs- state of A.P 2014 Cr.L.J. 2026(A.P)).
- III. President and Secretary of Kerala Cricket Association are public servants (High Court of Kerala and fortified by the Supreme Court of India)
- IV. Licenced stamp vendor is a public servant, whenever appointed by the Government or not. (Naval kishore -vs- state. 2015 Cr.L.J 207 DEL.).

- V. Persons receiving honorarium and not holding any office of Govt are not Public Servants (B. Manjunath-vs-State ACB, Warangal 2020 CU ALD (CRL))
- VI. Outsourcing/ Contract employees Discharging duty are Public Servants Apex Court. (2002) 7 SCC 631.
- VII. Partners of Firm doing Government Contract, hence Public Servant (Rajasthan).
- VIII. MLA's/MP's/Ministers – Public servants R.s.Nayak -vs- Antulay 1984 Cr.L.J 623.
- IX. Officers and members of the Guruvayur Devaswom Managing Committee are Public Servants **u/s**: 2(c) (viii) of the P.C. Act,1988 (Kerala High Court)

## **Section: 3 Power to appoint Special Judge.**

- 1) The central government or the state government by a notification in an official Gazette appoint as many as special Judges as may be necessary for such area or areas for such cases or group of cases as Specified in the Notification.

To try:

- a) Offences Punishable under the P.C. Act.
- b) Any conspiracy, attempt or abetment of the offence in **u/s** (a) sec:3.

## **2) Qualification:**

A person who is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Session Judge under the Code of Criminal Procedure 1973.

Special Judges can try offences committed by persons who are not Public Servants if non-Public Servants is also a member of Criminal conspiracy are abetted the Public Servant to commit the offence. (P.Nallammal -vs-state represented by Inspector of Police 1999 Cr.L.J3967) SC.

- a) The special judge has to follow the procedure prescribed by the Cr.P.C/BNSS for trial of warrant cases By Magistrate.
- b) So far trial of the cases is concerned the special judge stands in the position of a Magistrate.
- c) So far tendering of pardon is concerned, the Spl. Judge Assimilated to the position of the sessions judge under Cr.P.C.
- d) Special Judge enjoys a unique position.

- e) The Court of the Special Judge is a court of the original criminal Jurisdiction. He will enjoy all the powers of the original Criminal jurisdiction under Cr.P.C.
- f) Therefore, a private complaint can be entertained and taken cognizance of, In the respect of offences committed by a public servant.

#### **Section: 4 Cases Trible by special judges:**

**Offences specified Sub-section (1) of Section: 3 Shall be tried by Special judge.**

- 2. With in the area specified.
- 3. Special Judge may also try any Offence other than specified **u/s: 3(1)**, can be charged at the same trial.

4. The Special Judge as far as Practicable Shall hold trial on day - to- day basis and ensure the trial be completed within the period of two years.

Provided, for reasons recorded can be Extended for 6 months and not beyond four years in aggregate

State Government allocates cases to the Special Judges but can't transfer a pending case from one court to another. (1954 Cr.L.J1252).

5. Special Judge can also try other offences connected so close to the offence under P.C.Act.
6. Special judge has powers to remand the accused **u/s**: 167 of Cr.P.C.

7. Special judge can order for investigation **u/s** :156(3) of Cr.P.C. provided complaint discloses a cognizable offence prima - facie.
8. Can order for further investigation **u/s**: 173(8) of Cr.P.C.

### **Section: 5 Procedure and powers of the special Judge.**

- 1) Special Judge may take cognizance without being Committed to him for trial.
- 2) A Special Judge tenders Pardon to any person connected to the offence **u/s**: 308 of Cr.PC.
- 3) The Court of the Special judge deemed to be the Court of Sessions and the prosecutor conducting proceedings before it is public prosecutor.

- 4) As far as the sections 326 and 475 of Cr.P.C. -- Special Judge shall be deemed to be a Magistrate.
- 5) Special judge may pass Sentence upon any person convicted by him.
- 6) The special judge shall exercise all powers exercised by a Sessions Judge under the Criminal Law Amendment Ordinance 1944.
  - a) Power to take cognizance, remand, tender pardon etc. to Accused Officer.

## Section: 6 Power to try Summarily.

- 1) When it appears to the Special judge that the offender committed in contravention of special order referred to under sec:12-A of the essential commodities Act,1955, he can try the case summarily.

