

Role of Public Servants in Combating Corruption – Legislative Measures

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In our country, the problem of corruption is not a product of the modern India in the 21st Century. We find in Koutilya's Ardhasasthra that corruption existed in India even as early as 2400 years ago. Kautilya likened all those in the King's employment to fish swimming in water as it is difficult to prove whether the fish is drinking water or not. 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.

CORRUPTION IN BRITISH INDIA

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 Act also provided for the forfeiture of presents received whereby receiving of gifts by Government servants was made misdemeanor. Similarly, making or private investments, promoting or private companies and acceptance of commercial employment after retirement were all regulated by suitable enactments. The Indian Penal Code, which was enacted in the year 1860, contained a Chapter relating to offences by or relating to public servant under Sec.161 to 171.

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 wealth by corrupt and illegal means. The wartime scarcities coupled with controls and licensing system provided ample opportunities for bribery and corruption.

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. 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 organization and later take shape as DSPE Act 1946.

Criminal Law Amendment Ordinance 1944:

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.

The Special Police Establishment is a specialized 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.

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'.

Central Bureau of Investigation:

The Central Bureau of Investigation was established in the year 1963. The Special Police Establishment which is the investigation and Anti-corruption Division of the CBI is supplementary to the State's Police Force and enjoys concurrent powers of investigation and prosecution in respect of the offences notified under section 3 of the Delhi Special Police Establishment Act 1946. To avoid overlapping of jurisdiction the SPE is entrusted with cases involving Central Government employees and statutory bodies and public undertakings set up and financed by the Government of India.

ENACTMENT OF THE PREVENTION OF CORRUPTION ACT, 1988

In the year 1985 a committee was set up by the Central Government to examine the adequacy of the existing Anti-Corruption Laws and suggest measures to make them more effective and deterrent. After considering the report of this committee the Government of India decided to bring out a

comprehensive enactment to consolidate and amend the law relating to the prevention of corruption. Accordingly the prevention of Corruption Act, 1988 was enacted repealing the earlier Act of 1947.

As will be seen from the Statement of Objects and Reasons, the Bill is intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions.

"The Prevention of Corruption Act, 1947 was amended in 1964 based on the recommendation 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.

THE FOLLOWING ARE SOME OF THE IMPORTANT FEATURES OF PREVENTION OF CORRUPTION ACT, 1988:

- a. Section 2 defines a public servant and the following categories of persons are included in the definition, besides making suitable amendments to the definition of the term public servant in Sec.21 IPC and incorporating the same in this definition.
 1. Any person in the service or pay of a corporation established by or under a Central or State Act, authority or body owned or controlled or aided by Government or Government Company.
 2. A person who holds an office by virtue of which he is authorized or required to perform any public duty (Note: The Supreme Court

recently held that MsLA and MsP are Public Servants coming within the purview of this clause. Earlier, the Supreme Court held that Ministers are Public Servants).

3. Persons associated with registered Co-op. Societies, which receive financial aid from the central or State Governments Corporations, or Organizations owned, controlled or aided by Government or from Government Companies.
 4. Persons associated with service commissions or Boards for holding examinations / making selections.
 5. Persons associated with Universities persons whose services are availed by the University for conducting Exams.
 6. Persons associated with educational scientific social cultural or other institutions receiving financial assistance from Government or local or other public authority.
- b. Chapter 2 deals with appointment of Special Judges for trying offences under the Prevention of Corruption Act. The Central and State Governments are empowered to appoint one or more Special Judges for any case or group of cases.

A Sessions Judge or Addl. Sessions Judge or Assistant Sessions Judge shall be appointed as Special Judge under this Act.

When trying a case the Special Judge may also try any offence other than the offences mentioned above if the accused is charged of such offences at the same trial. He can also try offences or criminal conspiracy, attempt or abetment to commit the above member's offences.

The Special judge shall follow the procedure prescribed for trial of warrant cases by the Magistrates.

He is empowered to tender pardon to an Accused person.

The Court of the Special Judge shall be deemed to be a Court of Session and the person conducting the prosecution before Special Judge shall be deemed to be a Magistrate.

A Special judge is empowered to hold the trial of an offence on day to day basis. While trying an offence the Special Judge can exercise powers of a District Judge under Criminal Law Amendment Ordinance, 1944. The Special Judge can try offences under the Essential Commodities Act, summarily.

Corruption in India is alarming and has touched every walk of life. Tolerance of corruption appears to be the main reason for the tendency of corrupt practices to grow. It may not be possible to give exhaustive and complete list of causes of corruption. It differs from place to place and time to time. The methods also vary from person to person.

The poor are the worst sufferers of corruption as it leads to deprivation of basic services like primary education and health care. People must be educated about the evil effects of corruption. Petty corruption is also disastrous. The message that corruption is low risk and high profit business should not be the motto for public servants and people. Special classes in schools and colleges, universities and training institutions should be a part of curriculum and syllabus.

