

Prevention Of Corruption (Amendment) Bill, 2013

Bill No. LIII Of 2013

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A BILL further to amend the Prevention of Corruption Act, 1988.

Prevention Of Corruption (Amendment) Bill, 2013

Bill No. LIII Of 2013

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

**1. Short title and commencement.**

(1) This Act may be called the Prevention of Corruption (Amendment) Act, 2013.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Amendment of section 5.**

In the Prevention of Corruption Act, 1988 [49 of 1988] (hereinafter referred to as the principal Act), in section 5, sub-section (6) shall be omitted.

### **3. Substitution of new sections for sections 7, 8, 9 and 10.**

For sections 7, 8, 9 and 10 of the principal Act, the following sections shall be substituted, namely:—

7. Offence relating to public servant being bribed.

(1) Any person, being, or expecting to be, a public servant who,—

(a) requests any person for, or obtains or agrees to receive or accepts or attempts to obtain from any person, any financial or other advantage, intending that, in consequence, a relevant public function or activity would be performed improperly either by himself or by another public servant; or

(b) requests for, or obtains or agrees to receive or accepts or attempts to acceptance or attempt itself constitutes the improper performance of a relevant public function or activity; or

(c) requests for, or obtains or agrees to receive or accepts or attempts to obtain, a financial or other advantage as a reward for the improper performance (whether by himself or by another public servant) of a relevant public function or activity; or

(d) performs, or induces another public servant to perform, improperly a relevant public function or activity in anticipation of or in consequence of requesting, agreeing to receive or accepting a financial or other 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.—It shall be immaterial whether—

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

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

Explanation 2.—It shall be immaterial, whether such person being, or

expecting to be, a public servant knows or believes that the performance of the public function or activity is improper or whether the public servant who is induced to perform improperly a relevant public function or activity knows or believes that the performance of the public function or activity is improper.

Explanation 3.—"Expecting to be a public servants" If a person not expecting to be in office agrees to receive or accepts or attempts to obtain from any person, any other financial or other advantage by deceiving such other person into 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 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 that person to give the public servant, any financial or other advantage as a reward for this service, the public servant has committed an offence under this section.

(2) For the purposes of this Act,—

(a) a function or activity is a public function or activity, if—

(i) the function or activity is of a public nature;

(ii) the function or activity is performed in the course of a person's employment as a public servant;

(iii) the person performing the function or activity is expected to perform it impartially and in good faith; and

(iv) the person performing the function or activity is in a position of trust by virtue of performing it;

(b) a public function or activity is performed improperly, if—

(i) it is performed in breach of a relevant expectation; and

(ii) there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation;

(c) "relevant expectation",—

(i) in relation to a public function or activity performed, means the performing of the public function or activity impartially or in good faith, as the case may be;

(ii) in relation to a public function or activity performed in a position of trust (by virtue of performing such function or activity), means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of such trust;

(d) anything that a public servant does, or omits to do, arising from or in connection with that person's past performance of a public function or activity shall be treated as being done, or omitted, by that person in the performance of that function or activity;

(e) the test of what is expected is a test of what a reasonable person in India would expect in relation to the performance of the type of public function or activity concerned.

8. Offence relating to bribing of a public servant.

Any person who—

(a) offers, promises or gives a financial or other advantage to another person, and intends such financial or other 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 a financial or other advantage to a public servant and knows or believes that the acceptance of such financial or other advantage by the public servant would itself constitute the improper performance of a relevant 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 organisation, such commercial organisations shall be punishable with fine.

Explanation.—It shall be immaterial whether the person to whom the financial or other 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 financial or other advantage is offered, promised or given by the person directly or through a third party.

9. Offence relating to bribing a public servant by a commercial organisation.

(1) A commercial organisation shall be guilty of an offence and shall be punishable with fine, if any person associated with the commercial organisation offers, promises or gives a financial or other advantage to a public servant intending—

(a) to obtain or retain business for such commercial organisation; and

(b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person offers, promises or gives a financial or other advantage to a public servant if, and only if, such person is, or would be, guilty of an offence under section 8, whether or not the person has been prosecuted for such an offence.

