Introduction

During World War II, all methods were adopted to collect money for war preparation. The level of supervision of the officers declined because of the peculiar circumstances operating at that time which resulted into deflection of money and misuse of resources. Government took serious note of it and a cell was created in war department. In, 1946, Delhi Special Police Establishment Act was enacted and thereby a new investigative agency viz; Delhi Special Police Establishment came into existence for investigation of cases of corruption. It is noted here that the provisions regarding to the bribery were included\(^1\) in Indian Penal Code, 1860\(^2\) drafted by Lord Macaulay. These provisions of IPC were not proved sufficient and therefore as legal backing the Prevention of Corruption Act, 1947\(^3\) was enacted. Latter on a committee headed by J.B. Kriplani submitted a report on “Corruption in the Railways 1951” followed by Santhanam Committee Report on corruption in 1964. After a long time of these pioneering works, in 1988 the Prevention of Corruption Act, 1947 was thoroughly amended and some sections of I.P.C. were deleted\(^4\) to avoid contradiction.

Here, the Statement of Objects and Reasons of the Prevention of Corruption Act, 1947 (now repealed by the Prevention of Corruption Act, 1988, Act No. 49 of 1988) is noticeable. It clearly states that the scope for bribery and corruption of public servants had been enormously increased by war conditions and though the war is now over, opportunities for corrupt practices will remain for considerable time to come. Contracts are being terminated; large amounts of Government surplus stores are being disposed of; there will for years be shortage of various kinds requiring imposition of controls, and extensive schemes of post-war reconstruction, involving the disbursement of very large sums of Government

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1 Section 161 to 165 A of Indian Penal Code, 1860 has been omitted by Section 31 of the Prevention of Corruption Act, 1988.
2 Act No. 45 of 1860.
3 Act No. 2 of 1947.
4 Supra note 1.
money. All these activities offer wide scope of corrupt practices and seriousness of the evil and possibility of its continuance or extension in future are such as to justify immediate and drastic action to stamp it out.\(^5\) The long title of the Prevention of Corruption Act, 1947 was “an Act for more effective prevention of bribery and corruption”. It clearly states that the Prevention of Corruption Act, 1947 was enacted to make more effective provisions for the prevention of bribery and corruption.

**Statement of Objects and Reasons of Prevention of Corruption Act, 1988**

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

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 165-A 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 trial has commenced. In order to expedite the proceedings, provisions for day to day trial of cases and prohibitory provision with regard to grant of stay

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\(^5\) Published in Gazette of India, Part V, Extraordinary, dated 23\(^{rd}\) November, 1946.
and exercise of powers of revisions on interlocutory orders have also been included.

4. Since the provisions of sections 161 to 165-A 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.

**The Prevention of Corruption Act, 1988**

*(Act No 49 of 1988)*

**Preamble of the Act**

“An Act to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith”.

A preamble to a statute is a preliminary statement of the reasons which had made the passing to the statute desirable, and its position is immediately after the title and date of the royal assent. The preamble is undoubtedly part of the statute whether the preamble be considered as an integral part of the statute or not, the general rule with regard to its effect on the enacting part of the statute has always been that if the meaning of the enactment is clear and unequivocal without the preamble, the preamble can have no effect whatsoever. The preamble may be regarded like the title of a statute for the purpose of restraining, explaining or even expanding the enacting words but not for the purpose of qualifying or limiting the express provision incorporated in clear and unambiguous terms. It may now be regarded like the title as part of a statute of the purposes of explaining or even

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*Received the assent of the President on 9th September 1988 and Act, published in the Gazette of India (Extraordinary part-II section 1 dated 12.09.1988.)*

*Halsbury's Laws of England, 2nd edition vol. 36 at 310*

*Pollock, C.B. in Salkeld v. Johnson, 1848, 2 Ex 256.*


*Income-Tax Special Purposes Commissioners v. Peunsel, 1891 AC 531, 543; Fitcher v. Birkendhed Corporation, 1907 1 KB 205.*
The Prevention of Corruption Act, 1988 and other Legislative Provisions against Corruption: An Analysis

extending, enacting words but not for the purposes of qualifying or limiting express provisions couched in clear and unambiguous terms. Preamble is usually regarded as a key to interpretation of an Act, and if the express provisions of the Act point out to a different interpretation the preamble should be construed as laying down the object of the Act. It is a sort of formal introduction in the form of preliminary statement. It is an opening part of a statutory declaration, Acts, ordinances, and documental recitations and as such is not of a lesser significance than the main text itself. It is a good means to find out the meaning of statute.

Preliminary

1. Short title and extent- (1) This Act may be called the Prevention of Corruption Act, 1988.

(2) It extends to whole of India except the State of Jammu and Kashmir and it applies to all citizens of India outside India.

Commencement of the Act

Prevention of Corruption Act, 1988 does not mention the date; from when it would come into force. But the date of assent by the President is 9th September, 1988 and according the section 5 of the General Clauses Act, the new Act would come into operation on the date on which it receives the assent of the President. Thus, the date of commencement of the Act is 9th September, 1988. In Sarbonand Roy v. State of Bihar, the appellant was convicted by the trial court under section 5 (1) (d) r/w section 5(2), Prevention of Corruption Act, 1947 for demanding and accepting bribe. The offence was allegedly committed on 28.7.1988. The appellant assailed the impugned judgment on the ground that no valid sanction order from competent authority was obtained by the prosecution. In this regard the argument given by the prosecution that, according to section 19(3)

10 Kearus v. Cordwainers Co., 1859, 6CB, 388, 408.
11 Ram Kripal v. Srikrishna Deo Pratap Singh, AIR 1948, All 108
12 [2014(133) AIC (PAT., H.C.)]
of Prevention of Corruption Act, 1988, no finding, sentence or order can be reversed or altered and therefore the impugned judgment cannot be altered on the ground of illegality, irregularity or any error in the sanction order. The case was registered under the provisions of the Prevention of Corruption Act, 1947 and there was no such type of provisions in the aforesaid Act. According to prosecution case, the alleged occurrence took place on 28.07.1988. Patna High Court held that Prevention of Corruption Act, 1988 received the assent of President on 9th September, 1988 and was published in the Gazette of India on 12th September, 1988. The new Act does not mention the date from which it would come into force. However, section 5 of General Clause Act, 1897 states that in such contingency, new Act would come into operation on the date on which it receives the assent of President and, therefore, the Prevention of Corruption Act, 1988 came into force with effect from 9th September, 1988 i.e., after the alleged occurrence and, therefore the provisions of the aforesaid Prevention of Corruption Act, 1988 are not applicable in the present case. Therefore, the impugned judgment of conviction and order of sentence cannot be sustained in the eye of law and the same is liable to be set aside.

2. **Definitions**- In this Act, unless the context otherwise requires-
   a. “election” means any election, by whatever means held under any law for the purpose of selecting Members of Parliament or of any legislature, local authority or other public authority;
   b. “public duty” means a duty in the discharge of which the state, the public or the community at large has an interest;

**Explanation**- In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a government company as defined in Section 617 of the Company, Act, 1956 (1 of 1956);

c. “public servant” means,-
(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorized by a Court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such Court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorized or required to perform any public duty;

(ix) any person who is the President, Secretary or other office-bearer of a registered Co-operative Society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the
Government or a Government company as defined in section 617 of the companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations; and

(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.

It is to be noted that definitions generally open with the words, “In this Act unless there is anything repugnant in the subject or context”. If so, the definition given is normally to be taken, to apply wherever that word occurs in the statute. The definition, however, will not apply if the word appears in a subject or context which makes the application of the definition impossible and repugnant to the
meaning of the context in which the word is found.\textsuperscript{13} Definition of certain words used in the Act are for that limited purpose only\textsuperscript{14} and cannot be used to define those words in another statute.\textsuperscript{15} Where, the same words occur in different statutes they cannot be deemed to be having one and same interpretation. A definition given in an Act must be substituted for the word defined wherever it occurs in the Act.\textsuperscript{16} Expressions defined in an Act must be taken in the light of definition.\textsuperscript{17} Definitions are devices to widen or limit the plain grammatical meaning of expressions and to assign an artificial meaning. The legislature at the same time provides that where adherence to such meaning will lead to repugnancy it can be departed from.\textsuperscript{18} As regards to explanation it is settled principle of law that it does not enlarge the scope of original section but it simply helps in giving a clear meaning to the section.\textsuperscript{19}

\textbf{Appointment of Special Judges}

3. **Power to appoint Special Judges** - (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:-

a. any offence punishable under this Act; and

b. any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

\textsuperscript{13} Rambandhu Mishra v. Brahmanand Laik, AIR 1950 Cal 524.
\textsuperscript{14} Dunichand v. Padman, 1913 PLR No. 71, FB
\textsuperscript{15} Tulsiram v. C. Pal Ltd. AIR 1953 Cal. 160
\textsuperscript{16} Jagat Chandra N. Vora and another v. The Province of Bambay and others AIR 1950 Bom, 144
\textsuperscript{17} Anant Sadashiv v. Ratnagiri Jilha, AIR 1953 Bom. 71
\textsuperscript{18} Ramchandra v. Bhalu Patnaik AIR 1950 Orissa 137 FB.
\textsuperscript{19} AIR 1951, All 155.
(2) A person shall not be qualified for appointment as a Special Judge under this Act unless he is or has been a Sessions Judge or an Additional Session Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

Appointment of Special Judges

The offences which have been made punishable under the Prevention of Corruption Act shall be tried by Special Judge only. Special Judges has to be appointed by Central or State Government by notification in Official Gazette. The government may appoint as many Special Judges for a particular area or areas or for a particular case or for group of cases as it is necessary.

Thus, the Special Judge is empowered to try any offences which have been made punishable under the Act. The Special Judge is also made empowered to try under any offences of conspiracy or any offence of attempt or any offences of abetment which have been committed by any person and is made punishable under the Act. To make it more precise, the following offences has to be tried by Special Judge only who has been appointed for that purpose by the government:

i. any offences punishable under the this Act.
ii. any conspiracy to commit an offence punishable under this Act.
iii. any attempt to commit an offence punishable under the Act.
iv. any abetment of an offence punishable under the Act.

It is further provided that only a person who is or has been a Session Judge or an Additional Sessions Judge or an Assistant Sessions Judge shall be appointed as Special Judge. In J. Jayalalitha v. Union of India\textsuperscript{20} the question for consideration was before Supreme Court that whether the power of the state government to appoint Special Judge for an area or areas or for a case or group of cases is absolute, unfettered or unguided. The Supreme Court held that the discretion of

\textsuperscript{20} AIR 1999 SC 1912
the government is not unfettered or unguided. The exercise of discretion by the
government under section 3 has to be guided by the element of requirement in
public interest. The conferment of such wide discretion in government by section
3 is not likely to lead any discrimination either by the matter of court by which the
accused is to be tried or by the procedure by which he is to be tried. Whether he is
tried by a Special Judge appointed for a particular area or areas or a Special Judge
appointed for a particular case or group of cases, he shall be tried by a Special
Judge of the same class and by the same procedure.

A Special Judge appointed under section 3(1), of the Act has jurisdiction to
proceed exclusively against a public servant and exclusively against a non public
servant as well, depending upon the nature of the offence referred to in chapter
three of the Act. The junction of a public servant is not must for the Special Judge
to proceed against a non public servant for any offence alleged to have been
committed by him under Act. It is noted here that an offence under section 8 or
section 9 can be committed by non public servant and he can be tried by Special
Judge without junction of any public servant.21 The scheme of the Act makes it
clear that even a private person who has been committed any offence punishable
under the Act, shall only be tried by a Special Judge, and by no other Court. It is
not necessary that in every offence of corruption punishable under the Act, a
public servant must necessarily be charged an accused. The existence of a public
servant for facing the trial before the Special Court is not a must and even in his
absence, a private person can also be tried for PC offences as well as non PC
offences, depending upon the facts and circumstances of the case. It is not the law
that only, along with the junction of a public servant, the Special Judge can
proceeds against a private person who has committed an offence punishable under
the Act. Private individuals who are found grabbing public funds in conspiracy

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with and active connivance of public servant are liable for being punished under the Act.\textsuperscript{22}

Under section 4 (1) of the PC Act, it is stated that the offences specified in sub-section (1) of section 3 shall be tried by Special Judge only. Section 3 (1) (b) provides that any offences of conspiracy, attempt or abetment which have been committed under the Act shall be tried by Special Judge only. Therefore, it is quite clear that the abettor or the conspirator of an offence can be delinked from the delinquent public servant for the purpose of trial of the offences. An offence under sections 8, 9 or 12 can be committed by any person, who need not necessarily be a public servant. Offences of sections 8, 9, 12 can be committed by, either a public servant or by a private person or by the combination of both. A private person who has offered bribe to a public servant and thereby he has committed an offence punishable under section 12 of Act. This offence of bribery shall be tried by the Special Judge only, notwithstanding the fact that only a private person is the accused in the case and that there is no public servant named as an accused.

**Exercising of power by Special Judge under Section 156 (3) of Cr. P.C.**

A Special Judge is empowered to take cognizance of offences without the accused being committed to him.\textsuperscript{23} But a Magistrate is not deprived of his power to take cognizance of an offence. Therefore a Magistrate as well as a Special Judge is empowered to take cognizance of offence punishable under the Act. Except it is not otherwise provided in law, a Special Judge enjoys all the powers of a court of original criminal jurisdiction. When a private complaint is forwarded by Special Judge to the police under section 156 (3) of Cr. P.C. for investigation, the police is bound to register crime and make investigation into the case. Even if the police conduct a preliminary enquiry regarding the allegations made in the

\textsuperscript{22} Ramesh Chand Jain v. State of M.P. 1991 Cr. LJ2957

\textsuperscript{23} The Prevention of Corruption Act, 1988, Section 5 (1).
private complaint, the police cannot say that there is no need for registering a crime on the basis of the private complaint. The Vigilance Cell is also bound to register a crime on the basis of the complaint sent to it for investigation under section 156 (3) of Cr. P.C. There is nothing improper in sending a private complaint to police for investigation. In CBI v. State of Gujarat24, a complaint was filed the Special Judge for various offences under the PC Act and IPC. The Special Judge directed, that the investigation to be made by the CBI. On a revision petition filed by the C.B.I. contending that the Special Judge in exercise of his jurisdiction under section 156 (3) of Cr.P.C. could not direct investigation to be done by the C.B.I. The Gujarat High Court held that the Magisterial power cannot be stretched under section 156 (3) Cr. P.C., beyond directing the officer in-charge of the police station to conduct the investigation. The special Judge can only direct for further enquiry under section 202 Cr. P.C. Such further enquiry can be given to the police and not to the CBI.

4. Cases triable by Special Judges- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by Special Judges only.

(2) Every offence specified in sub-section (1) of Section 3 shall be tried by the Special Judge for the area within which it was committed, or, as the case may be, by the Special Judge appointed for the case, or, where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a Special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

24 II (2002), CCR 316 (Guj).
(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.

Cases triable by Special Judge

Section 4 of the PC Act dealt with the cases triable by Special Judge. Section 4 (1) of the Act, start with a non-abstain clause. It says that notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force the offences specified in sub-section (1) of Section 3 shall be tried by Special Judge only. Consequently, the offences referred in Section 3 (1) of the Act cannot be tried by the ordinary criminal court. Section 3(1) clause (a) and (b) deals with the offences punishable only under the PC Act and not any offence punishable under I. P.C. or any other law. Sub section (2) of section 4 provides that every offence specified in sub-section (1) of Section 3 shall be tried:

i. by the Special Judge for the area within which it was committed or;

ii. by the Special Judge who is appointed for conducting trial of a case or group of cases;

iii. where there are more Special Judges than one are appointed for a particular area, then by one of them as may be specified in this behalf by the Central Government.