Upon hearing the parties if the court feels it to be tried as a warrant case, it can do so.

- 2) Appeal shall be against the order passed by the Special judge in excess of the limits prescribed (not exceeding one year is the power).

# Chapter -III

## Offences and Penalties

### **Section: 7 offences relating to public servant being bribed.**

Under this section demand and acceptance of gratification other legal remuneration as motive or reward.

- a) for doing an official act,
- b) for showing favour in the exercise of official functions: and
- c) for rendering service to any person with any Public Servant is punishable.
- d) Even though the Public Servant receives gratification for doing what he does intend to do or as reward for doing what he has not done, he is liable under this section.

- i. offence is non bailable.
- ii. investigating officer taking part in trap not to investigate.
- iii. a) Legitimate trap: where the offence has already been born and in the course.  
b) illegitimate trap: Where the offence is not yet born and a temptation is offered to see whether offence would be committed.
- iv. Additional accused cannot be added during the trial without prior sanction.
- v. The conduct of the accused officer is relevant **u/s**: 8 of I.E.Act.
- vi. Where a prima-facie case is proved that AO has accepted illegal qualification the burden of proof shifts to the AO to prove the contrary.

- vii. Immediate explanation of AO after trap is important
- viii. Punishment prescribed is 3 to 7 years.

## **Section: 8 offences relating to bribing of a Public Servant:**

### **Any Person:**

- i. taking gratification by corrupt or illegal means, to influence Public Servant is an offence.
- ii. punishable with imprisonment for a term which may extend to seven years or with fine or with both.
- iii. offence is cognizable -non bailable – noncompoundable.
- iv. recipient of bribe need not be a Public Servant.

## **Section :9 offence relating to bribing a Public Servant by a commercial organisation:**

If any person associated with any commercial organisation gives undue advantage to a Public Servant.

a) to obtain or retain business.

b) to obtain or retain an advantage in the conduct of commercial organisation (or)

c) to obtain or retain an advantage in the conduct of business for such commercial organisation.

Such organisation is liable with fine.

2.commercial organisation and business - are defined under the section.

3.sections:8 and 9 apply to both public servants and private persons.

4.cognizable-non bailable and non-compoundable.

**Section 10:** persons in charge of commercial organisation to be guilty of offence [Persons in charge of organisation are guilty of offence, if the offence is committed with consent or connivance, such director, manager, secretary or other officers are guilty of the offence].

Cognizable - non bailable -non compoundable.

**Section: 11 Public servant obtaining undue advantage without consideration from concerned person in proceeding or business transacted by such Public Servant.**

i. Public servant accepts or obtains or an attempt to obtain or undue advantage without consideration or inadequate consideration from any person connected with the official function or public duty of himself or any Public Servant to whom he is subordinate.

Punishment – Imprisonment for six months to five years ---- also fine.

ii. Cognizable -Non bailable -Non compoundable.

## **Section: 12 Punishment for abetment of offence:**

1. A person is said to have committed offence:

If he abets any offence punishable under the Act, whether or not the offence is committed in consequence of that abetment.

**Punishment:** not less than three years, which may extend to seven years and shall also liable to fine.

2. This provision is substituted by Amendment Act, 2018. Earlier abetment of offences **u/s: 7 & 11** were punishable under this section.

3. Cognizable – non bailable & non compoundable

## **Section: 13 Criminal misconduct by a Public Servant:**

A public servant is said to commit the offence of criminal misconduct.

a) If he dishonestly or fraudulently misappropriation any property entrusted to him as a public servant or allows any other person so to do

(or)

3(1)(b): A public servant is said to commit offence of criminal misconduct.

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

## Explanation – I:

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 been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

## Explanation – II:

“Known sources of income” mean income received from any lawful source.

- i) This provision is amended by the prevention of corruption (amendment) Act 2018.
- ii) This corresponds to section 5 of P.C.Act,1947.

**Punishment:** 4 to 10 years.

[cognizable non bailable & non compoundable]

## **Section 14: Punishment for habitual offence.**

Repeat offender (who is convicted already) is punishable with not less than five years of imprisonment, may extend to 10 years.