(3) For the purposes of section 8 and this section,—

(a) "commercial organisation" means—

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;

(iii) a partnership firm or any association of persons formed in India and which carries on a business (whether in India or outside India); or

(iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;

(b) "business" includes a trade or profession or providing service including charitable service;

(c) a person is said to be associated with the commercial organisation if, disregarding any offer, promise or giving a financial or other advantage which constitutes offence under sub-section (1), such person is a person who performs services for or on behalf of the commercial organisation.

Explanation 1.—The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2.—Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all 35 the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3.—If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who performs services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under section 8 and this section shall be cognizable. .

10. Person in charge of commercial organisation to be guilty of offence.

(1) Where a commercial organisation has been guilty of an offence under section 9, every person who at the time the offence was committed was in charge of, and was responsible to, the commercial organisation for the conduct of the business 45 of the commercial organisation shall be deemed to be guilty of the offence and 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 nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under section 9 has been committed by a commercial organisation and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the commercial organisation, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly under this section.

Explanation.—For the purposes of this section, "director", in relation to a firm, means a partner in the firm.<sup>1</sup>.

#### **4. Omission of section 11.**

Section 11 of the principal Act shall be omitted.

#### **5. Substitution of new section for section 12.**

For section 12 of the principal Act, the following section shall be substituted, 15 namely:—

"12. Punishment for abetment of offences defined in the Act.

Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine."

#### **6. Amendment of section 13.**

For sub-section (1) of section 13 of the principal Act, the following shall be substituted, namely:—

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

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

(b) if he intentionally enriches himself illicitly during the period of his office and, he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purpose of this section, "known sources of income" means income received from any lawful source.'

#### **7. Substitution of new section for section 14. Punishment for habitual offender.**

For section 14 of the principal Act, the following section shall be substituted, namely:—

"14. Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to ten years and shall also be liable to fine."

#### **8. Amendment of section 15.**

In section 15, for the words, brackets and letters "clause (c) or clause (d)", the word, 40 brackets and letter "clause (a)" shall be substituted.

#### **9. Insertion of new Chapter IVA.**

After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

CHAPTER IVA

ATTACHMENT AND FORFEITURE OF PROPERTY

18A. Definitions.

In this Chapter, unless the context otherwise requires,—

(1) "date of termination of criminal proceedings" means—

(a) where such proceedings are taken to the Supreme Court in appeal, whether on the certificate of a High Court or otherwise, the date on which the Supreme Court passes its final orders in such appeal; or

(b) where such proceedings are taken to the High Court and orders disposing of the proceedings are passed thereon and—

(i) no application for a certificate for leave to appeal to the Supreme Court is made to the High Court, the day immediately following the expiry of ninety days from the date on which the High Court passes its final orders;

(ii) an application for a certificate for leave to appeal to the Supreme Court has been refused by the High Court, the day immediately following the expiry of sixty days from the date of the refusal of the certificate;

(iii) a certificate for leave to appeal to the Supreme Court has been granted by the High Court, but no appeal is lodged in the Supreme Court, the day immediately following the expiry of thirty days from the date of the order granting the certificate; or

(c) where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last judgment or order of a special Judge in the proceedings;

(2) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in such property or assets.

18B. Application for attachment.

(1) Where any police officer authorised to investigate any offence under section 17 has reason to believe that any person has committed any offence under this Act and such person has procured money or other property by means of such offence, the Investigating Officer may, with the prior approval of the Central Government or the State Government, as the case may be, at any stage, whether or not any court has taken cognizance, move an application before the special Judge appointed under section 3 for attachment of the said money or property or if such money or property cannot, for any reason, be attached, other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) An application under sub-section (1) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the said person has committed any offence under this Act is founded and the amount of money or value of other property believed to have been procured by means of the offence.