Thus it is amply clear that only a Special Judges has jurisdiction to try the offences specified in sub-section (1) of section (3) committed by a public servant or a non public servant alone or jointly. Sub-section (3) of Section 4 provides that a Special Judge when trying any case relating to the offences referred in Section 3 of the PC Act may also try any offence which is not specified in section 3, if the accused can be charged under Cr. P.C. at the same
In other words, an accused person, either public servant or non public servant who has been charged for an offence under section 3 (1) of the PC Act, could also be charged for an offence under I. P.C. or under any other criminal legislation. In the case *Vivek Gupta v. CBI and another*, the Supreme Court held that a public servant who is charged for an offence under the PC Act may also be charged for an offence under IPC by Special Judge at the same trial if the offence has been committed in a manner contemplated under Section 220 of Cr. P.C.

**Concept of jurisdictional fact**

The charges have not been framed against a public servant as well as private person, while they were alive and therefore the Special Judge has not got any occasion to “try any case” under section 3(1) of the PC Act. Trying any case of PC offences by a Special Judge under section 3(1) is a *sine qua-non* for exercising jurisdiction by the Special Judge for trying any non PC offences or for an offence which is not specified in section 3 (1) of the Act. Thus, “trying any case” for PC offences is a “jurisdictional fact” for the Special Judge to exercise powers to try any non PC offences which is not specified in section 3 (1) of the Act. In sub-section (3) of section 4 of the Act, the expression “may also try” has been used. It gives an element of discretion on the part of the Special Judge which will depend upon the facts and circumstances of each case and the inter-relation between PC offences and non PC offences. A Special Judge is not expected to exercise their powers to try any non PC offences which are totally unconnected with the PC offences. If a Special Judge did not get any occasion for conducting trial of any PC offences, then the question for the trial of non-PC offences does not arise. Thus, under sub-section (3) of Section 4, trying of a PC offence is a

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25 The Code of Criminal Procedure, 1973, Section 220 (1) reads: If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offences.


jurisdictional fact to exercise the power for trial of non PC offences. The power of Special Judge to try the non PC offences is totally concerned with the “exercise of jurisdiction” to try PC offences. It is not concerned with the “existence of jurisdiction” of Special Judge. Existence of a jurisdictional fact is a *sine qua non* or condition precedent for the assumption of jurisdiction by Special Court. In *Ramesh Chandra Sankla v. Vikram Cement and Others*\(^{28}\) the Supreme Court held that by erroneously assuming existence of jurisdictional fact, the Special Court cannot confer upon itself, the jurisdiction to try a case which otherwise it does not possess. In *Carona Ltd. v. Parvathy Swaminathan & Sons*,\(^{29}\) the meaning and context of “jurisdictional fact” has been considered by apex court. Where the jurisdiction of a court or a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary or collectively to the merits of the issue.

In *Ratilal Bhanji Mithani v. State of Maharashtra*\(^{30}\) it was noticed by the court that the trial of a warrant case starts with the framing of charges, prior to that the proceedings is only an inquiry.

In *State through CBI v. J.K. Singh*\(^{31}\) the question before Supreme Court was whether on the death of the sole public servant, the Special Judge will cease to have jurisdiction to continue with the trial against the private persons for non-PC offences. In this appeal, the CBI has submitted the charge sheet for the offences against A-1 who was public servant as well as others non public servants accused. Learned Special Judge has framed charges against the accused persons for PC offences and non PC offences also. Thus the charges have been framed against the public servants as well as non public servants in respect of PC offences as well as non PC offences. After framing the charges the sole public servant was died. The Supreme Court held that the existence of jurisdictional fact has been absolutely

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28 (2008) 14 SCC 58
29 (2007) 8 SCC 559; [2007 (60) AIC 146 (SC)]
30 (1979) 2 SCC 179.
31 Cr. Appeal No. 943 of 2008.
satisfied. On the death of sole public servant, the charge against that sole public
satisf. On the death of sole public servant, the charge against that sole public
satisf. On the death of sole public servant, the charge against that sole public
satisf. On the death of sole public servant, the charge against that sole public servant alone abates and since the Special Judge has already been exercised his jurisdiction under sub-section (3) of section 4 of the Act, and that jurisdiction cannot be divested due to the death of the sole public servant.

In criminal appeal No. 161 of 2011, the FIR was registered on 02.07.1996. The charge sheet was filed before Special Judge on 14.09.2001 for the offences under Sections 120 B, 420 IPC read with Sections 13(1) and (2) of the PC Act. The charges against sole public servant under were not framed since he was died on 18.02.2005. The Special Judge also could not frame any charge against non public servant. In the instant case, not any PC offence was committed by any of the non-public servants so as to fall under section 3(1) of the PC Act. Consequently, there was not any occasion for the Special Judge to try the case for PC offences. Since, no PC offences was committed by any of the non-public servants and not any charges were framed against the sole public servant, while he was alive, therefore, the Special Judge did not get any occasion to try the case against non public servants accused under the Act. The Supreme Court held that the Special Judge has no jurisdiction under sub-section (3) of Section 4 of the Act to try non PC offences since the sole public servant was died before framing of charges.

**Speedy trial of cases by Special Judge**

Sub-section (4) of Section 4 provides that the Special Judge shall hold trial
Sub-section (4) of Section 4 provides that the Special Judge shall hold trial of offences on day to day basis. In *P. Ramachandra Rao v. State of Karnataka*[^2] , the Supreme Court held that in its zeal to protect the right to speedy trial of an accused the court cannot devise and almost enact bars of limitation beyond which trial shall not proceeds though the legislature and the statutes have not choosen to do so. Bars of limitation, which engrafted by judiciary or no doubt meant to provide and protect the right to speedy trial of an accused but a solution of this

nature gives rise to greater problems like scuttling a trial without adjudication stultifying access to justice and giving easy exist from the portal of justice. Such bars of limitation are uncalled and impermissible.

In case *Niranjan Hemchandra Sashital v. State of Maharashtra* the petitioner/accused approached to the Supreme Court for quashing prosecution for disproportionate assets case pending against him since 1993. The Supreme Court held that if corruption cases are allowed to be quashed only on the ground of delay it may garner and pave way to anarchism and right to speedy trail does not become illusory when a time limit is not fixed. Hence, the apex court refused to exercise jurisdiction under Article 32 of the Constitution and directed the Special Judge to dispose of the trial by the end of December, 2013.

5. Procedure and Powers of Special Judge - (1) A Special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.

(2) A Special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of Section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under Section 307 of that Code,

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall so far as they are not
inconsistent with this Act, apply to the proceedings before a Special Judge, and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in Sub-section (3), the provisions of Sections 326 and 475 of the Code of Criminal procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a Special Judge and for the purposes of the said provisions, special Judge shall be deemed to be a Magistrate.

(5) A Special Judge may pass upon any person convicted by him any sentence authorized by law for the punishment of the offence of which such person is convicted.

(6) A Special Judge, while trying an offence punishable under this Act, shall exercise all powers and functions exercisable by a District Judge under the Criminal Law (Amendment) Ordinance, 1944 (Ordinance 38 of 1944).

**Power to take cognizance of an offence**

The powers and functions of Special Judge were prescribed for the first time under the Criminal Law Amendment Act, 1952\(^{34}\) and the Special Judge had been made empowered to take cognizance of offences without the accused being committed to him for trial. Under the Criminal Procedure Code, there are three type of method has been prescribed for taking cognizance of any offence by the Magistrate viz\(^{35}\):

i. upon receiving of a complaint of facts which constitute such offence;
ii. upon a police report of such facts;

\(^{34}\) Act No. 46 of 1952. Now it had been repealed by Section 30 (1) of The Prevention of Corruption Act, 1947.

\(^{35}\) The Code of Criminal Procedure, 1973, Section 190 (1).
iii. upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

If upon receiving a complaint or police report or information otherwise, it appears to the Magistrate that the offence is exclusively triable by Session Court, then he shall commit the case to the Court of Session and after commitment of the case the Session Court shall take cognizance of offence.

Procedure and powers of Special Judge

Section 5 of the PC Act dealt with the procedure and powers of Special Judge. Under sub-section (1) of Section 5 of the Act, it is provided that a Special Judge may take cognizance of an offence without the accused being committed to him for trial. After taking the cognizance, he shall follow the procedure prescribed for the trial of warrant case by the Magistrate. The procedure for trial of warrant cases by the Magistrate is contained under Sections 238 to 250 of the Code of Criminal Procedure, 1973. Section 5 of the PC Act does not provide as to in what manner and on what material the Special Judge may take cognizance of the offences. Under Section 190 (1) of Cr. P.C. as stated above the Magistrate can take cognizance upon receiving a complaint of the facts which constitute the offence or even upon information received from any person other than a police officer or upon his own knowledge or suspicion that the offence has been committed. There is no other known or recognized mode of taking cognizance of an offence by a Criminal Court. Therefore, the Special Judge has to take cognizance of an offence in accordance with the provisions of law contained under Section 190 of Cr. P.C.

In *Mahipal v. State of U.P.* the complainant has filed an application before the Special Judge under Section 156 (3) of Cr. P.C. The Special Judge has declined to pass order for registration of FIR. The petitioner approached to the

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36 *Id.*, Section 209, clause (a).
37 2009 Cr. L.J. 983 (All)
High Court. The High Court following the decision of the Supreme Court in *A.R. Antulay v. R.S. Nayak*\(^{38}\) held that the Special Judge can order for registration of FIR for offences allegedly has been committed under the PC Act on a private complaint. The application under Section 156(3) Cr. P.C. cannot be rejected on the ground that the sanction of appropriate government would be required at the time of taking cognizance. In *Anosh Ekka v. State*\(^{39}\), the court held that the Special Judge have power to deal with the matter under Section 156 (3) Cr. P.C. by virtue of Section 5(3) of the PC Act, 1988. In *B.S. Yediyurappa v. State of Karnataka*,\(^{40}\) the Special Judge referred a private complaint to S.P. Lokayukta to investigate into offences allegedly was committed under P.C. Act. The petitioner challenged the order on the ground that such power has not been given to Special Judge under the Act. But the High Court held that under P.C. Act there is no such embargo on the power of Special Judge.

**Power of Special Judge to tender pardon**

Section 5(2) of the Act provides that the Special Judge has power to tender pardon, with a view to obtaining the evidence, to any accused person who is supposed to have been connected with the offence on the condition that such person shall make full and true disclosure of the whole circumstances of offence having within his knowledge. Such pardon shall be deemed to be tendered under Section 307 of Cr. P.C.

In *Mrigendra Nath Ghosh v. D.K. Chowdhury Dy. S.P. C.B.I.*\(^{41}\) the accused persons for offences under Sections 120B/420/467/468/471/477-A IPC and Section 13(2) r/w Section 13(1) (d) of the PC Act, 1988, have been charged. During the course of investigation, under Section 306 of Cr. P.C the Magistrate has tendered pardon to the accused approvers. The Calcutta High Court held that

\(^{38}\) 1984 Cr. L.J. 647 S.C.
\(^{39}\) 2010 Cr. L.J. 259(Jhar)
\(^{40}\) 2012 Cr. L.J. 1989(Karn)
\(^{41}\) II (2002) CCR 286(Cal)
as per the provisions of the PC Act, the Magistrate has no jurisdiction at any occasion to tender the pardon to accused approvers. Being special Act, the provisions of the PC Act shall prevail over the provisions of general law. Where the approver’s evidence contained material contradictions and improvements and the analysis of his three statements which was given by him at different stage showed that his testimony was unreliable, and the accused cannot be convicted on that basis. It is well settled principle of law that a witness who needs corroboration cannot be corroborated by himself by any statement which has been made at any earlier or later stage. His evidence needs to be corroborated by independent evidence and his own previous statement cannot be said to be independent evidence.\footnote{P.V. Norasimha Rao v. State through CBI, 2002 Cr. LJ 240 (Del)}

A Special Judge trying offences under the PC Act has dual powers of Session Judge as well as Magistrate also. He controls and conducts the proceedings under the provisions of Cr. P.C. prior to filing of the charge sheet as well as after the filing of charge sheet for holding trail. Before filing of the charge sheet, a Special Judge under Section 167 of Cr.P.C. is fully vested with the powers to remand an accused for police or for judicial custody. He is empowered to conduct trial as a Session Court without there being any committal proceeding of Magistrate. A Special Judge enjoys more powers than a Sessions Judge for the reason that the Special Judge is vested with the powers of not only Session Court, but of the magisterial courts also for the purpose of conducting trial of offences under the PC Act. He conducts entire proceedings against an accused from the date of his arrest till to the final conclusion of the trial. A special Judge has powers to record the statement of an accused and tender him pardon before filing of charge sheet. The Special Judge can tender pardon at any stage of proceedings. At the stage of investigations when an accused applies for pardon, the other accused has not right to intervene or ask for hearing. The other accused against whom the evidence of the approver is likely to be used, would have sufficient opportunity to
cross examine the approver when examined in the course of trial and show to the court that his evidence is not reliable or he is not a trust worthy witness. Therefore, a co-accused cannot be permitted to raise objections at the stage of tendering pardon by another accused.\textsuperscript{43}

**Deemed to be Court of Session**

It is provided under section 5(3) that the provisions of Cr.P.C. which are not inconsistent with provision of the PC Act shall apply to the proceedings before Special Judge and for the purposes of those provisions of Cr. P.C., the Special Judge shall be deemed to be a Court of Session. Under section 5(4), it is further provided that the provisions of Sections 326 and 475 of Cr. P.C. shall also be applicable to the proceedings before Special Judge and for the purpose of those provisions the Special Judge shall be deemed to be a Magistrate.

**Powers of District Judge**

The Special Judge while trying any offence is empowered to exercise all powers and functions exercisable by a District Judge under the Criminal Law (Amendment) Ordinance 1944\textsuperscript{44}. Thus, during investigation stage the applications for attachment shall be filed before District Judge only and not before Special Judge. In *H.C. Sathyan v. State by Police Inspector, Police Wing, Karnataka Lokyukta, Mysore*,\textsuperscript{45} during investigation stage the Special Judge has passed an interim order for attachment of properties of the appellant. He challenged the aforesaid interim order before the High Court on the ground that under section 5(6) of the PC Act, the Special Judge has power to attach the properties only during the trial of case. At the investigation stage the Special Judge has not such power to attach the property of accused person. The High Court held that the

\textsuperscript{43} Ashok Kumar Aggrawal v. C.B.I., 2001 Cr. LJ 3710 (Del)
\textsuperscript{44} Ordinance No 38 of 1944.
\textsuperscript{45} 2012 Cr. LJ 387 (Ker) : 2012 (1) Crimes 718 (Ker)
interim order passed by Special Judge is illegal and therefore is liable to be quashed.

It is clear from reading of sub-section 6 of Section 5 of the PC Act that during investigation stage the application for attachment of property would be filed before District Judge and not before Special Judge. The Special Judge has given power to attach the property only during trial of the case. This legal position is not satisfactory and Section 5(6) of the PC Act should be amended and the Special Judge should be given power at any stage of proceeding such as enquiry, investigation or trial.

6. **Power to try summarily**— (1) Where a Special Judge tries any offence specified in sub-section (1) of Section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of Section 12 A of the Essential Commodities Act, 1955 (10 of 1955) or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or Section 260 of the Code of Criminal Procedure, 1973 (2 of 1974), the Special Judge shall try the offence in a summary way, and the provisions of Section 262 of 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial;

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Judge to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and
proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by the Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the Special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under Section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the Special Judge.

Summary trial

Section 6 of the PC Act dealt with summary trial. Under Section 6(1), the Special Judge is empowered to conduct summary trial. The Special Judge is empowered to proceeds a case for summary trail in those circumstances where during trial it has been alleged that:

i. the offence has been committed by public servant in violation of sub-section (1) of Section 12A of the Essential Commodities Act, 1955 or;
ii. the offence has been committed by public servant in violation of clause (a) of sub-section (2) of Section 12A of the Essential commodities Act, 1955.

