

PREVENTION OF CORRUPTION ACT, 1947

2 of 1947

[11th March, 1947]

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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 a considerable time to come. Contracts are being terminated; large amounts of Government surplus stores are being disposed of; there will, for some years, be shortages of various kinds requiring the imposition of controls and extensive schemes of postwar reconstruction, involving the disbursements of very large sums of Government money, have been and are being elaborated. All these activities offer wide scope for corrupt practices and the seriousness of the evil and the possibility of its continuance or extension in the future are such as to justify immediate and drastic action to stamp it out. \The existing law has proved inadequate for dealing with the

problem which has arisen in recent years and the Bill is intended to render the Criminal Law more effective in dealing with cases of bribery and corruption of public servants."--Gaz. of Ind., 1946, Pt. V, page 374.

1. Short title, extent and duration :-

(1) This Act may be called THE PREVENTION OF CORRUPTION ACT, 1947,

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

³ [(3) * * * * *]

1. Substituted for the former sub-Section (2) by A.L.O., 1950 (26-1-1950).
2. Substituted for the words "except Part B States" by the Part B States (Laws) Act, 1951 (3 of 1951), S. 3 and Sch. (1-4-1951).
3. Sub-section (3) was omitted by the Prevention of Corruption (Amendment) Act, 1957 (7 of 1957), S. 2 (29-3-1957).

2. Interpretation :-

For the purposes of this Act, "public servant" means a public servant as defined in Section 21 of the Indian Penal Code, 1860 .

3. Offence under section 165A of the Penal Code to be cognizable offence :-

An offence punishable under ¹[* * *] ²[*[*] Section 165A of the Indian Penal Code, 1860] shall be deemed to be a cognizable offence for the purposes of Code of Criminal Procedure, 1898, notwithstanding anything to the contrary contained therein: ³ [* * * * *]

1. The words and figures "section 161 or section 165 or" were omitted by the Prevention of Corruption (Amendment) Act, 1955 (50 of 1955), S. 2 (w. e. f. 1-1-1956).
2. The words, figures and letter "or section 165A" were inserted by the Prevention of Corruption (Second Amendment) Act, 1952 (59 of 1952), S. 2 (12-8-1952).
3. Proviso was omitted, the Prevention of Corruption (Second Amendment) Act, 1952 (59 of 1952), S. 2 (12-8-1952).

4. Presumption where public servant accepts gratification other than legal remuneration :-

¹[(1)] Where in any trial of an offence punishable under section

161 or Section 165 of the Indian Penal Code, 1860 ,²[or of an offence referred to in clause (a) or clause (b) of sub-sec. (1) of Section 5 of this Act punishable under sub-section (2) thereof,] 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 the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate: ³[* * * * *]

⁴[(2) Where in any trial of an offence punishable under Section 165A of the Indian Penal Code, 1860 ,² [or under clause (ii) of sub-section (3) of section 5 of this Act,] 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 S.161 of the Indian Penal Code, 1860or, as the case may be. without consideration or for a consideration which he knows to (3) Notwithstanding anything contained in sub-sections (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.)

1. Section 4 was renumbered as sub-section (1) of that section by the Prevention of Corruption (Second Amendment) Act, 1952 (59 of 1952), S. 3 (12-5-1952).

2. Inserted by the Anti-Corruption Laws (Amendment) Act, 1964 (40 of 1964), S. 6 (18-12-1964).

3. Proviso was omitted by Act 59 Of 1952, S. 3.

4. Sub-sections (2) and (3) were Inserted,by Act 59 Of 1952, S. 3.

5. Criminal misconduct in discharge of official duty :-

(1) A public servant is said to commit the offence of criminal misconduct ¹[* * *]-

(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 61 of the Indian Penal Code, 1860 , or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

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

(d) if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; ²[or]

²[(e) if he, or any person on his behalf is in possession of or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.]

⁴[(2) Any public servant who commits criminal misconduct ¹[* * *], shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine: Provided that the Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.]

⁶[(3) Whoever habitually commits

(i) an offence punishable under section 162 or Section 163 of the Indian Penal Code, 1860 , or

(ii) an offence punishable under Section 165A of the Indian Penal Code, 1860 , shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine: Provided that the Court may, for any special reasons recorded in writing, impose a sentence

of imprisonment of less than one year.

(3A) Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3B) Where a sentence of fine is imposed under sub-section (2) or sub-section (3) the Court in fixing the amount of fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1), the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily."]

⁷ [(4) The provisions of this section 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 section, be instituted against him.]

OBJECTS AND REASONS Sub-sections (2) and (2A)-"Experience has shown that there is a tendency among the Courts to deal too leniently with public servants convicted under the Prevention of Corruption Act Even. where imprisonment is awarded, the period is frequently too small to have adequate punitive or deterrent effect and the amounts of fine imposed are frequently grossly incommensurate with the correct gains." These sub-sections "will result in ensuring that adequate punishment is awarded in cases of proved corruption."- S.O R. Gaz. of Ind., 1937. Extra., Pt. II, S. 2. page 929.

1. Words "in the discharge of his duties" omitted by the Anti-Corruption Laws (Amendment) Act., 1964 (40 of 1964), S. 6 (18-12-1964).

2. Inserted by the Anti-Corruption Laws (Amendment) Act., 1964 (40 of 1964), S. 6 (18-12-1964).

4. Sub-sections (2). (2A) were substituted for sub-section (2) by the Criminal Law Amendment Act, 1953 (2 of 1958). S.3 (27-2-1958).