(3) The application shall also furnish—

(a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person;

(b) the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.

#### 18C. Ad interim attachment.

(1) Upon receipt of any application under section 18B, the special Judge shall, unless for reasons to be recorded in writing, he is of the opinion that there exists no prima facie grounds for believing that the person in respect of whom the application is made has committed any offence under this Act or that such person has procured thereby any money or other property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of such person of equivalent value as the special Judge may think fit:

Provided that the special Judge may, if he thinks fit, before passing such order, and before refusing to pass such order, examine the person or persons making the affidavit accompanying the application.

(2) At the same time as he passes an order under sub-section (1), the special Judge shall issue to the person whose money or other property is being attached, a notice accompanied by copies of the order, the application, affidavits and of the evidence, if any, recorded, calling upon him to show cause why the order should not be made absolute.

(3) The special Judge shall also issue notices, accompanied by copies of the documents accompanying the notice under sub-section (2), to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section calling upon each such person to appear on the same date as specified in the notice under the said sub-section and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the special Judge at any time before an order is passed under sub-section (1) or sub-section (3), as the case may be, of section 18D.

#### 18D. Inquiry of objections to attachment.

(1) If no cause is shown and no objections are made under section 18C on or before the specified date in the notice issued under sub-section (2) of section 18C, the special Judge shall forthwith pass an order making the ad interim order of attachment absolute.

(2) If cause is shown or any objections are made under section 18C, the special Judge shall proceed to inquire the same and in so doing, as regards the examination of the parties and in all other respects he shall, subject to the provisions of this Chapter, follow the procedure and exercise all the powers of a court in hearing a suit under the Code of Civil Procedure, 1908 [5 of 1908] and any person making an objection under section 18C shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property



attached.

(3) After inquiry under sub-section (2), the special Judge shall pass an order either making the ad interim order of attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order:

Provided that the special Judge shall not—

(a) release from attachment any interest which he is satisfied that the person believed to have committed an offence under this Act, has in the property, unless he is also satisfied that there will remain under attachment an amount of the said person's property of value not less than that of the property believed to have been procured by the said person by means of the offence; or

(b) withdraw the order of attachment unless he is satisfied that the said person has not by means of the offence procured any money or other property.

18E. Attachment of property of mala fide transferees.

(1) Where the assets available for attachment of a person believed to have committed any offence under this Act are found to be less than the amount or value which he is believed to have procured by means of such offence, and where the special Judge is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said person has, after the date on which the offence is alleged to have been committed, transferred any of his property otherwise than in good faith and for consideration, the special Judge may by notice require any transferee of such property (whether or not he received the property directly from the said person) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the date specified in the notice under sub-section (1), or where after inquiry in the manner provided in sub-section (2) of section 18D, the special Judge is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the special Judge shall order the attachment of so much of the said transferee's property as is, in the opinion of the special Judge equivalent to the proper value of the property, transferred.

18F. Execution of orders of attachment.

An order of attachment of property under this Chapter shall be carried into effect, so far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908 for the attachment of property in execution of a decree.

18G. Security in lieu of attachment.

Any person whose property has been or is about to be attached under this Chapter may, at any time, apply to the special Judge to be permitted to give security in lieu of such attachment and where the security offered and given is in the opinion of the special Judge, satisfactory and sufficient, he may withdraw or, as the case may be,

18H. Administration of attachment.

(1) The special Judge may, on the application of any person interested in any

property attached under this Chapter and after giving the officer or any other person authorised in this behalf by the State Government or, as the case may be, the Central Government, an opportunity of being heard, make such orders as the special Judge considers just and reasonable for—

(a) providing from such attached property, as the applicant claims, an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for the expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in any court for the offence;

(b) safeguarding, so far as may be practicable, the interests of any business affected by the attachment, and in particular, the interests of any partners in such business.