When summary trial is being made by Special Judge, the provisions of Sections 262 to 265 Cr. P.C. shall apply to such trial. In summary trial, the Special Judge can pass a sentence to the maximum period of one year for imprisonment. It is further provided that, if after commencement of summary trial, it appears to Special Judge that the nature of the case is such that the summary trial is undesirable. The Special Judge, after hearing to the parties may make an order to proceeds the case according to law prescribed for the trial of warrant cases by the Magistrate. Sub-section (2) of Section 6 provides that in case of a summary trial, if
the accused person has been convicted by Special Judge and the Special Judge has passed a sentence of imprisonment for one month and fine of two thousand rupees, then there shall be no appeal on behalf of convicted person under any law.

This section should be amended and it should be provided that where trivial amount of bribe is obtain or received by accused persons the Special Judges should be made empowered to proceed for summary trial.

Offences and Penalties

7. Public servant taking gratification other than legal remuneration in respect of an official act- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor 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 not be less than 46[three years] but which may extend to 47[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 office defined in this section.

46 Substituted by Act No. 1 of 2014, for the words “six months”.
47 Substituted by Act No. 1 of 2014, for the words “five months”.
(b) “Gratification”. The word “gratification” is not restricted to pecuniary gratification 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 organization, which he serves, to accept.

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

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

**Taking gratification other than legal remuneration by public servant**

Section 7 of the PC Act, 1988 regulates the demand side offence of bribery. It prohibits demand of bribe by public servant. The offence contemplated under Section 7 of the Act could only be committed by a public servant. Under section 7 of the Act, it is provided that any person who is a public servant or expecting to be a public servant:

a. accepts or obtains or;
b. agrees to accept or attempts to obtain;

any gratification as a motive or reward which is other than legal remuneration from any person, for himself or for any other person in the context of his official act or functions for:
The Prevention of Corruption Act, 1988 and other Legislative Provisions against Corruption: An Analysis

i. doing or forbearing to do any official act or;
ii. showing or forbearing to show favour or disfavor to any person or;
iii. rendering or attempting to render any service or disservice to any person, and thereby he commits an offence of bribery under section 7 of the Act.

Meaning of the word ‘accept’ and ‘obtain’

According to Shorter Oxford Dictionary, the word “accept” means to take or receive with a consenting mind. Such consent can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of prior agreement. If an acquaintance of a public servant voluntarily offers any gratification with the hope and expectation that in future, he would be able to get some official favour from him and the public servant willing takes or receives such gratification, it certainly amounts to acceptance.

According to Shorter Oxford Dictionary, “obtain” means to secure or gain (something) as the result or request or effort. In case of obtainment the initiative vests in the persons who receives and in the context a demand or request from him will be a primary requisite for the offence.

Demand and acceptance

In case M.K. Harshan v. State of Kerala48 the Supreme Court has opined that to bring home charges of bribery, the twin concomitants of ‘demand’ and ‘acceptance’ must be substantiated. In so far as the offence under Section 7 is concerned it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes can not constitute the offence under Section 7 of the Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be

48 (1996) 11 SCC 720
a bribe. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the charges of offence under Section 7 of the Act. The above legal position also will be conclusive in so far as the offence under Section 13 (1) (d) sub-clause (i) and (ii) 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 further observed by the apex court that, in so far as the presumption is permissible and has to be drawn under Section 20 of the Act is concerned. Such presumption can only be drawn in respect of the offence under Section 7 of the Act and not in respect of the offence under Section 13 (1) (d) sub-clause (i) and (ii) of the Act. In any event, 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. Proof of acceptance of illegal gratification can follow only if there is proof of demand. It is necessary for the prosecution to prove that the person demanding and accepting gratification is a public servant. The prosecution must also prove a demand for gratification and that the gratification has been given to the accused. If these three basic facts are proved, the accused may be found guilty for an offence under the provisions of law.

**Motive for demand and acceptance**

Section 7 of the P.C. Act (corresponds to section 161 IPC) speaks about taking gratification other than legal remuneration by a public servant as a motive or reward for doing or for bearing to do any official act. It means that the bribe should be given in connection with the official act or conducts of the concerned public servant but in law the capacity of the concerned public servant, to show any favour or disfavour or render any service in connection with his official act or

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50 Ibid, para 9 at 43.
duties is not necessary. No doubt a public servant has no right to demand any bribe but when he is hauled up before a criminal court to answer a charge of having taken illegal gratification, the question whether any motive, for payment or acceptance of bribe is in existence or not, is certainly relevant and a material fact for consideration.\(^{52}\) In *Dalpat Singh v. State of Rajasthan*,\(^{53}\) the Supreme Court observed that where the evidence shows that neither the accused intended to show any official favour to the persons from whom they extorted money or valuable things nor those persons expected any official favour from them. They paid amounts in question solely, with a view to avoid being ill-treated or harassed. The court held that it is difficult to hold that the acts complained against the accused persons constitute an offence under Section 161 IPC, although it comes under Section 5(1) (d) of the Prevention of Corruption Act, 1947.

In *H.H.B. Gill v. King*,\(^{54}\) the Privy Council observed that a public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. A judge neither acts nor purports to act as a judge in receiving a bribe though the judgments he delivers may be such an act. A government medical officer neither acts nor purports to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant can reasonably claim that whatsoever he did he did in virtue of his office. In case *Shiv Raj Singh v. Delhi Administration*,\(^{55}\) the Supreme Court held that where a public servant is charged on allegation that he has taken illegal gratification for doing or procuring an official act, then it is not necessary for the court to consider whether or not the accused was capable of doing or intended to do such an act. Where it is alleged that the illegal gratification was taken by a police officer for doing or procuring an official act, the question whether there was

\(^{52}\) *Madan Mohan Singh v. State of U.P.*, AIR 1954 SC 637

\(^{53}\) AIR 1969 SC 17

\(^{54}\) AIR 1948 PC 128

\(^{55}\) AIR 1968 SC 1419: 1969 Cr. LJ. I (S C).
any offence against the giver of the gratification which the accused could have investigated or not, is not material for that purpose. If he has used his official position to extract illegal gratification, the requirement of law is satisfied. It is not necessary in such a case for the court to consider whether or not the public servant was capable of doing or intended to do any official act of favour or disfavor.\(^56\) It is necessary to show whether there was any other public servant who was to be approached, where the public servant taking the money is himself in the very office by which the appointment would be made. In such a case persons would be taking money for him or for any other person in his office in order to do any official act or get it done.\(^57\) When evidence showed that the complainant has strong motive for falsely implicating the accused and bribe was alleged to have been given for job which was not part of the duties of the accused, the conviction of the accused was set aside.\(^58\)

**The word gratification: meaning and scope**

According to explanation (b) of Section 7, the word “gratification” is not restricted to pecuniary gratifications or to gratification estimable in money. Thus, it is used in its larger sense as connoting anything which affords gratification or satisfaction or pleasure to the taste, appetite or the mind. Money is of course, one source of affording pleasure, because it implies command over things which afford pleasure but there are various other objects which afford gratification. The satisfaction of one’s desires whether of body or of mind is also a gratification in the true sense of this term. The craving for an honorary distinction or for sexual intercourse is an example of mental and bodily desires, the satisfaction of which is gratification not estimable in money. A person may desire to marry his son to another’s daughter, who may consent on the condition to doing some official favour. In short, the gratification is any benefit or reward given to influence one in

one’s behavior in office, and incline one to act contrary to the rules of honesty and integrity. Anything, whether a sum of money, an object which appeals to one’s sense, a dinner, a plate full of fruit, a medicinal pill is gratification within the meaning of the term of gratification though the recipient may not be punishable on that account.\textsuperscript{59} Thus, the “gratification” mentioned in Section 7 explanation (b) cannot be confined to payment of money. The prosecution has to prove before the court that the accused person has received a gratification other than legal remuneration. If it is shown that the accused has received the stated amount and that the said amount was not legal remuneration, the conditions prescribed by the Section 7 of the Act is fully satisfied. In the context of the remuneration legally payable to, and receivable by a public servant there is no difficulty in holding that where money is shown to have been paid and accepted by such public servant and that the said money is not legal remuneration, the presumption may be safely made as required under Section 20 of the Act.

The plain words of section exclude the defence that the benefit bargained for, was to go to somebody else. It also excludes the notion that an officer is protected if he agrees to do his official acts by the motive of accepting gratification for advancing some public object such as charity, science or religion. Certainly, that kind of motive is different from the desire of private lucre, but it may easily lead to oppression. The enjoyment of rights should not be hampered by any kind of such laudable thought. The public officer should not be affected in performing his duty to the crown in dealing with the subject by such laudable thought or consideration.\textsuperscript{60} The payment of money to a public officer as a donation to a public institution in which such officer is interested would amount to an offence, if the motive of such payment was showing of favour in official capacity of the person making such payment or it was made as a reward for the favour


\textsuperscript{60} \textit{Emperor v. Amiruddin}, AIR 1923 Bom 44.
shown in the past. In *Mohd. Nazeeruddin v. state of A.P.* it was contended by the accused that he did not receive the amount of 480 as illegal gratification because it was collected at the instance of the District Treasury Officer to meet the expenses of the audit party which was lodged in a hotel. It was only a contribution which comes within the term “legal remuneration” as defined under explanation (c) of Section 7. The court held that the demand or liability to make such payment was not legally sanctioned. Therefore, the amount collected by accused is illegal gratification. Even though, the accused had received the amount not for his personal purpose but for a charitable purpose or for the purpose of his employer, he commits the offence under Section 7 of the Act. The employer is not entitled to refuse to discharge his official duties, which are of public nature. In *Palani Palli v. State*, the accused received certain amount from the complainant as contribution to Flag Day fund for doing on official act. It was held that if a public servant insisted upon a particular payment which did not amount to a legal remuneration as consideration for discharge of his official duties, he commits an offence under Section 7 of the Act. Even it was found that he had received the amount for a charitable purpose. Discharge of official duties, which are of public nature, cannot be refused.

**Trivial amount of bribe**

Clerk was prosecuted for demanding and accepting bribe of Rs. 150 from complainant for issuing solvency certificate in his favour and he was convicted by trial court. He filed an appeal against his conviction. During the pendency of the appeal he died and his legal heirs continued the appeal. After considering the fact that the appeal in question was being prosecuted by the dependents of the deceased-accused in order to enable them to get the provident fund and gratuity or other benefits because of the death of the accused and also considering the fact

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62 1994 Cr. LJ 2304 (AP)
64 1996 (1) LW (Cr.) 1994 (Mad).
that the sanctioning authority did not consider whether departmental inquiry was just and proper in the circumstances of the case and looking to the triviality of the amount, the High Court set aside the conviction and allowed the appeal. In *Tara Singh v. State of Punjab*, the accused was working as Patwari and accepted bribe of Rs. 50/- from the complainant for supplying jamabandi. There was no corroboration to the evidence of the complainant by independent witness. The High Court held that such bargains take place in secrecy and isolation and it is too far for the courts to presume that there would be independent evidence and convicted the accused.

In *Mohd. Hadi Hasan v. State of U.P.*, the accused employed in the District co-operative Banks Ltd. Bareilly was convicted for having demanded and accepted Rs. 20/- as copies of arbitration decree to the complaint and the bribe amount was recovered from the accused immediately after his arrest and the plea of the accused that he was falsely implicated was not found convincing. The conviction was confirmed by High Court. In *Nanak Chand v. State*, the appellant was convicted when he demanded Rs. 40/- and accepted from the complainant, who was a sweeper in the same office, for deducting part of salary to deposit in GPF account. It was argued in the appeal that it was not part of his job to open PF account of Municipal Corporation, Delhi employees and so there could be no occasion to demand bribe amount. The High Court held that if the accused public servant makes a representation, express or even implied, to the complainant that he was in a position to show him some favour in discharge of his official function and obtains money, then the offence of demand and acceptance of bribe would be complete.

In *Shivdas Dashrath Jadhav v. State of Maharashtra*, the accused was convicted for demanding and accepting Rs.500/- from complainant, an accused in

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65 *Hanumanthappa Murtyappa Vijapure v. State of Maharashtra*, 2004 Cr. L.J. 3001 (Bom)
66 III (1999) CCR 487 (P & H)
67 2013 Cr. LJ 2962 (Del)
a criminal case being conducted by the appellant for managing witnesses to secure acquittal for him and brother co-accused. The High Court after analyzing the evidence held that- (i) the accused failed to prove his defence that complainant thrust the money in his pocket and merely because the complainant was involved in many criminal cases there is no ground to reject his testimony since the testimony of the complainant and panch witnesses was corroborated by evidence of tea stall owner where the accused accepted bribe; (ii) though Director and IGP is competent to remove a police prosecutor, the Joint Secretary attached to Home Department being higher in rank is competent to accord sanction for prosecution; and (iii) corrupt practices adopted by the Member of the Bar or the members of prosecution wing tarnish the image of judicial system in which common man has still certain amount of faith and, as such, instances give a serious jolt to the faith of litigants in judicial system and as such accused does not deserve any leniency in matter of sentence.

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 not be less than\textsuperscript{68}[three years] but which may extend to\textsuperscript{69}[seven years] and shall also be liable to fine.

\textsuperscript{68} Substituted by Act No. 1 of 2014, for the words “six months”.
\textsuperscript{69} Substituted by Act No. 1 of 2014, for the words “five months”.
Taking gratification for inducing, to a public servant by corrupt or illegal means

Section 8 of the Act starts with the word “whoever” and the words “other than legal remuneration” have not been used in this section. It means that the offence contemplated in Section 8 of the Act may be committed by a public servant as well as by a non public servant also. It is provided that any person whoever-

a. accepts or obtains or;

b. agree to accepts or agree to obtain

any gratification as motive or reward from any person for himself or; for any other person for the purpose to induce any public servant by corrupt or illegal means in the context of his official act or function-

i. to do or forbearing to do any official act or;

ii. for showing or for bearing to show favour or disfavor to any person or;

iii. for rendering or attempting to render any service or disservice to any persons;

then he commits an offence and he shall be punished under Section 8 of the Act.

Section 8 of the Act dealt with the offence of soliciting or receiving, any illegal gratification by a person who, needs not to be a public servant. The gratification must be as a motive or reward for inducing to a public servant for doing or forbearing to do an official act.\(^70\) Section 8 of the P.C. Act is applicable to both; a public servant as well as a non public servant also, if he induces to a public servant to do or forbear to do any official act. In *Prakash Singh Badal v.*

\(^70\) *B. Chinnaswamy Iyengar v. Emperor*, 3 IC 668.
State of Punjab it was argued by the appellant before Supreme Court that being a Member of Parliament he is a public servant and cannot be charged with the offences under Sections 8 and 9 of the Act. His contention was that Sections 8, 9, 12, 14 and 24 of the Act are applicable to private persons only and not to public servants. The Supreme Court held that the opening word of Sections 8 and 9 is “whoever”. This expression of Section 8 and 9 is very wide and the public servants also come within the ambit of Section 8 and 9. A public servant who accepts gratification as a motive or reward for inducing to any other public servant by corrupt or illegal means, he commits an offence punishable under Section 8 of the Act. Restricting the operation of the expression by curtailing the ambit of sections 8 and 9 and confining it to private persons only would not reflect the actual intention of legislature. It is not permissible to contend that a public servant would be covered by section 13 (1) (d) (i) and therefore he would not be covered by Sections 8 and 9 of the Act. A public servant who obtains for “himself or for any other person” any valuable thing or pecuniary advantage by corrupt or illegal means, he commits an offence of criminal misconduct under Section 13 (1) (d) sub-clause (i) of the Act. It does not mean that the provisions of Sections 8 and 9 are not applicable to the public servants. Section 13 (1) (d) sub-clause (i) is totally different from the Sections 8 and 9 of the Act. If a public servant accepts gratification for inducing to any other public servant to do or forbear to do any official act, then his act of inducement clearly falls within the ambit of Section 8 of the Act. Further, if this act of inducement has to be done by exercising his personal influence, then it falls within the ambit of Section 9 of the Act.