On 9th September 1988 was enacted and received the assent of the President of India on 9-9-1998 in order to consolidate and amend the law relating to the Prevention of Corruption and for matters connected therewith.

During the last 3 decades, many developments have taken place. The ratification by India of UNCAC (United Nations Convention against Corruption), the International practice on treatment of offence of bribery and corruption and judicial pronouncements have necessitated a review of the existing provisions of the Act and needs to amend in order to fill in the gaps.

The **Prevention of Corruption (Amendment) Act 2018 (Act No. 16 of 2018)** received the assent of the President on 26-07-2018. Further, the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) vide notification S.O 3664 (e) issued notification on 26/7/2018 that in exercise of the powers conferred by sub-section(2) of section (1) of the Prevention of Corruption (Amendment) Act 2018 (16 of 2018), the Central Government appointed the 26th day of July 2018, as the date of which the provisions of the said act shall come into force.

The Act has come into force on 26th July, 2018.

Section (2) Amended:

New Sec 2 (aa) “prescribed” means prescribed by rules made under this Act and the expression “prescribe” shall be construed accordingly;’

New 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’.**

New Section 4 (iv) **trial** shall be held **as far as practicable on day to day basis** and an **endeavour shall be made** to conclude **within the period of two years.**

If the trial is not concluded within the period of Spl. Judge shall record the reasons. Further **period may be extended** in writing but **not exceeding 6 months at a time. Total period shall not exceed 4 years in aggregate.**

Offences under the P.C. Act, 1988:

Section 7, 8, 9,10 substituted with new sections.

In **section 7 three clauses** have been mentioned which primarily referred to offence relating to Public Servant being bribed.

(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) Refers to reward for such improper or dishonest performance of a Public Servant duty or for forbearing to perform such duty either by himself or another public servant; or

7(c) refers to inducing 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.

The same shall be punishable with imprisonment for a term which shall not be less than 3 years may extend to 7 years and also fine.

New 7(A) Offence relating to Public Servant bribed:

Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence. Offence shall be cognizable. The same shall be punishable with imprisonment for a term which shall not be less than 3 years may extend to 7 years and also fine.

Section 8 Offence relating to bribing of a Public Servant - Offence relating to bribing of a public servant, shall be punishable with imprisonment for a term which may extend to seven years or with fine. Offence shall be cognizable.

Section 9 – Offence relating to bribing a public servant by a commercial organization.

Section 10 – Person in charge of commercial organization to be guilty of offence - Where an offence under section 9 is committed by a commercial organization, **the person in-charge of commercial organization, shall be guilty of the offence.** Offence shall be punishable with imprisonment for a term not less than three years may extend upto seven years and also fine.

Section 11: Where a public servant accepts or agrees to accept

- a. for himself or for any other person;
- b. any valuable thing without consideration or for inadequate consideration;
- c. from any person who is concerned or is likely to be concerned;
- d. in any proceeding or business transacted or about to be transacted by such public servant;
- e. or having any connection with the official functions of himself or any public servant to whom is subordinate is punishable under this Section is liable for punishment under this section.

Section 11: Public Servant obtaining “undue advantage”, without consideration from person concerned in proceeding or business transacted by such Public Service. Section 11 of the original act the words “**undue advantage**” have been substituted **instead of “valuable thing”**.

Section 12 – punishment of abetment of offences imprisonment for a term not less than 3 years which may extend to 7 years and also liable to fine.

Section 13(i) amended by **substituting a and b** “(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.

Section 13(2): Any Public Servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four year but which may extend to ten years and shall also be liable to fine.

In **section 13** the expression known sources of income means income received from lawful source.

The words such receipt has been intimated in accordance with the provisions of law rules or orders for the time being applicable to public servants have been deleted.

New **Section 14** is punishment for habitual offender. Every person convicted of an offence under the Act subsequently commits an offence, shall be punishable with imprisonment for a term not less than **5 years**, which may extend **10 years and also fine**.

New **Section 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 which may extend to two years but which may **extend to five years and with fine.**

New Section 17A. A Police Officer has to take previous approval for enquiry or Inquiry or investigation of **offences relatable to recommendation made or decision taken by public servant in discharge of official functions or duties.**

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.”.**

The concerned Union or State Government or concerned Authority shall give the previous approval.

Sections 17 and 18 deals with the powers of the Investigating Officers. A Police Officer not below the rank of Inspector of Police of DSPE or authorized by the State Government can investigate and arrest without a warrant from the Magistrate. An offence under section 13(1)(e) shall not be investigated without the order of a Police Officer below the rank of a Superintendent of Police.

The Investigating Officer is empowered to inspect the Bankers' books relating to persons suspected to have committed an offence or of any other

person suspected to be holding money on behalf of such person and take certified copies of the relevant extracts there from.

New 'Chapter IV- A and Sec. 18A for Attachment and Forfeiture of Property included.