(2) Where it appears to the special Judge to be just and convenient, he may, by order appoint a receiver to manage any property attached under this Chapter in accordance with such instructions as the special Judge may, from time to time, think fit to give and where a receiver is so appointed, the provisions of rules 2, 3, 4 and 5 of Order XL of the First Schedule to the Code of Civil Procedure, 1908 shall be applicable.

#### 18-I. Duration of attachment.

An order of attachment of property under this Act shall, unless it is withdrawn earlier in accordance with the provisions of this Act, continue in force—

(a) where no court has taken cognizance of the alleged offence at the time when the order is applied for, one year from the date of the order under sub-section (1) of section 18C or sub-section (2) of section 18E, as the case may be, unless cognizance of such offence is, in the meantime taken by the court, or unless the special Judge on application by the Investigating Officer showing reasons for non-completion of the investigation and if the Judge is satisfied that reasonable grounds exist, extends further period of attachment not exceeding six months;

(b) where a court has taken cognizance of the alleged offence whether before or after the time when the order of attachment of property is made by the court, until orders are passed by the special Judge in accordance with the provisions of this Act, upon the termination of the criminal proceedings in respect of the disposal of such property.

#### 18J. Appeals.

(1) The State Government or, as the case may be, the Central Government or any person who has shown cause under section 18C or section 18E or has made an objection under section 18C or has made an application under section 18G or section 18H, if aggrieved by any order of the special Judge under any of the foregoing provisions of this Chapter, may appeal to the High Court within thirty days from the date on which the order appealed against was passed.

(2) Upon any appeal under sub-section (1), the High Court may, after giving such parties as it thinks proper an opportunity of being heard, pass such orders as it thinks fit.

(3) Until an appeal under sub-section (1) is finally disposed of by the High Court, no

court shall, otherwise than in accordance with the provisions of section 18G or section 18L, pass any order in respect of the attachment of the property to which the appeal relates.

18K. Court to evaluate property procured by offence.

(1) Where before judgment is pronounced in any criminal trial for any offence under this Act, it is represented to the court that an order of attachment of property has been passed under this Chapter in connection with such offence, the court shall, if it is convicting an accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence.

(2) In any appeal or revisional proceedings against such conviction, the appellate or revisional court shall unless it sets aside the conviction, either confirm such finding or modify it in such manner as it thinks proper.

(3) In any appeal or revisional proceedings against an order of acquittal passed in a trial, such as, is referred to in sub-section (1), the appellate or revisional court, if it convicts the accused, shall record a finding, such as is referred to in that sub-section.

(4 ) Where the accused is convicted of any offence under this Act and where it appears that the offence has caused loss to more than one Government or authority or corporation or Government company referred to in sub-clause (iii) of clause (c) of section 2, the court shall, in the concerned finding referred to in the foregoing sub-sections, indicate the amount of loss sustained by each such Government or authority or corporation or Government company, as the case may be.

(5) Where the accused is convicted in the same trial of one or more offences specified under this Act, the court shall, in the concerned finding referred to in the foregoing sub-sections, indicate separately the amounts procured by means of the two classes of offences.

18L. Disposal of attached property upon termination of criminal proceedings.

(1) Upon the termination of any criminal proceedings for any offence under this Act in respect of which any order of attachment of property has been made under this Chapter or security given to in lieu thereof, the officer or any other person authorised by the State Government or, as the case may be, the Central Government in this behalf shall, without delay inform the special Judge, and shall where criminal proceedings have been taken in any court, furnish the special Judge with a copy of the judgment or order of the trying court and with copies of the judgment or orders, if any, of the appellate or revisional court thereon.

(2) Where it is reported by the officer or any other person referred to in sub-section (1) to the special Judge that cognizance of the alleged offence has not been taken or where the final judgment or order of the court is one of acquittal, the special Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned.

(3) Where the final judgment or order of the court is one of conviction, the special

Judge shall order that from the property of the convicted person attached under this Chapter or out of the security given in lieu of such attachment, there shall be forfeited to the Central Government or the State Government, as the case may be, such amount or value as is found in the final judgment or order of the court in pursuance of section 18K, to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the special Judge and where the final judgment or order of the court has imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the special Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or the security given in lieu of attachment.