Under section 13 (1) (d), it is not necessary to prove that the valuable thing or pecuniary advantage has been obtained by any act of inducement. Another difference is that under Section 13 (1) (d) (i) “a public servant” obtains “any valuable thing or pecuniary advantage” for himself or for any other person by corrupt or illegal means. On the other hand, under Sections 8 and 9 it is provided

that “whoever” obtains “any gratification whatever” for himself or for any other person by corrupt or illegal means for inducing to a public servants. In this regard explanation (b) of Section 7 is relevant. Under explanation (b) of Section 7 it is provided that the word “gratification” is not restricted to pecuniary gratifications or to gratifications estimable in money. Thus, section 8 and 9 are much wider than Section 13 (1) (d) and clearly constitute different offences.

In Kumar Suman Singh v. state of Bihar,\textsuperscript{72} a charge-sheet was filed against a private person for the offences under Section 8 of the PC Act and Section 120-B of IPC for inducing to a public servant to do an illegal act. When the trial court refused to discharge him, he questioned the legality in the High Court under Section 482 of Cr.P.C. The High Court held that Section 8 of PC Act is applicable to a private person, if he induces to a public servant, to do an illegal act and therefore refused to interfere with the order of trial court.

Section 8 penalizes the act of inducement to a public servant by corrupt or illegal means. Thus, to induce a public servant by corrupt or illegal means is an offence under Section 8 of the Act whereas to induce a public servant by exercising of his personal influence has been made an offence under Section 9 of the Act.

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 disfavor 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,

\textsuperscript{72} 2006 Cr. LJ 1599 Pat.
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 not be less than 73[three years] but which may extent to 74[seven years] and shall also be liable to fine.

**Taking gratification to exercise his personal influence**

Any person who, accepts or obtains or; agree to accept or agree to obtain any gratification whatever, as a motive or reward from any person, for himself or for any other person, for inducing to any public servant by exercising his personal influence, in the context of his following official acts or functions:

i. to do or forbearing to do any official act or;

ii. for showing or for bearing to show favour or disfavor to any person or;

iii. for rendering or attempting to render any service or disservice to any persons;

then he commits an offence and shall liable to be punished under Section 9 of the Act.

**Difference between Section 8 and Section 9 of the Act**

Under Section 9 of the Act, an act of inducement by the exercising his personal influence with a public servant has been made an offence. While under Section 8 of the Act, an act of inducement by corrupt or illegal means has been made an offence.

**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

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73 Substituted by Act No. 1 of 2014, for the words “six months”.
74 Substituted by Act No. 1 of 2014, for the words “five months”.

199
or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

To constitute the offence of abetment, it is not necessary that the act abetted should be committed. The offence of abetment involves active complicity of abettor prior to actual commission of offence. It is essential that the abettor should substantially assist to the principal accused of offence. The offence of abetment may be committed by three modes:

i. by instigation.

ii. by criminal conspiracy.

iii. by intentionally aid.

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 not be less than six months but which may extend to five years and shall also be liable to fine.

Under this section a public servant is made liable for punishment for accepting or agreeing to accept any valuable thing without consideration or with consideration which he knows to be inadequate. The entire evidence led by prosecution has also of the defence and the suggestions made to the prosecuting
The Prevention of Corruption Act, 1988 and other Legislative Provisions against Corruption: An Analysis

witnesses have to be taken into account and only conclusion possible has to be arrived at.\(^{75}\)

12. Punishment for abetment of offences defined in Section 7 or 11-

Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than \(^{76}\) [three years] but which may extend to \(^{77}\) [seven years] and shall also be liable to fine.

Under Section 12 of the Act, it is provided that abetment of offences prescribed under Sections 7 and 11 of the Act, in itself would be an offence whether such offence is committed or not. A person who abets any of the aforesaid offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to five years and shall also be liable to fine.

Mens rea of the bribe giver

In a trial for the offence of offering a bribe to a public servant, the state of mind of the accused, when he offers bribe is relevant. It is not relevant or necessary that the public servant to whom the bribe is offered is in position to do or not to do the intended act. In a trial under Section 165-A of IPC, it is the mens rea of the bribe giver that has to be considered and it should be sufficient to render him liable if his object in bribing or attempting to bribe the public servant was to induce the public servant to do official act or show or for bear to show, in the exercise of his official functions, favour or disfavor to him, it being quite immaterial whether the public servant was not in fact in a position to do or not to do the act or show or forbear to show the favour or disfavor in question.\(^{78}\)

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\(^{75}\) Bharat Kumar Jayamani v. State of Gujarat, 1982 Cr. LJ 1304.

\(^{76}\) Substituted by Act No. 1 of 2014, for the words “six months”.

\(^{77}\) Substituted by Act No. 1 of 2014, for the words “five months”.

\(^{78}\) Padam Sen v. State AIR 1959 All 707; 1959 Cr. LJ 1276 (All)
In *Om Prakash v. State of Haryana*, the appellant with co-accused suspected to be involved in a murder case offered bribe of Rs. 10,000/- to the Police Inspector investigating the case. The Inspector refused to accept the money but later accepted on insistence and prepared a memo, sealed the money in the presence of Head Constable and got FIR recorded. The defence of the accused was that in connection with the murder case some of their relatives who were accused came to court with more than Rs. 10,000/- and the Inspector snatched the amount from their hands. When threatened that if the amount is not received by them, the matter would be reported to the higher ups, a false case was thrust upon them by the Inspector. Both the accused were convicted under Section 12 of the PC Act by the trial court and the High Court upheld the same. In Appeal, after assessing the evidence, the Supreme Court held that the defence story set up by the appellant cannot be said to be wholly improbable in view of the delay in lodging FIR and discrepancies in the prosecution witnesses. The Supreme Court further held that when the demand has not been proved Section 20 of the PC Act will have no application and set aside conviction, giving benefit of doubt.

In *Sucha Singh v. State of Punjab*, the appellant offered bribe of Rs. 12000/- to police inspector, when he was arrested for an offence under Punjab Prohibition of Cow Slaughter Act. The inspector prepared a memo for the said money and sent to DSP for investigation. After registering FIR, the case was investigated by DSP. The appellant was convicted under Section 12 of the PC Act. In appeal, the High Court held that investigation not vitiated by preparing memo and registering FIR by the inspector and confirmed the conviction but reduced the sentence the period undergone and increased the fine amount from Rs. 1000 to 5000.

In *Gardara Singh v. State of H.P.* the accused, an ex-military person was convicted for offering bribe to a judge to get the judgment in his favour. In next

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80 2009 Cr. LJ (NOC) 606 (HP)
day he realized his mistake and moves an application for tendering apology. In appeal, the High Court held that the accused had failed to prove that at the time of committing offence he was suffering from any mental illness and further held that the police did not exert any pressure on him to tender apology and conviction was proper.

In Ghisalal v. state of M.P.,\textsuperscript{81} the accused, a liquor contractor was convicted by the Special Judge under Section 12 of the PC Act for giving a bribe of Rs. 500 to Station House Officer of police station. On appeal, the High Court found that: “two panch witnesses found hostile and one witnesses supported the statement of appellant who examined himself an oath in defence; the statement of SHO did not appear to be true that a bribe giver will offer bribe in the presence of two public persons and five police personnel present in his chamber; DSP, who investigated the case was not examined; no evidence like challan was adduced to support SHO’s statement that the accused was caught twice or thrice while selling liquor in prohibited area and accordingly set aside the conviction”.

In R.P. Malik v. State of NCT of Delhi\textsuperscript{82} the petitioner was charge sheeted by ACB branch of Delhi Police for abetment under Section 12 of the Act. It was contended that the ACP filed a vexatious complaint against the petitioner at the behest of complainant Naveen Soni and therefore the FIR should be quashed. The High Court held that from reading of the FIR which has culminated in to charge sheet, it cannot be said that it has no substance and an issue requiring appreciation of evidence cannot be dealt with under Section 482 of Cr.P.C.

In Kancharla Veeraiah v. State,\textsuperscript{83} the appellant, a private person and representative of twin cinema theatres at Yanam was convicted by trial Court for offence under Section 451of IPC and Section 12 of the PC Act, 1988 on the charge that he went to the house of complainant who was director of Local

\textsuperscript{81} 2010 (1) Crimes 381 (M.P.)
\textsuperscript{82} 2013 (2) Crimes 632 (Del)
\textsuperscript{83} (2007) 1 MLJ (Cri.) 1300 (Mad)
Administration Department, Pondicherry and offered a bribe of Rs. 7000 for giving exemption of entertainment tax. In appeal the High Court re-appreciated the evidence and held that; to warrant conviction U/S 451 IPC, the prosecution must prove that the accused had committed an offence of house tress pass as defined in Section 442 of IPC and; to warrant conviction under section 12 of the PC Act, it is the bounden duty of the prosecution to prove that an offence under Section 7 or 11 of the PC Act has been abated by the accused. Therefore, the High Court acquitted the accused giving benefit of doubt.

In *S.N.Prasad v. State of Bihar*, a vigilance enquiry was being conducted by the complaint Vigilance Inspector against appellant. The appellant offered bribe of Rs. 500 to Vigilance Inspector upon which he gave a complaint and a trap was laid by CBI. The appellant was prosecuted and convicted by Special Judge for the offence under Section 12 of the PC Act. On appeal the High Court re-appreciated the entire evidence and came to the conclusion that the prosecution could not proved the charges against the accused by unimpeachable and clinching evidence and acquitted the accused appellant by giving benefit of doubt.

**Non public servant alone can be tried by Special Judge**

The Special Judge has exclusive jurisdiction to try the offences which are committed by non public servant under Section 12 and Section 14 (b) of the PC Act. Even, if the offence abetted is not committed by the public servant, the person who abetted the offence is liable for punishment. A person who habitually commits the offence punishable under Section 12 of the PC Act shall be punished under Section 14 (b) of the Act. It is true that when an offence abetted is committed both the person who abetted the offence and the person who committed the offence can be tried at a same trial by Special Judge.

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84 I (2001) CCR 52 (Pat)
85 *Prabhu v. Union of India*, 2003 (3) Crimes 270 (Ker) : 2003 (5) AIC 803 (Ker)
Thus, when an offence under Section 7 or Section 11 of the Act is abetted by a non public servant but that offence is not committed by such public servant, then the non public servant alone can be prosecuted and punished under Section 12 or Section 14 (b) of the Act.

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 obtains 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** (1) For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant, who commits criminal misconduct, shall be punishable with imprisonment for a term which shall not be less than 86[four years] but which may extend to 87[ten years] and shall also be liable to fine.

**Offence of criminal misconduct**

Criminal misconduct committed by public servant has been made an offence under Section 13 of the Act. Firstly, this new offence of criminal misconduct was created by Section 5 of the Prevention of Corruption Act, 1947. The legislature advisedly widened the scope of the crime by giving a very wide definition in Section 5 with a view to punish those, who holding public office and taking advantage of their official position obtain any valuable thing or pecuniary advantage.88 Though, the Act creates a new offence of criminal misconduct but to some extent it overlaps on the pre-existing offences.89 Section 13 of the Act, corresponds to Section 5 of the Prevention of Corruption Act, 1947. Under Section

86 Substituted by Act No. 1 of 2014, for the words “one year”.
87 Substituted by Act No. 1 of 2014, for the words “seven years”.
The Prevention of Corruption Act, 1988 and other Legislative Provisions against Corruption: An Analysis

13 (1) of the Act, the main ingredient of the offence of criminal misconduct can be described as that the accused person is a public servant and he:

a. 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 motive or reward for the purposes as mentioned in Section 7 of the Act; or

b. 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 consideration which he knows to be inadequate; or

c. he dishonestly misappropriates any property entrusted to him as public servant; or

d. he obtains any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant or without any public interest; or

e. he or any person on his behalf, is or has been in possession at any time during the period of his office as a public servant, as such pecuniary resources and properties which are disproportionate to his known sources of income and he is unable to satisfactorily account to it.

Meaning of the word ‘habitually’

What constitute the proof of habit is not stated anywhere in the Act. In this regard any other legal provision also, is not available. In Halsbury’s Laws of England90 it is stated that: “however, no exhaustive definition of a habitual criminal and the question whether an offender is or is not a habitual criminal is always one of fact for jury. The mere fact that he has on a previous occasion been proved to be a habitual criminal and has subsequently relapsed into crime is not of

itself conclusive. The accused is always entitled to call evidence to show that at
the material time he is not a habitual criminal”. In this regard some guidance can
be received from Russell on Crimes,\textsuperscript{91} wherein it is stated:

“a person can be found to be a habitual drunkard, it within twelve months
preceding he has been summarily convicted at least three times for any of the
offences specified in relation to drink”. For the purpose of preventive detention on
the ground of habitual criminality, it is further stated that\textsuperscript{92}: “a person cannot be
found to be habitually criminal, unless the person has been at least three times
previously convicted of the crime charged”.

In \textit{Queen-Empress v. Baburam Kansari}\textsuperscript{93} the accused was charged under
Section 413 of IPC for habitually receiving stolen property. Norris and Beverly,
JJ. held:

“We do not think that a man can be said to be habitually receiving stolen
goods who may receive the proceeds of a dozen different robberies from a dozen
different thieves on the same day, but in addition to the receipt from different
persons there must be a receipt on different occasions and a different dates”.

In \textit{Biswaabhaushan Naik v. State}\textsuperscript{94}, it has been said that, in construing the
word habitually, used in Section 5 (1) (a) and (b) of the Prevention of Corruption
Act, 1947, what is required to be proved as habitual bribe-taking. What constitutes
proof of habit is not indicated anywhere in the Act, or in any other legal provision
in this behalf. The attention has also been drawn for an analogy to Russell on
Crimes as stated above. But it has been held that:

“These provisions cannot furnish any real analogy for guidance in respect of
an offence of habitual bribe taking under clause (a) and (b) of sub-section (1) of

\begin{itemize}
\item \textsuperscript{91} Vol. 1, 1923 ed. at 247.
\item \textsuperscript{92} \textit{Ibid}. at 243.
\item \textsuperscript{93} AIR 19 Cal 190.
\item \textsuperscript{94} AIR 1952 Orissa 289 at 301
\end{itemize}
Section 5 of the Prevention of Corruption Act, 1947; because obviously it is not meant that only instances of previous conviction of bribe-taking should be given in evidence, nor is there any particular sanctity attached to number three. Neither does Section 110 of Cr. P.C. which in its various clauses, refers to habitually commission of certain classes of offences, furnish any guide, because by that section mere reliable information that a person is a habitual offender in respect of certain specified offences without proof of the actual commission of those crimes, may be enough for action under Section 110 of Cr. P.C. The only provision that may afford some guidance is Section 413 of the IPC, which provides for enhanced punishment in the case of habitual receiver of stolen property. It has been held with reference to that section that in order that a person may be convicted under it, it must be shown that the offence of receiving stolen property has been committed on different occasions and on different dates”. It was further held that a charge under Section 5 (1) (a) and (b) of the Prevention of Corruption Act, 1947 should refer to some specific period during which the accused is alleged to have committed the offence. The period may be one year may be two years, may be perhaps a little more but it cannot be so wide as to amount to an abuse of the process of the court. If the court finds that the prosecution attempts to give evidence of quite a very large number of instances, covering over an unduly long period, in proof of the alleged habitual misconduct, the court undoubtedly would have the power to require the prosecution to limit itself to a reasonable period of time, in order to prevent any prejudice arising in the mind of the court by allegations of numerous items. It is ordinarily desirable that prosecution of public servants for offence of criminal misconduct should mention the specific act or acts sought to be relied upon in proof thereof and to state in cases falling under clauses (a) and (b), that all or such of the instances as may be held proved, are intended to be relied upon as proof of the habit. But a trial cannot be held to be illegal on the ground that the particular items of bribery have not been specified in the charge, if the omission has not occasioned a failure of justice.
The words ‘by habit’ or ‘by habitually’ imply frequent practice or use. The words “by habit” or “by habitually” imply frequent practice or use. There must be at least two or more cases against the same individual to show habit. The word ‘habitually’ must be taken to mean repeatedly or persistently, and habit is capable of proof by adducing evidence of the commission of a number of similar acts. In *Maung Po Aung v. The King* it was held that the word habitually means frequent practice or use. The word ‘habit’ implies a tendency or capacity resulting from the frequent repetition of the same acts. The aforesaid words have been used in Section 110 of Cr. P.C. in the sense of depravity of character as evidenced by the frequent repetition or commission of offence mention in the section.