6. Substituted for sub-sections (2A) and (3) by the Anti-Corruption Laws (Amendment Act 1964 (40 of 1964), S. 6 (2) (18-12-1954).

7. Substituted for original sub-section (4) by Prevention of Corruption (Second Amendment) Act, 1959 (58 of 1952), S. 4 (12-8-1952).

5A. Investigation into cases under this Act :-

1 .-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the presidency-towns of Calcutta and Madras, of an Assistant Commissioner of Police:

(c) in the presidency-town of Bombay, of a Superintendent of Police; and

(d) elsewhere, of a Deputy Superintendent of Police, shall investigate any offence punishable under section 161, section 165 or Section 165A of the Indian Penal Code, 1860 or undersection 5 of this Act without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant. Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant: Provided further that an offence referred to in clause (e) of sub-sec. (1) of section 5 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

(2) 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 sub-section (1) and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the person 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 therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this sub-section: Provided that no power under this sub-section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised to this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation.- In this sub-section, the expressions "bank" and "bankers' books" shall have the meanings assigned to them in the Banker's Books Evidence Act, 1891 ."]

1. Substituted for former section 5A by the Anti-Corruption Laws (Amendment) Act. 1964 (40 of 1964). S. 6 (3) (18-12-1964).

6. Previous sanction necessary for prosecution :-

¹[(1)] No Court shall take cognizance of an offence punishable under section 161²[or section 164] or Section 165 of the Indian Penal Code, 1860 or under sub-section (2) ³[or sub-section (3A)] of section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the ⁴[Union] and is not removable from his office save by or with the sanction of the Central Government ⁵[* *], ⁶[of the] Central Government:

(b) in the case of a person who is employed in connection with the affairs of ⁷[a State] and is not removable from his office save by or with the sanction of the State Government ⁵[* *], ⁶[of the] State Government:

(c) in the case of any other person, of the authority competent to remove him from his office.

10 [(2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or 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.]

1. Section 6 was renumbered as sub-section (1) of that section by the Prevention of Corruption (Second Amendment) Act. 1952 (59 of 1952). S. 5 (12-8-1952)

2. Inserted by the Prevention of Corruption (Amendment) Act. 1955 (50 of 1955), S. 3 (w. e. f. 1-1-1956).

3. Inserted by the Anti-Corruption Laws (Amendment) Act. 1964 (40 of 1964), S. 6 (4) 18-12-1964).

4. Substituted for the word "Federation" by A.L.O., 1950 (26-1-1950).

5. The words "or some higher authority" were omitted, by A.L.O., 1950 (26-1-1950).

6. Inserted by the Repealing and Amending Act, 1949 (40 of 1949), S. 3 and Sch. (1-5-1949).

7. Substituted for 'a Part A State' by the Part B States (Laws) Act, 1951 (3 of 1951), S. 3 and Sch. (1-4-1951).

10. Subsection (2) was inserted by Act 59 of 1952, S. 6

6A. Particulars in a charge in relation to an offence under sec. 5 (1) (c) :-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 1898, when an accused is charged with an offence under clause (c) of sub-section (1) of section 5, it shall be sufficient, to describe in the charge the property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Sec. 234 of the said Code: Provided that the time included between the first and last of such dates shall not exceed one year.]

7. Accused person to be competent witness :-

Any person charged with an offence punishable under section 161 or section 165¹ [or Section 165A of the Indian Penal Code, 1860 or under ² [* * *], section 5 of 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 on 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 questions 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.

1. Inserted by the Prevention of Corruption (Second Amendment) Act, 1952 (59 Of 1952), (12-8-1952).

2. Words "sub-section (2) of" omitted by the Anti-Corruption Laws (Amendment) Act, 1964 (40 of 1964), S. 6 (6) (18-12-1964).

7A. The Code of Criminal Procedure, 1898, to apply subject to certain modifications :-

The provisions of the Code of Criminal Procedure, 1898, shall, in their application to any proceeding in relation to an offence punishable under section 161, Section 165 or Section 165A of the Indian Penal Code, 1860 or under section 5 of this Act, have effect as if,-

(a) in sub-section (8) of section 251A , 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 Magistrate 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 (1A) of section 344, after the second 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 S. 435 has been made by a party to the proceeding";

(c) in sub-section (1) of S.435 of the Code Of Criminal Procedure, 1898, before the Explanation, the follow" Provided that where the powers under this sub-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 proceeding-

(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 proceeding may be made from the certified copies thereof; and in

any case, the proceedings, before the inferior Court shall not be stayed except for reasons to be recorded in writing,";

(d) after sub-section (2) of section 540A, the following sub-section had been inserted, namely:- "(3) Notwithstanding anything contained in sub-section (1) or sub-sec. (2), the Judge or Magistrate may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry 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."]

8. 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 section 161 or Section 165 of the Indian Penal Code, 1860 or under sub-section (2) ¹ [or sub-section (3A)] of section 5 of this Act, 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 165A of the said Code.] OBJECTS AND REASONS "Since the introduction of S.165A of the Indian Penal Code, 1860, persons offering illegal gratification to public servants have become more reluctant to come forward to give evidence. This is because on his own admission in Court such a person becomes liable for prosecution under that section. This section will afford the necessary protection to the person whose evidence has been utilised in Court for the prosecution of corrupt public servants."-S. O. R., Gaz. of Ind.. 1957, Extra, Pt. II, S. 2. page 929.

1. Inserted by the Anti-Corruption Laws (Amendment) Act, 1964 (40 of 1964), S. 8 (18-12-1964).