(4) Where the amounts ordered to be forfeited or recovered under sub-section (3) exceed the value of the property of the convicted person attached, and where the property of any transferee of the convicted person has been attached under section 18E, the special Judge shall order that the balance of the amount ordered to be forfeited under sub-section (3) together with the costs of attachment of the transferee's property as determined by the special Judge shall be forfeited to the Government from the attached property of the transferee or out of the security given in lieu of such attachment, and the special Judge may order without prejudice to any other mode of recovery that any fine referred to in sub-section (3) or any portion thereof not recovered under that sub-section shall be recovered from the attached property of the transferee or out of the security given in lieu of such attachment.

(5) If any property remains under attachment in respect of any offence under this Act or any security given to in lieu of such attachment remains with the special Judge after his orders under sub-sections (3) and (4) have been carried into effect, the order of attachment in respect of such property remaining shall be forthwith withdrawn or, as the case may be, the remainder of the security shall be returned, under the orders of the special Judge.

(6) Every sum ordered to be forfeited under this section in connection with any offence under this Act shall, after deduction of the costs of attachment as determined by the special Judge, be credited to the Government or authority or corporation or Government company referred to in sub-clause (iii) of clause (c) of section 2 of the Act, to which the offence has caused loss, or where there is more than one such Government or authority or corporation or Government company, as the case may be, the sum shall after such deduction as aforesaid, be distributed among them in proportion to the loss sustained by each.

18M. Bar to other proceedings.

Save as provided in section 18J and notwithstanding anything contained in any other law,—

(a) no suit or other legal proceeding shall be maintainable in any court—

(i) in respect of any property ordered to be forfeited under section 18L, or which has been taken in recovery of fine in pursuance of an order under that section; or

(ii) while any other property is attached under this Chapter, in respect of such other property, by any person upon whom a notice has been served under section 18C or section 18E or who has made an objection under sub-section (4) of section

18C; and

(b) no court shall, in any legal proceeding or otherwise, pass any decree or order, other than a final decree to a suit by a person not being a person referred to in clause (a), which shall have the effect of nullifying or affecting in any way any subsisting order of attachment of property under this Chapter, or the right of the special Judge to hold security in lieu of any such order of attachment.

18N. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Chapter.’.

#### **10. Amendment of section 19.**

In section 19 of the principal Act, in sub-section (1),—

(i) for the words and figures "sections 7, 10, 11, 13 and 15", the words and figures "sections 7, 13 and 15" shall be substituted;

(ii) in clause (a), for the words "who is employed", the words "who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted;

(iii) in clause (b), for the words "who is employed", the words "who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted;

(iv) after clause (c), the following provisos shall be inserted, namely:—

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

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

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

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

Provided also that the appropriate Government or the competent authority, as the case may be, shall convey its decision under this sub-section within a period of three months, which may, for reasons to be recorded in writing by the appropriate Government or the competent authority, that the consultation with the Attorney General or the Advocate General, as the case may be, is required, be extended by a further period of one month."

## **11. Substitution of new section for section 20.**

For section 20 of the principal Act, the following section shall be substituted, namely:—

"20. Presumption where public servant accepts financial or other advantage or any valuable thing.

Where, in any trial of an offence punishable under section 7, it is proved that an accused person has accepted or obtained or has agreed to receive or attempted to obtain for himself, or for any other person, any financial or other advantage 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 financial or other advantage, as the case may be, intending that, in consequence, a relevant public function or activity would be performed improperly either by himself or by another public servant."

## **12. Omission of section 24.**

Section 24 shall be omitted.

## **13. Amendment of Ordinance.**

In the Criminal Law Amendment Ordinance, 1944, in the Schedule,— (i) paragraph 4A shall be omitted;

(ii) in paragraph 5, for the words, figures and letter "items 2, 3, 4 and 4A", the words and figures "items 2, 3 and 4" shall be substituted.