The evidence must be of persons who are acquainted with the accused and live in the neighborhood and are themselves aware of the accused reputation. It must be the opinion of witnesses from specific case coming to their knowledge and not merely from reports or rumours received from other. It is not enough merely to assert that the person proceeded against is a person of criminal tendencies or that he is suspected of having committed certain crimes. The evidence must be specific and must relate to particular instances within the knowledge of the witnesses. Evidence must relate to particular instances which have come to the knowledge of the deponent and must be specific mere belief and opinion without reference to acts and instances which have induced the witness to from opinion can hardly be regarded as evidence of repute. In *P.B. Pande v. Emperor*, it was held by Crump J. that the term habitually in Section 47, Evidence Act means usually, generally or according to custom. It does not refer to

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95 *Bhubaneshwar*, 6 Pat I, 100 IC 967
96 *Bonai*, 15 CWN 461
97 *Local Govt. v. Hnumantha Rao*, AIR 1924 Nag 19 : 25 Cr. LJ 65
98 41 Cr.L.J. 495: 187 IC 609.
100 *Ramalagan v. Emperor*, AIR 1924, Pat 500 : 1925 Cr. LJ 1377
102 *K. Ranga Reddy v. King Emperor*, ILR43 Mad 450
frequency of the occasion but rather to the invariability of the practice. In *Azharuddin Ahmad v. the Crown*, it was held that: “habitual misconduct may be defined as customary, constant or continual. In the Oxford Dictionary ‘habit’ is described as settled tendency or practice. We think it is difficult to hold that payment of bribe to three persons in the same transaction is sufficient to show a settled tendency or practice. In our opinion much more than this is required”.

In *Nani Gopal Mitra v. State of Bihar* it was held that where the charge did not disclose the amounts which the accused took as bribes and the persons from whom he had taken such bribes, this circumstance does not invalidate the charge, though it may be ground for asking for a better particular. When the accused did not complain in the trial court or the High Court that the charge did not contain the necessary particulars and the record disclosed that the accused understood the case against him and adduced all the evidence which he wanted to place before the court, the argument of the accused that he had no opportunity to prove his innocence cannot be accepted. Where the charge is of habitually accepting bribes it is not necessary that the various instances should be mentioned.

**Attempt to obtain bribe in a single instance**

An attempt to obtain bribe in a single case which was never paid would not fall under clause (a) or (b) or (d) of sub-section (1) of Section 5 of the Prevention of Corruption Act, 1947 and would not, therefore, be corruption within the meaning of this Act.

The word habitually occurring in Section 5 (1) (a) and (b) has to be regarded not to refer to an isolated act of criminal misconduct but to indicate persistency in doing the acts of accepting or obtaining of illegal gratification. In

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104 52 Cr. LJ 355: 54 Cal WN 2 DLR 276: Pak Cas 1951: Dacca 78.
107 Rajagopala Ayyar v. State, AIR 1955 Mad 182
order to constitute an offence of criminal misconduct falling within Section 5 (1) (a) and (b) of the Act, *inter alia*, it has to be proved that the accused habitually accepts or obtains any illegal gratification other than legal remuneration as a motive or reward such as is mentioned in Section 161 of the IPC. The word habitually means ‘usually’ or according to custom. It does not refer to the frequency of occasions but rather to the invariability of practice.

**Offence of criminal misconduct under Section 13 (1) (a)**

Section 13 (1) (a) of the Prevention of Corruption Act, 1988 corresponds to Section 5 (1) (a) of the Prevention of Corruption Act, 1947. The essential ingredients of the offence under Section 5(1) (a) of the Act were same as the Section 161 of IPC, subject to only one difference that the offence under the Prevention of Corruption Act, 1947 was an aggravated form of the offence than the offence under Section 161 of IPC.

**Offence of criminal misconduct under Section 13(1) (b)**

When the prosecution proves that the accused had received gifts on several occasions from a firm with which he had official dealings, the offence defined under clause (b) of Section 13 (1) would be established, if from the circumstances of the case it could be presumed that such gifts had been received as a motive or reward for showing undue favour\(^{108}\).

**Offence of criminal misconduct under section 13 (1) (c)**

It is not necessary or possible in every case to prove in what precise manner the accused person has dealt with or appropriated the goods of his master. The question is one of intention and not a matter of direct proof but giving a false account of what he has done with the goods received by him may be treated as a strong circumstance against the accused person. In the case of a servant charged

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with misappropriating the goods of his master, the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss, then the facts being within the servant's knowledge, it is for him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of accused, then he has to prove them. Of course, the prosecution has to establish a prima facie case in the first instance. It is not enough to establish facts which give rise to a suspicion and then by reason of Section 106 of the Evidence Act to throw the onus on him to prove his innocence.\(^\text{110}\)

In *Kantilal Gandalal Shah v. The State of Gujarat*\(^\text{111}\) the accused who was the Secretary of a Co-operative Society received an amount of Rs. 275 on behalf of the society and the amount was credited in the books of the society. Subsequently at the instance of the accused the accountant made a cross entry showing that the credit entry made earlier was wrong. The accused appended his signatures under both the above mentioned entries. It was held that as the funds of the society were in the charge of the accused, the instructions given by him to the accountant to make wrong entry were only susceptible of the inference that he wanted to misappropriate the amount.

In *State v. Panduranga Baburao*,\(^\text{112}\) a full bench of the Bombay High Court held that the language used by the legislature in Section 5 (1) (c) of the Prevention of Corruption Act, 1947 clearly negative any suggestion that the legislature intended to repeal the provisions of Section 409 of IPC. It was also held that it cannot be said that Section 409 of IPC is impliedly repealed by the provisions of

\(^{109}\) The Indian Evidence Act, 1872, Section 106 reads: When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

\(^{110}\) *Krishna Kumar v. Union of India*, AIR 1959 SC 139; 1959 Cr. LJ 1508.

\(^{111}\) AIR 1974 SC 222; 1974 Cr. LJ 310.

\(^{112}\) AIR 1955 Bom 451.
the Prevention of Corruption Act, 1947 because it is impossible to say that the provisions of the two are wholly incompatible or that the two statutes together would lead to wholly absurd consequences.

**Distinction between Section 13 (1) (c) of the Act and Section 405 of IPC**

In *Om Prakash Gupta v. State of U.P.*\(^ {113}\), the Supreme Court observed that from the comparison the provisions of the two sections, it is clear that an offence under Section 405 IPC is separate and distinct from the one under Section 5 (1) (c) of the Act, 1947.

**Offence of criminal misconduct under Section 13 (1) (d)**

It is provided that if a public servant obtains any valuable thing or pecuniary advantage by corrupt and illegal means or; by abusing his position as public servant, without any public interest then, he commits an offence of criminal misconduct under Section 13 (1) (d) of the Act.

It is noted here that in Section 7 of the Act, the words accepts or obtains or agrees to accept or attempts to obtain has been used, specifically. But in Section 13(1) (d), the only word ‘obtains’ has been used by legislature. Thus, it is clear that there is a departure in the language used in clause (d) of Section 13 (1) and the word ‘accepts’ is omitted and therefore, mere acceptance of money without any other evidence would not be sufficient for convicting the accused under Section 13(1)(d) of the Act.\(^ {114}\)

**Meaning of the terms ‘obtains’ or ‘attempts to obtain’**

The word obtains in Section 5(1)(d) of the Prevention of Corruption Act, 1947 does not eliminate the idea of acceptance of what is given or offered to be

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\(^ {113}\) AIR 1957 SC 458 : 1957 Cr. LJ 575  
\(^ {114}\) *Subash Parbhat Sonvane v. State of Gujarat*, 2002 Cr. LJ 2787 (S.C.)
given. Though, it connotes an element of effort on the part of receiver. A public servant may accept money that is being offered to him, or he solicits payment of bribe or, he extorts bribe by threat or coercion. In each case, he obtains a pecuniary advantage by abusing his position as a public servant. In *Narayan Nambiar v. State of Kerala*, the Supreme Court has explained the meaning of the word ‘obtains’ as follows:

“Obtains means acquire or get. If a corrupt officer by the said means obtains a valuable thing or a pecuniary advantage, he can certainly be said to obtain the said thing or a pecuniary advantage; but it is said that in clauses (a) and (b) the same word is used and in the context of those clauses it can only mean getting from a third party other than the government and, therefore, the same meaning must be given to the said word in clause (d). The word “obtains” in clauses (a) and (b) in the context of those provisions may mean taking a bribe from a third party, but there is no reason why the same meaning shall be given to the word used in a different context when that word is comprehensive enough to fit in the scheme of that provision. Nor can we agree that as dishonest misappropriation has been provided for in clause (c), the other cases of wrongful loss caused to the government by the deceit practiced by a public officer should fall outside the section. There is no reason why when a comprehensive statute was passed to prevent corruption, this particular category of corruption should have been excluded therefrom because the consequences of such acts are equally harmful to the public as acts of bribery”.

**Pecuniary advantage**

The meaning of the words ‘pecuniary advantage’ is very wide and includes all cases of cash payment. Thus, the all objects in coins or specie as well as cash payment is included in the meaning of words pecuniary advantage. A man when

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he gets some money, in cash, he certainly makes a pecuniary gain and therefore has a pecuniary advantage.

In *Delhi Administration v. S.N. Khosla*, an Income Tax Officer obtains the goods on credit from various firms and failed to repay the amounts the Supreme Court held that the obtaining of goods on credit cannot be held to amount to obtaining pecuniary advantage unless there was an agreement between the trader and the officer that the later was not expected to pay for the goods.

**Abusing his position**

If a public servant obtains money from any person to conceal the birth of an illegitimate child, which is not an offence under IPC or any other criminal statute, he is guilty of abusing his position as a public servant within the meaning of Section 13(1) (d) of the Act by obtaining for himself a valuable thing or pecuniary advantage.117

In Section 13 (1)(d), abusing his position as public servant do not confine merely to misuse of his position as such public servant, but such misuse of his position must be with a dishonest mind. There is no prohibition for a public servant taking a loan when he is in need of money. But if he takes the loan from a person with whom he has got official dealings it may be improper.118 It may even amount to misuse of his position since it is likely to create an impression in the mind of the person from whom he obtains the loan that he is likely to do favour to that person or withhold doing a favour if loan is not given. Unless it is established that the public servant has obtained such loan by corrupt or illegal means or by dishonestly misusing his position as public servant, the offence of Section 5 (1) (d) would not be made out119.

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117 *Siv Raj Singh v. Delhi Administration*, AIR 1968 SC 1419 : 1969 Cr. LJ 1
118 P.V. Ramkrishna, *supra* note 59 at 374.
In *Public Prosecutor v. T.K. Vishanatham*\(^{120}\) it was held that where a Technical Investigator in the Regional Office of the Textile Commissioner, Madras, borrowed large sums of money as hand loans from several persons with whom he had official dealings and there is no evidence to show that the accused reminded to the persons of his position and obtained the loans, it cannot be said that the accused had dishonestly abused his position as public servant.

In *V.S.Abdul Sattar Shah v. Superintendent of Police, CBI, Cochin*\(^{121}\) the accused, a Superintendent of Central Excise in the office of the Collector of Customs and Central Excise, Cochin was prosecuted for having received money from some job-seekers representing that he would be able to secure jobs for them in some industrial establishment. During trial, he argued before the court that at the relevant time, he was transferred to a range in whose limits the particular establishments did not fall and therefore he was not able to abuse his position as a public servant. The High Court rejected the plea and observed:

“Even if, on some working arrangements the appellant was asked to confine his supervision work to a particular range during a particular period that does not mean that the appellant had ceased to be a public servant who could have exercised supervision over the three industrial establishments mentioned above. If the appellant had gone to supervise those industrial establishments in his official capacity during the said period, I do not think that the appellant could have been prevented from discharging his functions merely on the ground that as per the working arrangements he had to attend to some other establishments. He continued to be the Superintendent of the Central Excise under the same Collectorate division during the period. Therefore, his acts could only be termed as those in his capacity as a public servant and not in his individual capacity”.

\(^{120}\) 1971 Cr. LJ 573
\(^{121}\) 1987 Cr. LJ 1670 : 1987 (2) Ker, LT 19
Offence of criminal misconduct under Section 13 (1) (e) of the Act

Section 13(1) (e) corresponds to Section 5(1) (e) of the Prevention of Corruption Act, 1947. Under Section 13 (1) (e) of the Act, it is provided that if a public servant or any other person on behalf of him, during the period of his office, is in possession or has been in possession such pecuniary resources or property which are disproportionate to his known sources of income and he is unable to satisfactorily account to them, then he commits an offence of criminal misconduct. In State of Maharashtra v. Wasudeo Ramachandra Kaidalwar, the Supreme Court held that to substantiate the charges under Section 5(1) (e) of the Act, the prosecution must have to prove that:

i. the accused is a public servant;
ii. the nature and extend of the pecuniary resources of property which are found in his possession;
iii. it must be proved that what are known sources of income of the accused public servant;
iv. lastly, it must be proved quit objectively, that such resources or property which are found in his possession are disproportionate to his known sources of income.

Once these above ingredients are established, the offence of criminal misconduct under section 13(1) (e) is made out and burden to prove to satisfactorily account for his possession of disproportionate assets shifts on accused person. Under criminal law, the nature and extent of burden to prove his innocence on accused person is well settled and accused is not bound to prove his innocence beyond all reasonable doubt. Thus, the public servant has to prove satisfactorily account for his possession of disproportionate assets and not to prove his claim beyond all reasonable doubt.

122 AIR 1981 SC 1186 : 1981 Cr. LJ 884
According to explanation of Section 13(1) (e), the “known source of income” means income which has been received from lawful sources and also intimated in accordance with provisions of law. Thus, the prosecution has relieved from burden of investigating into sources of income of an accused to a large extent.

**Known sources of income**

The expression “known Sources of income” must have reference to sources known to the prosecution on a thorough investigation of case. It is not intended that the known sources of income means sources known to the accused. It is not expected from prosecution to known all affairs of accused person which especially would be within the knowledge of accused person.

In *Biswaabhaushan Naik v. State*, the Orissa High Court held that travelling allowance cannot be treated as a source of legitimate income. In *C.S.D. Swami v. State* the Supreme Court held that the prosecution would not be justified in concluding that travelling allowance was also a source of income where such allowance is ordinarily meant to compensate an officer concerned for his out of pocket expenses incidental to journeys performed by him for his official tours. In case of a public servant, the prosecution would naturally, infer that his known source of income would be the salary earned by him during his active service. If the prosecution has failed to disclose all the sources of income of an accused person, it is always open to him to prove those other sources of income which have not been taken into account or brought into evidence by prosecution.

In *M.M. Gandhi v. State of Mysore*, it was held that travelling allowance given in whole time to public servants is not intended to be a source of profit. Known source of income means known sources of income to the prosecution after

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123 P.V. Ramakrishna, *supra* note 59 at 498.
124 AIR 1952 Orissa 289 : 1952 Cr. LJ 1533
126 AIR 1960 Mys 111 : 1960 Cr. LJ 934
a thorough investigation and the onus of satisfactorily accounting for it is not as heavy an onus as is on the prosecution to prove its case beyond all reasonable doubt.\textsuperscript{127} Travelling allowance cannot be taken as a legitimate source of income and therefore, onus would not be on the prosecution to lead evidence of the same. Whether savings have been made or not being within the special knowledge of the accused, it is on him to adduce acceptable evidence of the same and if the accused successfully discharges that onus, it is not open to the court to brush aside the same with the aid to any fancied legal fiction.\textsuperscript{128} It is provided that an offence under section 13(1) (e) of the Act shall not be investigated without the order of a police officer not below the rank of Superintendent of Police.\textsuperscript{129}

14. Habitual committing of offence under Sections 8, 9 and 12- Whoever habitually commits,-

\begin{itemize}
  \item[a)] an offence punishable under section 8 or Section 9; or
  \item[b)] an offence punishable under section 12;
\end{itemize}

shall be punishable with imprisonment for a term which shall not be less than \textsuperscript{130} [five years] but which may extend to \textsuperscript{131} [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 \textsuperscript{3}[which shall not be less than two years but which may extend to five years] and with fine.