Provisions of Criminal Law Amendment Ordinance 1944 and that of PMLA Act 2002 for attachment and confiscation shall apply for attachment, administration & confiscation of properties.

Section 19 lays down that no court shall take cognizance of an offence under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a Public Servant except with the previous sanction of the central Government in the case of a person employed in connection with the affairs of the Union and is not removable from his office by the Central Government and similarly by the State Government in the case of employees employed and removable by the State Government. In the case of any other person sanction of the authority competent to remove him from office is required.

Amendment to Sec. 19 Under section 19 for sanction, the words **who is employed or as the case may be was at the time of commission of the alleged offence employed** have been mentioned.

In other words sanction for prosecution is needed **even after retirement.**

In respect **of private complaint** filed in the competent court and **where court** has not dismissed the complaint u/s. 203 of CrPC and **directs the complaint to obtain sanction for prosecution** against the public servant for further proceedings, the appropriate Government or competent authority **shall not accord sanction without providing an opportunity of being heard of the concerned public servant.**

The endeavour to convey the decision on the proposal for **sanction for prosecution be within a period of 3 months from the date of its receipt.** In case, where legal consultation is required, for reasons to be recorded in writing, the period may **be extended by one month.**

Further, it has been explained that the expression “public servant” includes such person who ceased to **hold the office** during which the offence was **alleged to have been** committed and is **holding an office other than the office during which the offence was alleged to have been committed.**

Section 20 provides a statutory presumption in favour of the prosecution in regard to proof of offences under Section 7, 11 and 13(1)(a) and (b).

Suitable amendments have also been made in the Criminal Procedure Code restricting adjournments, recording of evidence in the absence of accused, etc.

An appeal lies to the High Court against conviction of the accused by the Special Judge.

New **Section 20** Presumption where Public Servant accepts any undue advantage unless the contrary is proved.

Section 24 of the Principal Act omitted, pertaining to protection to the bribe given that he shall not be prosecuted.

It is pertinent to note that all the offences committed prior to the commencement of this Amended Act shall continue to be tried under the provisions of the Principal act.

Implication of Sec 17 A and offence under Sec 7 of PC Act 1988:

The Prevention of Corruption (Amendment) Act 2018 redefined criminal misconduct to cover misappropriation of property and possession of disproportionate assets as Criminal misconduct.

Though the provision S.13 (1) (d) has been deleted, the ingredients pertaining to S. 13 (1) (d) have been included under the head "Explanation" of Sec.7 of PC (Amendment) Act 2018.

In this context it is necessary to go through provision of Sec 7 as amended. In order to establish such offence under Sec 7, it must be established that Accused was a Public Servant and obtained or accepted or attempted to obtain from any person undue advantage

with intention to perform or
cause performance of public duty, improperly or dishonestly or
to forbear or cause forbearance to perform such public duty
either by himself or by another public servant.

Explanation to Section 7 further expands the scope of the application of section 7.

Expln 2 (i) provides that Public Servant obtaining or accepting or attempting **to obtain**

an undue advantage for himself or
for any other person,
by abusing his official position or
by using his personal influence over another public servant or
by any other corrupt or illegal means,
constitutes offence even if the performance of a public duty by Public Servant, is not or has not been improper.

So all the key words under 13 (i) (d) are included in the explanation except the words "valuable thing" and "without public interest".

In fact, the same language in the previous 13 (i) (d) has been included. Thus indicating that though sec 13 (i) (d) has been deleted under the head criminal misconduct but is included under Sec 7.

Therefore, it has to be read that the said offence still remains in force under Sec7.

Expln 2 (ii) expressly clarifies that it shall be immaterial whether any **undue advantage is given or promised** to be given by the person **directly or through a third party.**

Further, it is clear that there is no need to prove quid pro quo also.

Inclusion of **Section 17 A** i.e., Enquiry or inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties **also has to be read keeping in mind the above explanation under section 7.**

No previous approval of the Central Govt or State Govt or Competent Authority is necessary **in case of arrest of person** on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person.

It can therefore be restricted only to those offences where it is alleged to have been committed by a public servant **which is relatable to any recommendation made or decision taken in discharge of his official functions or duties.** The said protection can therefore be **available only in such circumstances** not otherwise.

Decision making or recommendations made by a public servant during the discharge of official functions or duties **whether it can be applied to all levels depends, on the facts of a case.** The **ambiguity, if any,** in a case registered without previous approval has **to await judicial pronouncements as of now.**

So section 7 can be made use of in all types of offence pertaining to undue **advantage by a public servant for himself or for another public servant**. Thereby necessitating previous approval for investigation, only in respect of offences relating to recommendations made or decision taken by a public servant in discharge of official functions or duties. It appears that the **provision and words used in sec 13 (i) (d) have been shifted to explanation u/s 7**.

The intention of the legislation is clear from the statement of objects and reasons for amendments. It is only to bring in line with the current international practice and also to meet more effectively the country's **obligation under the United Nations Convention against Corruption**.