## **14. Amendment of Act 25 of 1946.**

In the Delhi Special Police Establishment Act, 1946, in section 6A, in sub-section (1), after the words "where such allegation relates to", the words "the persons who are or have been" shall be inserted.

## **STATEMENT OF OBJECTS AND REASONS**

The Prevention of Corruption Act, 1947 provides for prevention of corruption and for matters connected therewith. The ratification by India of the United Nations Convention Against Corruption, the international practice on treatment of the offence of bribery and corruption and judicial pronouncements have necessitated a review of the existing provisions of the Act and the need to amend it so as to fill in gaps in description and coverage of the offence of bribery so as to bring it in line with the current international practice and also to meet more effectively, the country's obligations under the aforesaid Convention. Hence, the present Bill.

2. The salient features of the Bill, inter alia, are as follows:—

(a) section 7 of the Act at present covers the offence of public servant taking gratification other than legal remuneration in respect of an official act. The definition of offence is proposed to be substituted by a new comprehensive definition which covers all aspects of passive bribery, including the solicitation and acceptance of bribe through intermediaries and also acts of public servants acting outside their competence;

(b) the Act at present does not contain any provisions directly dealing with active domestic bribery, that is, the offence of giving bribe. Section 12 of the Act which provides for punishment for abetment of offences defined in section 7 or section 11, covers the offence indirectly. Section 24 provides that a statement made by a bribe-giver in any proceeding against a public servant for an offence under sections 7 to 11, 13 and 15 of the Act shall not subject him to prosecution under section 12. Experience has shown that in a vast majority of cases, the bribe -giver goes scot free by taking resort to the provisions of section 24 and it becomes increasingly difficult to tackle consensual bribery. The aforesaid Convention enjoins that the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, be made a criminal offence. Accordingly, it is proposed to substitute a new section 8 to meet the said obligation;

(c) as the proposed new definitions of bribery, both as regards the solicitation and acceptance of undue advantage and as regards the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, are found to be comprehensive enough to cover all offences presently provided in section 8 which covers taking gratification, in order, by corrupt or illegal means, to influence public servant; section 9 which covers taking gratification, for exercise of personal influence with public servant; section 10 which provides for punishment for abetment by public servant of offences defined in section 8 or section 9; and section 11 which provides for public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant; and also the offences presently defined in clauses (a), (b) and (d) of sub-section (1) of section 13 of the Act which covers criminal misconduct by a public servant, it is proposed to omit the said sections;

(d ) it is proposed to substitute section 9 to provide punishment for the offence relating to bribing a public servant by a commercial organisation. A commercial organisation will be guilty of this offence if any person associated with it offers, promises or gives a financial or other advantage to a public servant intending to obtain or retain business or some advantage in the conduct of business for the commercial organisation. The proposed section 10 provides for punishment of persons in charge of a commercial organisation which has been guilty of the offence under the proposed section 9;

(e) section 12 at present provides for punishment for abetment of offences defined in section 7 or section 11. It is proposed to substitute section 12 of the Act to provide punishment for abetment of all offences under the Act;

(f) it is proposed to substitute sub-section (1) of section 13 with a new sub-section so as to omit the existing clauses (a), (b) and (d) of sub-section (1) as mentioned above; to incorporate the element of intentional enrichment in the existing clause (e) relating to possession of disproportionate assets by a public servant; and to modify the definition of "known sources of income" as contained in Explanation, to mean income received from any lawful source, that is, by doing away with the requirement of intimation in accordance with any law, rules or orders applicable to a public servant;

(g ) section 14 at present provides for habitual commission of offences under sections 8, 9 and 12. It is proposed to substitute section 14 of the Act to provide

punishment for habitual commission of all offences under the Act;