16. Matters to be taken into consideration for fixing fine- Where a sentence of fine is imposed under sub-section (2) of Section 13 or Section 14, the Court in fixing the amount of the fine shall take into consideration the amount or

\textsuperscript{127} Hemanta Kuamr Mohanty v. State of Orissa, 1973 (1) SLR 1121
\textsuperscript{128} Ibid.
\textsuperscript{129} The Prevention of Corruption Act, 1988, Section 17, proviso (ii).
\textsuperscript{130} Substituted by Act No. 1 of 2014, for the words “two years”.
\textsuperscript{131} Substituted by Act No. 1 of 2014, for the words “seven years”.

220
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.

**Investigation into Cases under the Act**

17. **Persons authorized 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 Ahmadabad 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 authorized 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 makes arrest therefor without a warrant:
Provided further that an offence referred to in clause (e) of sub-section (1) of Section 13 shall not be investigate without the order of a police officer not below the rank of a Superintendent of Police.

**Investigation of the offences punishable under the PC Act**

The main object of the legislature which has reflected under Section 17 of the Act is to protect the interest of public servant. But the main idea behind it is the public interest. It has been thought in the public interest that the investigation of the offences punishable under this Act should be conducted by responsible police officers. Under Section 17 of the Act, an alternative procedure has also been put in place and it is provided that after obtaining an order from a Metropolitan Magistrate or from a Magistrate of the first class, a police officer below the rank of Deputy S.P. may make investigate into offences punishable under this Act.

Under section 17 of the Act, an Inspector of the police of the Delhi Special Police Establishment, and in metropolitan areas including, Bombay, Calcutta, Madras and Ahmadabad, an Assistant Commissioner of Police and in other areas a Deputy S.P. or a police officer equivalent to him is empowered to make or conduct investigation into offences punishable under this Act.132 Those police officers as stated above are also empowered to make arrest without warrant of Judicial Magistrate.133

Further, it is provided that State Government by general or special order may authorize to a police officer, who is not below from the rank of an Inspector of Police, to make investigation into offences punishable under this Act. Such police officer authorized by State Government may make investigation into offences and if it is required he also may make arrest to a person without order of

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132 The Prevention of Corruption Act, 1988, Section 17 (1), Clause (a), (b) and (c).
133 Ibid.
Judicial Magistrate.\textsuperscript{134} Further, it is also provided that an offence punishable under Section 13 (1) (e) of the Act shall not be investigated without the order of a police officer who is not below the rank of Superintendent of Police.\textsuperscript{135} The SP is not required to write a judgment or a reasoned order, he is to satisfy himself that it is necessary to make investigation into offences but, it is not necessary to record the reason of that satisfaction.\textsuperscript{136} During course of trial, it would be open to the accused person to examine the concerned S.P. that the order of authorization given by him was not in accordance with the requirements of law\textsuperscript{137}.

18. Power to inspect bankers’ books- If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under Section 17 and considers that for the purpose of investigation or enquiry into such offence, it is necessary to inspect any bankers books, then notwithstanding anything contained in any law for the time being in force, he may inspect any bankers’ books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries there from, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section.

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

\begin{itemize}
\item \textsuperscript{134} \textit{Ibid.}, proviso (i)
\item \textsuperscript{135} \textit{Ibid.}, proviso (ii)
\item \textsuperscript{136} \textit{Manavir Prasad Srivastava v. State of M.P.} 2000 Cr. LJ 1232 (M.P.)
\item \textsuperscript{137} \textit{Ibid.}
\end{itemize}
The Prevention of Corruption Act, 1988 and other Legislative Provisions against Corruption: An Analysis

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

Power to make inspections into bankers’ book

In course of investigation, police officer, who is not below the rank of Superintendent of Police, can make inspection into the bankers’ book. The Superintendent of Police may authorize to an Inspector of Police to inspect the bankers’ book for the purpose of investigation.

In Case, state of Maharashtra v. Tapas D. Neogy, the Supreme Court held that within the meaning of Section 102 of Cr. P.C., a bank account is a property and a police officer can seize the account and issue the directions to the concerned Bank to prohibit the operation of account by the accused person. The Supreme Court observed that:

“It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the Courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Cr. P. and the underlying object engrafted therein, in as much as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdraw by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. It may also be seen that under the Prevention of Corruption Act, 1988 in the matters of imposition of fine under sub-section (2) of Section 13, the legislature have provided that the court in fixing the amount of fine shall take into consideration the amount or value of the

138 1999 Cr. LJ 4305(SC) : (1999) 7 SCC 685
property, 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 for which the accused person is unable to account satisfactorily. The interpretation so given in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 18 of the Prevention of Corruption Act”.

Sanction for Prosecution and other Miscellaneous Provisions

19. Previous sanction necessary for prosecution- (1) No Court shall take cognizance of an offence punishable under Sections 7,10,11,13 and 15 alleged to have been committed by a public servant, \(^{139}\) [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)],-

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

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

\(^{139}\) Substituted by Act No.1 of 2014, for the words “except with the previous sanction”.

225
(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) not 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 of 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-sanction (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 purpose of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes references 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.
Sanction for prosecution

Section 19 (1) of the Act, provides that no court shall take cognizance of an offence, punishable under Sections 7, 10, 13 and 15 of the Act, against public servant without previous sanction of competent authority. The existence of a valid sanction of competent authority is a pre-requisite for the court to take cognizance of offences enumerated in Section 19(1) of the Act. The bar is for court to take cognizance of offence. The object of Section 19 of the Act is to protect the interest of public servants against irresponsible, frivolous and vexatious proceedings. Certainly, it is necessary that the a public servant who has performed his official duties in good faith should be protected from unnecessary harassment of legal proceedings arising out of unfounded and baseless complaints. In the absence of such a provision, the public servant may not be inclined to offer his/her free and frank opinion and may not be able to function freely. Thus, the underlying policy of Section 19 of the Act is to protect the public servant from unnecessary harassment by frivolous legal proceedings.

In *R.S. Nayak v. A.R. Antulay*, the Supreme Court held that, a trial without sanction renders the proceedings *ab-initio* void. But the *terminus a quo* for a valid sanction is the time when the court is called upon to take the cognizance of offence. If, therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him.

**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

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141 AIR 1984 SC 684 : 1984 Cr. LJ 613
it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

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

21. Accused person to be a competent witness- Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that,-

(a) he shall not be called as a witness except at his own request;
(b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless-

(i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged; or

(ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence.

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

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

(b) in sub-section (2) of Section 309, after the third proviso, the following proviso had been inserted, namely :-
“Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under Section 397 has been made by the party to that proceeding”; 

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

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

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

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

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

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

23. Particulars in a charge in relation to an offence under Section 13(1)

(c)- Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), when an accused is charged with an offence under clause (c) of sub-section (1) of Section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so farmed shall be deemed to be a charge of one offence within the meaning of Section 219 of the said Code :
Provided that the time included between the first and last of such dates shall not exceed one year:

24. **Statement by bribe giver not to subject him to prosecution**-
Notwithstanding anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant for an offence under Sections 7 to 11 or under Section 13 or Section 15, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under Section 12.

25. **Military, Navy 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 Special Judge shall be deemed to be a Court of ordinary criminal justice.

26. **Special Judges appointed under Act 46 of 1952 to be Special Judges appointed under this Act**-
Every Special Judge appointed under the Criminal Law Amendment Act, 1952 for any area or areas and is holding office on the commencement of this Act shall be deemed to be a Special Judge appointed under Section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.
27. Appeal and revision- Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the Court of the Special Judge were a Court of Session trying case within the local limits of the High Court.

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

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

(a) in sub section (1) of Section 3, sub-section (1) of Section 9, clause (a) of Section 10, sub-section (1) of Section 11 and Sub-section (1) of Section 13, for the words “State Government”, wherever they occur, the words “State Government or, as the case may be, the Central Government” shall be substituted;

(b) in Section 10, clause (a), for the words “three months”, the words “one year” shall be substituted;

(c) in the Schedule,-

(i) paragraph 1 shall be omitted;

(ii) in paragraphs 2 and 4,-

(a) after the words “a local authority”, the words and figures “or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in Section 617 of the companies Act, 1956 (1 of 1956), or a society aided by such corporation, authority, body or Government Company” shall be inserted;
(b) after the words “or authority”, the words “or corporation or body or Government Company or Society” shall be inserted;

(iii) for paragraph 4-A, the following paragraph shall be substituted, namely “4-A. An offence punishable under the Prevention of Corruption Act, 1988”;

(iv) in paragraph 5, for the words and figures “items 2, 3, and 4”, the words, figures and letter “items 2, 3, 4 and 4-A” shall be substituted.


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

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

Conclusion

The Prevention of Corruption Act, 1988 is a puerile piece of legislation. It is not effective to check and control the very cancerous problem of corruption. As soon as possible it should be amended. In this regard the stringent provisions should be incorporated in the Act. Reason of corruption is greed for property. Therefore, this greed of property should be punished by way of confiscate entire assets of corrupt public servant not just of proceed of corruption. Corrupt public
servant should be boycotted from holding any public office. Their corruptibility should be treated as ineligibility and incompetency to hold any public office.

The Prevention of Corruption (Amendment) Bill, 2013

Introduction

There is a very long history of anti-corruption law in India. Before independence, an ordinance dealing with corruption and the attachment of property was promulgated under the Government of India Act, 1935. It was called the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No. 38 of 1944). It was promulgated to prevent the disposal or concealment of property procured by means of certain scheduled offences, including offences under the India Penal Code of 1960. The Ordinance came into force on 23rd August, 1944. The Ordinance is one of the few remaining permanent ordinances given that it was enacted when the India and Burma Emergency Provisions were in effect and when the six month clause requiring ordinances to be statutorily enacted was suspended. Thereafter, in independent India, to supplement the provisions of IPC the Prevention of Corruption Act, 1947 was enacted. It was the first direct and consolidated law against corruption in India. The existing provisions under the IPC and other laws had proved inadequate to deal corruption of public servants, which had increased greatly during the war years, due to scarcity and controls. Therefore, a new law was required to deal with various post war scenarios, which provided multiple opportunities for corruption, these included post war reconstruction schemes, termination of contracts, and disposal of large number of government surplus stores. The scope of the Prevention of Corruption Act, 1947 was considered very narrow and therefore the Prevention of Corruption Act, 1988 was enacted to replace it. The new Act of 1988 was intended to make existing

\[142\] Statement of Objects and Reasons of the Bill preceding the enactment of the Prevention of Corruption Act, 1947
anti-corruption laws more effective by their coverage. With the passes of time some deficiencies have been noticed in the law and therefore the Prevention of Corruption (Amendment) Bill, 2013 was introduced in the Rajya Sabha on 19th August 2013 to amend the PC Act, 1988, the Delhi Special Police Establishment Act, 1946 and the 1944 Ordinance. The Bill was referred to Standing Committee, and the Committee has submitted its Report on 6th February, 2014. Subsequently, on 12th November 2014 an informal and improved version of the Bill was approved by the cabinet of Government of India.

Objectives of the Bill

The main objectives of the 2013 Bill are as follows:

(a) Widening of the description of both the demand and supply sides of corruption by providing criminalization of;
   i. bribe giving by any person/organization to public servant;
   ii. bribe taking by public servant by direct or indirect manner;
   iii. and corporate liability in bribe giving.

   Thus the Bill seeks to criminalize both the collusive as well as coercive bribery.

(b) Protection of honest public servants.

(c) Lying down of criteria and procedure for sanction of prosecution.

(d) Confiscation of proceeds of corruption

Statement of objects and reasons

The statement of objects and reasons to the Bill makes it clear that the proposed amendments in law have been necessitated due to ratification of the United Nation Convention Against Corruption in May 2011; the international practice on treatment of the offence of bribery and corruption; judicial pronouncements in corruption cases to fill in gaps in description and coverage of offence of bribery so as to bring domestic laws in line with current international
practice. It is also needed to meet more effectively the country's obligation under UNCAC.\(^{143}\)

**Main features of the Bill**

Under the proposed Bill all aspects of passive bribery, including solicitation and acceptance of bribe, have been covered. The new provisions under the proposed Section 7 of the PC Act make it an offence for any public servant to request, agree to receive or accept or attempt to obtain from any person any undue financial or other advantage. Even without demand any advantage provided to public servant could be considered as bribe under proposed Bill. At present there is no provision under the PC Act to tackle consensual bribery and the consensual bribery goes unpunished. It is proposed to criminalize any act of consensual bribery. Under new Section 9, it will be an offence for the commercial organization, if any person associated with it offers or promises any financial or other advantage to public servant to obtain or retain business for such organization. Thus, under the proposed Bill corporate liability has been fixed for bribe giving to public servant. The proposed Bill extends the protection to the honest public servant against vexatious prosecution who ceased to be government public servant. At present, under Section 19 of the Act, the protection of sanction for prosecution by appropriate authority is available to serving public servant only, which is now proposed to extend to retired public servant also.

Through the proposed Bill, Sections 7, 10, 12, 14 and 20 of the PC Act, 1988 are proposed to be substituted. Sections 1, 5, 13, 15 and 19 are proposed to be amended. After Chapter IV of the PC Act, 1988, a separate Chapter i.e. Chapter IVA titled “Attachment and Forfeiture of Property” (Section 18A-18N) has to be inserted. Sections 11 and 24 of the PC Act will have to be deleted. It is also proposed to insert an amendment in Section 6A of the Delhi Police Establishment Act, 1946.

Analysis of new formulation of Section 7 under the proposed Bill, 2013

Under the proposed Bill, 2013 Section 7 intends to regulate demand side of bribery. It criminalizes acts relating to a public servant being bribed. Under the proposed Section 7 of the Bill, an attempt has been made to create a new comprehensive definition of offence which covers all aspects of passive bribery including the solicitation and acceptance of bribe through intermediary and also acts of public servants acting outside their competence. In respect of bribery the proposed Section 7 (1) criminalizes the following acts of the public servant viz: any public servant who requests for, or obtains or agrees to receive or accepts or attempts to obtain an undue financial or other advantage from any person:

a. to perform a relevant public function or activity, improperly by himself or by another public servant or;

b. as a reward for the improper performance of a relevant public function or activity or;

c. performs, or induces another public servant to perform improperly a relevant public function or activity in anticipation of a undue financial or other advantage or;

d. a request or agreement or acceptance or attempt for an undue financial or other advantage itself constitutes the improper performance of a relevant public function or activity.

According to explanation (1) (a) of Section 7 (1), it shall be immaterial that a public servant requests or obtains or agrees to receive or accepts or attempts to obtain the advantage directly or through a third party. Further explanation (1) (b) provides that the financial or other advantage may be for the benefit of a public servant himself or another person. Explanation (2) provides that it shall be immaterial that whether the public servant knows or believes that his conduct is improper. According to explanation (4) where a public servant induces a person erroneously to believe that his influence with the government has obtained a title or other benefit for that person and thus induces to give him any financial or other
advantage as a reward for his service, he has committed an offence under Section 7 (1).

**Public function or activity**

Section 7 (2) (a) defines “public function or activity”. A function or activity is a public function or activity if:

i. It is of a public nature.

ii. It is performed in the course of a person’s employment as a public servant.

iii. It is expected that such function or activity has to be performed in good faith and impartially.

iv. A person who is performing that function or activity is in a position of trust by virtue of performing it.