## **Section 15: Punishment for attempt.**

Whoever attempts to commit an offence u/s:13(1)(a) (i.e, dishonest misappropriation) is liable for punishment

## **Section 16: Matters to be taken into consideration for fixing fine.**

When a sentence of fine is imposed u/s: 7,8,9,10,11,13(2),14 or 15 the court in fixing the amount of fine, shall take into consideration the amount or the value of the property which the accused obtained by committing the offence.

## Chapter IV: INVESTIGATION

**Section 17: persons authorized to investigate** [in case of the DSPE, Inspector of police.]

1) In metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad etc- Asst. Commissioner of Police.

2) elsewhere- DSP or equivalent ranks shall investigate.

Police officer not below the rank of inspector can also investigate if authorized by Govt.

Proviso: But the offence referred to in (b) of subsection (1) of section 13 shall not be investigated without the order of a police officer not below the rank of Superintendent of Police.

**Section 17 A:** A police officer has to take previous approval of State Govt, Central Govt (or) concerned authority as the case may be, of offences relatable to any recommendation made or decision taken by such public servant.

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.

concerned authority has to convey it's decision with in (3) months  
- can be extended to one more month.



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## **CHAPTER IV -A.**

**SECTION 18 A:** Attachment, adjudication and confiscation the provisions of Criminal Law Amendment ordinance,1944 shall apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property.

## CHAPTER – V

### SANCTION

#### **Section:19 Previous Sanction Necessary for prosecution.**

No court shall take cognizance of an offence punishable under sec:7,11,13 and 15 alleged to have committed by a public servant, except with the previous sanction.

- a) In case of a person employed in connection with the affairs of Union Government - Central Government.
- b) A person connected with the affairs of the state i.e., state government employees - State Govt.
- c) In the case of any other person, of the authority competent to remove him from his office.

**Proviso:** concerned I.O/police officer alone is competent to seek sanction orders.

[In case of any other applying for sanction, an opportunity of being heard shall be provided to the Public Servant by the govt. concerned.]

1. In case of private complaint upon courts direction the de facto complainant shall obtain sanction orders from Govt.
2. Govt shall convey its decision on proposals of Sanction orders to be issued, within a period of (3) months.

[Any reasonable reasons for delay are to be recorded in writing for extending to one more month.]

3. Central Govt shall issue guide lines on this subject.

**Explanation:** 'Public Servant' includes –

- a) who has ceased to hold the office during which the offence is committed. (Retired)

- b) who has ceased to hold the office during which the offence alleged to have committed and is holding an office other than the office during which the offence was committed. (Transferred)
- c) no court shall stay the proceedings on the ground of any error, omission, irregularity in sanction granted, unless there is error, omission or irregularity which resulted in failure of justice.

**Section: 20 Presumption where public servant accepts any undue advantage –**

In case of offences u/s: 7 & 11 of the Act, Prima – facie is proved, court shall presume that the accused is involved in the offence.

Burden of proof will be shifted to the accused to prove contrary or his innocence.

**Section: 21 Accused person to be competent witness.**

Accused person, on his own request can be examined as witness to disprove charges made against him.

**Section: 22 The code of criminal procedure 1973 to apply subject to certain modifications.**

**Section: 23** When an accused is charged with an offence under section 13(1) (a) of the Act, of property, single charge can be framed for offences occurred within a span of one year.

**Section: 24** This section is omitted and incorporated in sec 8(c) of Amendment Act,2018.

**Section: 25** The provisions of P.C. Act 1988 shall not affect the jurisdiction exercisable by courts under military, naval & Air force.

**Section: 26** Every special judge appointed under Criminal Law Amendment Act, 1952 shall be deemed to be Special Judge u/s: 3 of P.C.Act 1988.

**Section: 27** High court would exercise all powers of appeal and the special court is the Sessions Court.

**Section: 28** The words “state govt or as the case may be, the central govt” shall be substituted in sections 3,9,10,11 and 13 of the Criminal Law Amendment ordinance,1944 in the place of “State Government” in respect of application for attachment.

**Section: 29-A** The central govt makes rules for guidelines in respect of commercial organisations u/s:9 and guidelines for sanction of prosecution.

**Section :30** Prevention of Corruption Act, 1947 and Criminal Law Amendment Act, 1952 are repealed.

**Section :31** Sections 161 to 165 of IPC shall be omitted.

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