( h) the Prevention of Corruption Act, at present, does not specifically provide for the confiscation of bribe and the proceeds of bribery. A Bill, namely, the Prevention of Corruption (Amendment) Bill, 2008, to amend the Prevention of Corruption Act, 1988, providing, inter alia, for insertion of a new Chapter IVA in the Prevention of Corruption Act for the attachment and forfeiture of property of corrupt public servants on the lines of the Criminal Law (Amendment) Ordinance, 1944, was introduced in the Lok Sabha on 19th December, 2008 and was passed by the Lok Sabha on 23rd December, 2008. However, the said Bill lapsed due to dissolution of the Fourteenth Lok Sabha. It is proposed to insert similar provisions on the lines of the 2008 Bill in the Prevention of Corruption Act;

(i) the Prevention of Corruption (Amendment) Bill, 2008 had proposed an amendment to section 19 of the Act on the lines of section 197 of the Code of Criminal Procedure, 1973 for extending protection of prior sanction of the Government or competent authority after retirement or demittance of office by a public servant so as to provide a safeguard to a public servant from vexatious prosecution for any bona fide omission or commission in the discharge of his official duties. The said Bill having lapsed, this protection is, at present, not available for a person who has ceased to be a public servant. Section 19 is, therefore, proposed to be amended to provide the said protection to the persons who ceased to be public servants on the lines of the said Bill. Further, in the light of a recent judgment of the Supreme Court, the question of amending section 19 of the Act to lay down clear criteria and procedure for sanction of prosecution, including the stage at which sanction can be sought, timelines within which order has to be passed, was also examined by the Central Government and it is proposed to incorporate appropriate provisions in section 19 of the Act;

(j) section 6A of the Delhi Special Police Establishment Act, 1946 contains a protection of prior approval of the Central Government in respect of officers working at policy making levels in the Central Government before any inquiry or investigation is conducted against them by the Delhi Special Police Establishment. The basic principle behind the protection under section 19 of the Prevention of Corruption Act, 1988 and section 6A of the Delhi Special Police Establishment Act, 1946, being the same, namely, protection of honest civil servants from harassment by way of investigation or prosecution for things done in bona fide performance of public duty, it is felt that the protection under both these provisions should be available to public servants even after they cease to be public servants or after they cease to hold sensitive policy level positions, as the case may be. Accordingly, it is proposed to amend section 6A of the Delhi Special Police Establishment Act, 1946 for extending the protection of prior approval of the Central Government before conducting any inquiry or investigation in respect of offences under the Prevention of Corruption Act, 1988, to civil servants holding such senior policy level positions even after they cease to hold such positions due to reversion or retirement or other reasons.

3. The Bill seeks to achieve the above objectives.

ANNEXURE

EXTRACTS FROM THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)



\* \* \* \* \*

5.(1)\* \* \* \* \*

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

Ordinance, 1944.

\* \* \* \* \*

### CHAPTER III

#### OFFENCES AND PENALTIES

7. Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations.—(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(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.

8. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant,

whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

9. Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

10. Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

11. Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

12. Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

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

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows

to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

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

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

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

Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

\* \* \* \* \*

14. Whoever habitually commits,—

(a) an offence punishable under section 8 or section 9; or

(b) an offence punishable under section 12,

shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

15. Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

\* \* \* \* \*

## CHAPTER V

### SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

19. (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

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

\* \* \* \* \*

20. (1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

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

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

\* \* \* \* \*

24. 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.

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EXTRACTS FROM THE CRIMINAL LAW AMENDMENT ORDINANCE, 1944

\* \* \* \* \*

THE SCHEDULE

(See section 2)

Offences in connection with which property is liable to be attached

\* \* \* \* \*

4A. An offence punishable under the Prevention of Corruption Act, 1988.

\* \* \* \* \*

5. Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in items 2, 3 and 4.

\* \* \* \* \*

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EXTRACT FROM THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946

\* \* \* \* \*

6A. (1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of 49 of 1988. Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to—

(a) the employees of the Central Government of the level of Joint Secretary and above; and

(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

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