**Improper performance of a public function or activity**

Section 7 (2) (b) of the Bill defines “improper performance of a public function or activity”. According to Section 7(2) (b) of the Bill a public function or activity has to be construed to be performed improperly, when it is performed in breach of relevant expectation or there is a failure to perform it. The failure to perform a public function or activity itself constitutes the breach of relevant expectation.

Further, Section 7 (2) (c) of the Bill defines “relevant expectation”. In relation to a public function or activity, relevant expectation means that such public function or activity has to be performed impartially or in good faith. According to Section 7 (2) (e) of the Bill the test of ‘relevant expectation’ is what a reasonable person in our country expects in relation to performance of a public function or activity.

The proposed Section 7(1) criminalizes five types of activities of a public servant, namely if he requests any person for; obtains; agrees to receive; accepts; or attempts to obtain any undue financial or other advantage for the improper performance of a relevant public function or activity then the concerned public servant commits an offence under proposed Section 7 (1) of the Bill. It creates
great ambiguity and confusion and may be problematic in future for a number of reasons. The phrase “requests for” seems to already be criminalized under the phrase “attempts to obtain” and to unite with or amalgamation of these two phrases in Section 7(1) seems more than enough. In this regard, the Law Commission of India\textsuperscript{144} has recommended that the phrase “request for” should be deleted from Section 7 of the Bill\textsuperscript{145}.

The phrases “undue financial or other advantage” and “improper performance” repeatedly used in Section 7 of the Bill are also problematic. The proposed formulation “financial or other advantage” seems narrower than the existing Section 7 formulation of “any gratification whatever, other than legal remuneration”\textsuperscript{146}. The word “gratification” has been defined expressly under Section 7 explanation (b) of the 1988 Act as the word gratification is not restricted to pecuniary gratification or to gratification estimable in money. It clearly covers sexual favours also as “gratification” in return for the public servant to do or refrain from doing a certain act. However, other advantage in the phrase financial or other advantage being interpreted using “ejusdem generis” does not seems to cover sexual favours in return for the public servant's acts or omissions.\textsuperscript{147} Thus, the proposed amendment is narrowing the scope of corruption, instead of the stated intent of expanding it. Further the proposed Section 7 (a) deals with situations, which are very common in India, in which the public servant takes bribes to perform their functions properly.\textsuperscript{148} This situation seems too covered under Section 7(1) (b) of 2013 Bill, but does not clearly express due to absence of an appropriate illustration. There is a need to resolve this situation by providing an

\textsuperscript{145} Id., para 4.4 at 7.
\textsuperscript{146} Id., para 2.5.3 at 8
\textsuperscript{147} Id.,
\textsuperscript{148} Id., para 2.7.1 at 10
The Prevention of Corruption Act, 1988 and other Legislative Provisions against Corruption: An Analysis

appropriate illustration. However, Section 7(1) (b) of the 2013 Bill criminalizes the mere act of obtaining, agreeing to receive, attempting to obtain any financial or other advantage. It is confusing because of two reasons. Firstly, it seems to comprise the minimum morality of entire Section 7 of the Bill. If mere asking for a bribe is made an offence, then the purpose of Section 7(1) (a), (c) and (d) seems become unnecessary. Therefore it should be subsumed within the main section. Secondly, having four sub-sections of Section 7, it seems that Section 7(1) (a), (c) and (d) are required because there are certain circumstances which are not covered by Section 7(1) (b). That cannot have been the intention of legislative in expanding the scope of bribery offence under Section 7. Lastly, Section 7 of the 2013 Bill repeatedly refers to the term relevant public function or an activity which borrowed from Sections 2 and 3 of the U.K. Bribery Act, 2010. The U.K. Bribery Act sought to punish private acts of bribery but wanted to classify only some of them as punishable. This is not relevant in the Indian context because the PC Act only deals with corruption amongst public servants. Moreover the proposed Section 7(2) (a) only defines “public function or activity” and therefore, the use of word “relevant” in Section 7 (1) creates unnecessary confusion.

The PC Act, 1988 only deals with corruption by public servant. The term “public duty” and “public servant” have been defined under Section 2(b) and 2(c) of the Act respectively. The proposed Section 7(2) (a) of the 2013 Bill deals with the definition of a “public function or activity”. Therefore, the definition under Section 7(2) (a) of the term ‘public function or activity’ is unnecessary and only will create confusion because Section 7(2) (a) (i) and (ii) focuses on the public nature of activity or the performance in the course of a person's employment as public servant.

149 The Law Commission of India in its 254th Report has recommended an illustration covering such instances where a civil servant 'R' asks a person 'P' to give him Rs. 10,000 to process his routine rations card application on time. R is guilty of an offence under this section.
150 Law Commission of India, supra note 144, para 2.7.8 at 12.
151 Id., para 2.7.9 at 13.
The last two sub-clauses of Section 7(2) (a) namely Section 7(2) (a) (iii) and (iv) make cumulative conditions that are supposed to be disjunctive. The U.K. Law Commission gives using examples of referees and agents accepting contractor’s bid, emphatically states that “the duty to act in good faith is not the same as a duty to act impartially”\textsuperscript{152}. For instance, paying an academic referee to write an unduly partial reference is a breach of the duty of good faith and not the duty of impartiality. Similarly, agents accepting bids from contractor’s are not under a duty to assess the bids impartially, they must only assess the bids in good faith. The duty of impartiality on the other hand, is cast on the mediator.

Further, in Section 7(2) (c) (i) the terms “impartially or in good faith” have been used and which have used as disjunctive terms. Whereas, under Section 7(2) (a) (iii), the terms “impartially” and “in good faith” has been used as conjunctive term. Now it is unclear why it has happened. It creates great ambiguity and uncertainty between Section 7(2) (a) (iii) and Section 7(2) (c) (i). Again the Section 7(2) (a) (iii) and (iv) starts with the words “the person” performing the function or activity whereas the PC Act, 1988 only relates to public servant. Even the Section 7 (2) (a) (ii) talks about the function or activity being carried out in a person's course of employment as a “public servant”. Thus, the clarity of the Bill is missing. Similarly, the invocation of the concept of “position of trust” in Section 7(2) (a) (iv) and Section 7(2) (c) (ii) is also confusing. It is very unclear how this “position of trust” will be interpreted given that the doctrine of public trust has not yet been brought into criminal law in India. It applies only into tort cases\textsuperscript{153}. Section 7 (2) (d) is also problematic. The Section 7(2) (d) introduces with the words “anything that a public servant does”. Later in the section the words “that person” has been used in place of public servant. Thus, the rest of Section 7 (2) (d) talks about “person”. This is unnecessary because the PC Act, 1988 only relates to


\textsuperscript{153} Law Commission of India, \textit{supra} note 144, para 2.11.6 at 19.
public servants\textsuperscript{154}. However, the applicability of Section 7(2) (d) is also not clear, due to absence of an appropriate illustration\textsuperscript{155}. In this regard, The U.K. Law Commission Report\textsuperscript{156} provides some guidance through an example as under\textsuperscript{157}.

\textsuperscript{154} Id., para 2.11.10 at 21.
\textsuperscript{155} The Law Commission of India has redrafted the entire Section 7 of the 2013 Bill. It is reproduced here as under:

7. **Offence Relating to Public Servant being Bribed**- 1. Any person, being, or expecting to be, a public servant who obtains or agrees to receive or accepts or attempts to obtain, an undue advantage from any person shall be punishable, with imprisonment which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

2. Notwithstanding anything contained in sub-section (1), any person, being, or expecting to be, a public servant who,-

a. obtains or agrees to receive or accepts or attempts to obtain from any person, any undue advantage, intending that, in consequence, a public function or activity would be performed improperly either by himself or by another public servant; or

b. obtains or agrees to receive or accepts or attempts to obtain, an undue advantage as a reward for the improper performance (whether by himself or by another public servant) of a public function or activity; or

c. performs, or induces another public servant to perform, improperly a public function or activity in anticipation of or in consequence of agreeing to receive or accepting an undue advantage from any person,

shall be punishable, with imprisonment 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 sub-section ((1), the obtaining, agreeing to receive, accepting, or the attempting to obtain an undue advantage itself constitutes the improper performance of a public function or activity.

**Illustration**: A public servant, “R” asks a person, “P” to give him Rs. 10,000 to process his routine ration card application on time. R is guilty of an offence under this sub-section.

**Explanation 2**- For the purpose of sub-section (1), the expressions “obtains” or “attempts to obtain” shall cover cases where a person, being, or expecting to be, a public servant, obtains 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 acting in violation of a statutory duty or any set of rules, government policies, executive instructions and procedures; or by any other corrupt or illegal means.

**Explanation 3**- For the purpose of this section, it shall be immaterial whether-

a. such person being, or expecting to be, a public servant obtains or agrees to receive or accepts, or attempts to obtain (or is to agree to receive, or accept) the advantage directly or through a third party;

b. the undue advantage is, or is to be, for the benefit of such person being or expecting to be, a public servant or another person.

**Explanation 4**- “Expecting to be a public servant”. For the purpose of this section, if a person not expecting to be in office agrees to receive or accepts or attempts to obtain from any person, any undue advantage by deceiving such other person in to a belief that he is about to be in office, and that he will then serve him, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

**Explanation 5**- For the purpose of this section, where a public servant, or a person expecting to be a public servant, induces a person erroneously to believe that his influence with the government has obtained...
“R has recently retired from an influential position in the civil service. He or she is approached by P who is seeking a lucrative contract with a government department. P pays R a large sum of money to provide confidential information to P about the bidding processes. In this example, a prosecution should not fail at the outset simply because R is not currently engaged in a profession or performing a public function. The transactions between P and R clearly relate to past conduct of a public or professional kind. That should be sufficient to bring the matter within the scope of the offence”.

Offence relating to bribing of a public servant under Section 8

The PC Act, 1988 does not directly criminalizes the supply side of bribery or active domestic bribery. The proposed Section 8 of the 2013 Bill criminalize the acts relating to bribing of a public servant. The new offence of supply side of bribery is proposed to introduce under the proposed Section 8 of the 2013 Bill because the experience has shown that in vast majority of cases the bribe-giver goes scot-free and it becomes difficult to tackle consensual bribery.\textsuperscript{158}

Under Section 8 (1) (a) it is proposed to provide that any person who offers, promises or gives a financial or other advantage to another person to induce\textsuperscript{159} or to reward\textsuperscript{160} a public servant for the improper performance of a public function or activity and he know that the acceptance of such financial or other advantage by the public servant itself constitute the improper performance of a relevant public function or activity\textsuperscript{161} shall be punished under this section. When the offence under this section has committed by a commercial organization shall

\textsuperscript{156} The U. K. Law Commission, \textit{supra} note 152 para 3.26-3.27
\textsuperscript{157} \textit{Id.}, para 2.11.9 at 20 as quoted in Law Commission of India, \textit{supra} note 144.
\textsuperscript{158} The Prevention of Corruption (Amendment) Bill, 2013, Section 8 (1) (a) (i).
\textsuperscript{159} The Statement of Objects and Reasons of the Prevention of Corruption (Amendment) Bill, 2013
\textsuperscript{160} \textit{Id.}, Section 8 (1) (a) (ii).
\textsuperscript{161} \textit{Id.}, Section 8 (1) (b).
be punished with fine.\textsuperscript{162} Thus, the Section 8 criminalizes corporate bribery also. It is immaterial that the person, to whom the financial or other advantage is offered, is the same person as the person who is to perform the concerned public function or activity.\textsuperscript{163} It shall also be immaterial that such financial or other advantage has offered or promised by a person directly or through a third party.\textsuperscript{164}

The 2014 amendment inserted a new sub-section (3) to Section 8 clarifying that “nothing in sub-section (1) shall apply to a person who after informing a law enforcement agency, offered or gave any undue financial or other advantage to another person in order to assist such law enforcement agency”.

The proposed Section 8 (1) (a) and (b) suffers from similar problems as Section 7 (1) (a) and (b). Prima facie Section 8(1) (a) suggests that it criminalizes only those cases where the person bribes a public servant to perform a public function or activity improperly. It does not seem to cover those cases, which are very common in India, where the bribe giver seeks to perform his routine ration card application on time by giving a bribe.\textsuperscript{165} Further, Section 8 (1) (b) of the 2013 Bill also suffers from legislative unclarity. No appropriate illustration has been put under Section 8 (1) (a) and (b) to bring legislative clarity and therefore in future it would likely to be legally interpreted variedly.

The 2014 amendment inserted a new sub-section (2) to Section 8. There is also unclarity in sub-section (2) of Section 8. Many times, the person giving the bribe may be required to pay the bribe money to a third person, who subsequently delivers to public servant. This situation has been covered by explanation of Section 8 (1). In the proposed sub-sec (2) of Section (8) the use of the word “person” covers all such cases where the immediate recipient of the bribe may be a public servant or a person expecting to be a public servant or any other person. However, for the avoidance of any doubt the Law Commission of India in its 254\textsuperscript{th} Report recommended to put an explanation after sub-section (2) of Section (8) to

\textsuperscript{162} Id., Section 8 (1) proviso.
\textsuperscript{163} Id., Section 8 (1) explanation.
\textsuperscript{164} Ibid.
\textsuperscript{165} Law Commission of India, supra note 144 para 3.3.1 at 26
clarify that the phase "another person" in sub-section (2) of Section (8) shall include a public servant or a person expecting to be a public servant. Keeping in mind the above discrepancy the Law Commission of India has redrafted the Section 8 of the Bill.

**Offence of bribe giving**

Thus, it is proposed that if any person who offers, promises or gives financial or other advantage to another person (third party/intermediaries) or public servant to induce or reward a public servant to perform improperly any public function or activity then he commit an act of offence of corruption. The proposed amendment prescribes equal punishment to both bribe takers, bribe givers and intermediaries. The immunity given to bribe giver under Section 24 of the principal Act, 1988 is proposed to be done away. Moreover, the collusive (consensual) bribery and coercive (harassed) bribery has been criminalized and

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166 Law Commission of India has redrafted the section 8 of the Bill. It is reproduced here as under:

**8- Offence Relating to Bribing a Public Servant**- Any person who-

a. offers, promises or gives an undue advantage to another person, and intends such undue advantage-

(i) to induce a public servant to perform improperly a public function or activity; or
(ii) to reward such public servant for the improper performance of such public function or activity; or

b. offers, promises or gives an undue advantage to a public servant and knows or believes that the acceptance of such undue advantage by the public servant would itself constitute the improper performance of a public function or activity, shall be punishable with imprisonment which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

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

**Illustration for sub-section (a):** A person, 'P' gives a public servant, 'R' Rs. 10,000 to ensure that he is granted a license, over all the other bidders. P is guilty of an offence under this sub-section.

**Illustration for sub-section (b):** A person 'P' goes to a public servant, 'R' and offers to give him Rs. 10,000 to process his routine ration card application on time. P is guilty of an offence under this sub-section.

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

(2) Nothing in sub-section (1) shall apply to a person, if that person has, after informing a law enforcement authority or investigation agency, offered or given 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 latter.

**Explanation:** - For the avoidance of doubt it is hereby clarified that the phase "another person" in this sub-section shall include a person being, or expecting to be, a public servant.
treated on same footing. During the Standing Committee's interaction with many stakeholders/NGOs it was suggested that consensual and harassed bribery need to be distinguished and should not be treated on same footing. In this regard, the committee has received the number of suggestions.\textsuperscript{167} Some of them are as follow:

i. Punishment in collusive bribery should be made double from other coercive cases of bribery.

ii. Burden of proof should be on the accused in case of collusive bribery.

iii. Concept of plea bargaining should be available to bribe giver who is a victim of extortionary bribery.

iv. Section 24 of the PC Act should be retained so that the bribe giver could feel free to cooperate with anti corruption bureau for laying of trap to catch alleged corrupt public servants. Deletion of Section 24 would make difficult to lying of traps.

v. In case of coercive bribery, the quantum of punishment for bribe giver should be reduced as compared to bribe takers in view of the fact that the bribe is paid to get the service or job for which he/she has legitimate right.

The line between coercive and consensual bribery is very thin. There may be number of instances where a coercive bribery case may be turned into a case of consensual bribery to implicate the bribe giver. Coercive bribery mostly takes place at the lower level of administrative apparatus where services are delivered to the common man in India therefore, the coercive bribery occurring at any level need to be curbed. It is noted here that the proposed Bill of 2013 penalize the consensual bribery as well as coercive bribery on same footing. The Standing

\textsuperscript{167} The Department of Personnel and Training (DOPT) in their response have submitted that the bribe giver in the consensual bribery, who is also equally beneficiary of the act of corruption, may resort to the route of protection given under Section 24 to escape the liability, if protection is given to bribe givers in coercive bribery. It would be difficult to curb corruption without checking the supply side of corruption in both coercive as well as consensual bribery; See 69\textsuperscript{TH} Report of Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, para 20 at 24-25.
Committee has suggested\textsuperscript{168} for the protection of bribe giver in case of compelling emergent situation of coercive bribery.

It is pointed out by the Department of Personnel and Training that the intersection where the corporate entity interacts with the public servants provides a fertile ground feeding corruption.\textsuperscript{169}

**Corporate liability in bribe giving to public servant**

The proviso of Section 8 (1) of the 2013 Bill criminalizes the corporate bribery. The act of bribe giving to a public servant by commercial organization has been made an offence under proposed Bill and is punishable with fine. On the other hand Section 9 of the 2013 Bill deals with the failure of a commercial organization to prevent bribery.

Under the proposed Section 9 of the 2013 Bill, a commercial organization shall be guilty of a offence if any person associated with it offers or promises or gives any financial or other advantage to a public servant for the purpose to obtain or retain any business\textsuperscript{170} or he obtains or retains an advantage in conduct of business for such commercial organization.\textsuperscript{171} Further, the proviso to Section 9 of the 2013 Bill provides that it shall be a defence for the commercial organization to prove that it has put in place adequate procedures designed to prevent any person associated with it from undertaking the stipulated criminalized conduct. A person

\textsuperscript{168} It has inter-alia been suggested that bribe given in compelling emergent situation particularly in the case of hospitalization, protection may be provided to the briber givers as the he is compelled to pay bribe to save the life of an individual. The committee observes that the person who reports the matter of corruption to the anti-corruption agencies prior to offering bribe to the public servant has clear intention of not paying bribe and getting benefit out of it. He/she is rather cooperating with anti-corruption agencies to help the state to curb the demand of bribe by public servant and also be a part of lying of traps etc. Such types of individuals are although victim of bribe taker but help the state to curb corruption, therefore, they need to be protected by the state. The committee observes that the individuals who report the matter to state after payment of bribe in normal circumstances need not be protected whereas person who pays bribe in compelling emergent situation, the court may take decision based upon facts and circumstances of the case which could be laid down in the rules by Government; See 69\textsuperscript{th} Report of Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, para 22 at 25.

\textsuperscript{169} 69\textsuperscript{th} Report of Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, para 28 at 28.

\textsuperscript{170} According to Section 9 (3) (b) of the 2013 Bill “Business” includes a trade or profession or providing service including charitable service.

\textsuperscript{171} The Prevention of Corruption (Amendment) Bill, 2013, Section 9 (1) (a).
who offers an undue advantage to public servant for the purpose of Section 9 (1) (a) or (b) would also be guilty for an offence under Section 8, whether he has prosecuted or not for such offence.\(^{172}\) For the purpose of Section 8 and 9 the terms “commercial organization” mean\(^{173}\):

i. a body which is incorporated in India and carries on a business in India or abroad or;

ii. any other body which is incorporated outside of India but carries on a business in any part of India;

iii. a partnership firm or association of persons which is formed in India and carries on a business in India or abroad;

iv. any other partnership or association of persons which is formed outside India but carries on a business in any part of India.

A person is said to be associated with a commercial organization that performs services on behalf of such commercial organization.\(^{174}\) It does not matter that in which capacity he performs services on behalf of such commercial organization.\(^{175}\) He may be an employee, agent or subsidiary of such organization. Whether he is or not a person who performs services on behalf of the commercial organization it shall be decided by all relevant circumstances and not merely by the nature of relationship between them.\(^{176}\) It shall be presumed unless the contrary is proved that an employee of a commercial organization performs services on behalf of such commercial organization.\(^{177}\)

It is noted here that the proviso to Section 9 (1) of 2013 Bill provides a defence for the commercial organization that it had put in place adequate procedure to prevent corporate bribery. However, it does not require any obligation on the government to issue and publish guidelines in this regard.

\(^{172}\) Id., Section 9 (2).

\(^{173}\) Id., Section 9 (3) (a).

\(^{174}\) Id., Section 9 (3) (c).

\(^{175}\) Id., Section 9, explanation (1).

\(^{176}\) Id., Section 9, explanation (2).

\(^{177}\) Id., Section 9, explanation (3).
especially when the burden of proof has been put on the commercial organization\textsuperscript{178}. This provision will lead to an immediate and significant impact on the conduct of businesses, because they will not have any clarity on what is expected to them\textsuperscript{179}. This might also impede the efficient functioning of small business, which will not be able to determine the adequate standard for themselves\textsuperscript{180}. Therefore, Section 9 of the 2013 Bill should be amended to introduce a statutory obligation on the government to publish guidance and after sub-section (4) of Section 9; a new sub–section (5) should be added for this purpose\textsuperscript{181}. There is a strong apprehension that this provision can be used as an escape route by the commercial organizations. Moreover, even in U.K. and U.S. it is mandated to issue guidelines in this regard. The U.K. authorities have put in place a detailed guidance for such procedures to provide clarity and certainty which are listed below\textsuperscript{182}:

i. The principle of proportionate procedures.

ii. Top level commitment.

iii. Risk assessment.

iv. Due diligence.

v. Communications including training.

vi. Monitoring and review.

**Person in-charge of commercial organization**

In the proposed Bill, corporate bribery is made punishable only when it pertains to a public servant for the purpose of Section 9 (1) (a) and (b). Hence

\textsuperscript{178} Law Commission of India, \textit{supra} note 144 para 4.2.5 at 34.

\textsuperscript{179} \textit{Ibid.}

\textsuperscript{180} \textit{Ibid.}

\textsuperscript{181} The Law Commission of India in its 254\textsuperscript{th} Report has recommended that after sub-section (4) of Section 9; a new sub–section (5) should be added to the following effect:

“

The central government shall prescribe and publish guidelines about the adequate procedures, which can be put in place by commercial organization to prevent persons associated with them from bribing any person, being or expecting to be, a public servant.

Provided that such guidelines shall be prescribed and published by the central government after following a consultation process in which the views of all the interested stakeholders are obtained through public notice”.

\textsuperscript{182} The U.K. Law Commission, \textit{supra} note 152 para 6.108.
Section 9 is a distinct offence from Section 8. Further, Section 10 extends the liability of the commercial organization to every persons in charge of and responsible to the organization through a deeming provision\textsuperscript{183}. Thus it is clear that Section 10 pertains to Section 9 and is not connected to Section 8\textsuperscript{184}. It provides differing standards of how to treat corporate bribery within the same enactment\textsuperscript{185}.

Section 10 (1) of the 2013 Bill is a deeming provision. Under the proposed Section 10 (1) of the 2013 Bill it is provided that where a commercial organization is found guilty of an offence under Section 9, every person who at the time of commission of such offence was in charge and responsible to commercial organization for conduct of business shall be deemed to be guilty of such offence. Further, it is also proposed to provide under proviso of Section 10 (1) that if he proves that the offence was committed without his knowledge and he exercised due diligence to prevent the offence, he shall not be punished under Section 10 (1).

Under Section 10 (2) of the 2013 Bill it is proposed to provide that if an offence of Section 9 has been committed by the commercial organization with the consent or connivance or a negligence on the part of any director, manager, secretary or other officer of commercial organization then such director, manager, secretary or other officer shall also be deemed guilty and punished under this section.

The proposed Section 10 (1) of the 2013 Bill and Section 10 (2) with its elements of negligence are overly broad. For example, if an employee P of a company C, sitting in Bangalore bribes a local official R to get its clearance on time then the combined effect of the 2013 Bill is that P will be liable under Section 8; R under Section 7; and C under Section 9\textsuperscript{186}. Each and every responsible person, in charge or director of company C who may be sitting in

\textsuperscript{183} Law Commission of India, supra note 144 para 4.3.1 at 35
\textsuperscript{184} Ibid.
\textsuperscript{185} Ibid.
\textsuperscript{186} Id., para 4.3.2 at 35.
more than 2000 kms away shall be deemed to be punishable under Section 10 of the 2013 Bill\(^\text{187}\). Further, the punishment for vicarious liability to commercial organization is (civil liability) fine, whereas the punishment for in-charge of that organization is imprisonment with fine\(^\text{188}\). The punishment prescribed for commercial organization should be in addition to the punishment prescribed to individuals/associated with it and in-charge of the commercial organization\(^\text{189}\).

**Investigation of offences**

Under Section 17A it is proposed to provide that when an offence committed by a public servant is relatable to any recommendation made by or a decision taken by him in discharge of his official duties, the investigation shall not be conducted without the previous approval of Lokpal or Lokayukta as the case may be. In case of arrest of a public servant on spot on the charge of accepting any undue advantage, no such approval shall be necessary. The protection of proposed Section 17A (1) has extended to ex-public servants also.

**Confiscation and forfeiture of proceeds of bribery**

The Principal Act of 1988 does not specifically provide for confiscation and forfeiture of proceeds of bribery. Now, insertion of new Chapter IV A (Attachment and Forfeiture of Property) containing section 18A-18N is proposed. The Law Commission has recommended\(^\text{190}\) that the proposed Chapter IV-A should be deleted, but Standing Committee has appreciated\(^\text{191}\) it because the procedure for


\(^{188}\) *Ibid.*

\(^{189}\) *Id.*, The Law Commission of India in its 254th Report has redrafted Section 10 of the 2013 Bill as follows:

“10- Where an offence under Section 9 is committed by a commercial organization, and such offence is proved to have been committed with the consent or connivance of any director, manage, secretary or other officer of the commercial organization, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceed against and punishable with imprisonment which shall not less than three years but which may extend to seven years and shall also liable to fine”.

\(^{190}\) *Law Commission of India, supra note 144 para 8.1.8 at 45*

\(^{191}\) *69th Report of Standing Committee, supra note 169 para 27 at 28*
attachment and forfeiture in cases of corruption of public servants are covered under following three laws:

   i. The Criminal Law (Amendment) Ordinance, 1944
   iii. The Lokpal and Lokayukta Act, 2013

Conclusion

There are many confusing provisions in the Bill. The Law Commission of India has rightly pointed out the number of legislative unclarity of the Bill. Therefore the provisions of the Bill should be revisited by Parliament and appropriate step should be taken before amending the anti corruption law. The recommendations of Law Commission and Standing Committee as well as other stock holders should be taken into consideration for re enacting the anti corruption law.

Whistle Blower Protection Act, 2011

A statute for protection of whistle blower

Whistleblowers play a crucial role in providing information about corruption. Public servants who work in a department/agency know the antecedents and activities of others in their organization. They are, however, often unwilling to share the information for fear of reprisal. There is a very close connection between the public servant’s willingness to disclose corruption in his organization and the protection given to him and his/her identity. If adequate statutory protection is granted, there is very likelihood that the government would be able to get substantial information about corruption. The term “whistle blowing” itself is a relatively recent addition to our lexicon. In the united states in the post-Watergate era, after the trials and tribulations of Daniel Ellsberg, the man who “blew the whistle” on the so called “Pentagon papers” whistle blowing has not only been protected by statute but is also encouraged as an ethical duty on the part of the citizens. Furthermore, after the spectacular collapse of Enron and
WorldCom, the US Congress passed the Sarbanes-Oxley Act of 2002, granting sweeping protection to whistleblowers in publicly traded companies. Anyone retaliating against a corporate whistleblower can now be imprisoned for up to 10 years\(^{192}\).

Laws providing such protection exist in the UK, the USA, Australia and New Zealand. The UK Public Interest Disclosure Act, 1998, the Public Interest Disclosure Act, 1994 of Australia, the Protected Disclosure Act, 2000 of New Zealand, and the Whistle blowers Protection Act, 1984 of USA are legislations providing protection to whistleblowers. All these laws generally provide for preserving the anonymity of whistleblowers and safeguarding him/her against victimization within the organization\(^{193}\).

Freedom of speech and expression is a fundamental right given under the Article 19 (1) (a) of the Constitution. It is restricted right under the limitations given in article 19(2). This right also gives the power to raise the voice against the corruptions and oppressions done by the State. Corruption has become epidemic in India. Most time the corrupt practices are being done by the State agencies. State has enormous power contained with itself. The State by the use of these powers like police powers frightens the people not to go against the State. These pressures built techniques demoralize the people to fight against corruption. The Law Commission in its 179 Report has proposed a Public Interest Disclosure [Protection of Informers] Bill, which provides protection to whistleblowers. The Bill has provisions for providing safeguards to the whistleblowers against victimization in the organization. It also has a provision that the whistleblower may himself seek transfer in case he apprehends any victimization in the current position\(^{194}\). There was demand from the various civil societies to enact legislation

\(^{192}\) Second Administrative Reform Commission, 4\(^{th}\) report on ‘Ethics and Governance’ (June, 2006), para 3.6.1 at 77.

\(^{193}\) Id., para 3.6.2 at 78.

\(^{194}\) Id., para 3.6.3 at 78.
for the protection of these anti corruption bodies. The people or an organization that fights against the corruption is known as the whistleblower. This prolongs demand of the civil societies and people have been fulfilled by the legislature in the year 2014 when the Parliament has passed the Whistle Blower Protection Act, 2011. It got the assent of the President on 9 May, 2014. It is said that this new Act will play an important role for protecting and safeguarding to the whistleblowers.

**Concluding remarks**

There is steady decline of public standards, morals and ethics. The honesty cannot be merely infused by the law. To some extent, it can be infused by providing proper education of social values, moral values and ethical values to the common people in general and to the younger generation in particular. When in England Nolan Committee (Committee on Standards in Public Life) gave its first Report in 1995, it came under attack from members of House of Commons. Enoch Powell complained that the entire exercise has logically flawed. He said; “the trouble about Nolan Committee is that it was established to define the indefinable and reduce to a set of rules that which cannot be so treated”. The House of Commons expects its members to behave as a gentleman would behave; but to sit down and draw up a schedule of how a gentleman will behave is in the nature of the case not possible. If it were, we could be without gentleman. If “my honorable friend” or “the honorable member” is not honorable, no amount of regulation or supervision will make him so\(^\text{195}\). Historically, the very existence of state is for the protection of basic rights of human beings. Despite this, by criminalization of coercive bribery the state automatically will be in position to jeopardize the common man of India for their basic needs. Mostly, coercive bribery takes place at the lower level of administrative apparatus where services are delivered to the common man. For example, if a person gives bribe in compelling emergent

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situations such as in case of hospitalization he is compelled to pay the bribe to save the life of an individual he commits the offence of bribery. Even, bribe given due to ignorance or illiteracy having no intension of bribery is proposed to be made an offence of briery. The line between coercive bribery and consensual bribery is very thin. Moreover, the occurring of bribery should be prevented at every stage rather to punish the victim of it. Such type of individual is victim of briber takers and therefore they should be protected not punished. In this regard, The Right of Citizens for Time Bound Delivery of Goods and Services and Redressed of their Grievances Bill, 2011 should be enacted very soon. In that law the officer who is in charge of delivery of service would be liable in the case of failure of delivery of service within time limit prescribed by the state and would be punishable with fine which could be extended to Rs. 50,000. It will provide a tool to the common man to avail their basic rights within the legal framework, particularly when coercive bribery is proposed to be criminalized under the 2013 Bill. Definitely, there should be zero tolerance to consensual bribery but at the same time consensual and coercive bribery cannot be put on same footing.