

# **THE PREVENTION OF CORRUPTION ACT, 1947**

**(ACT NO. 2 OF 1947)**

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# THE PREVENTION OF CORRUPTION ACT, 1947

(ACT NO. 2 OF 1947)

An Act for the more effective prevention of bribery and corruption.

WHEREAS it is expedient to make more effective provision for the prevention of bribery and corruption;

The Prevention of Corruption Act, 1947

It is hereby enacted as follows:—

**1. Short title and extent.-** (1) This Act may be called the Prevention of Corruption Act, 1947.

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

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

**3. Offences under Section 165 A of the Penal Code to be cognizable offences.-** An offence punishable under Section 165 A of the Indian Penal Code shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure, 1898 notwithstanding anything to the contrary contained therein.

**4. Presumption where public servant accepts gratification other than legal remuneration.-** (1) Where in any trial of an offence punishable under section 161 or Section 165 of the Indian Penal Code or of an offence referred to in clause (a) or clause (b) of sub-section (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.

(2) Where in any trial of an offence punishable under Section 165 A of the Indian Penal Code 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 Section 161 of the Indian Penal

Code, 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.

**5. Criminal misconduct in discharge of official duty-** (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 161 of the Indian Penal Code; 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 public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, 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.

(2) Any public servant, who commits criminal misconduct 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.

- (3) Whoever habitually commits :-
  - (i) an offence punishable under section 162 or section 163 of the Indian Penal Code, or

- (ii) an offence punishable under section 165 A of the Indian Penal Code, 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.

(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.

**5A. Investigation into cases under this Act.**— (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 or under Section 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-section (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 there from, 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 below the rank of a Superintendent of Police, unless he is specially authorised in 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 Bankers' Books Evidence Act, 1891.

**6. Previous sanction necessary for prosecutions.-** (1) No Court shall take cognizance of an offence punishable under Section 161 or Section 164 or Section 165 of the Indian Penal Code or under sub-section (2) 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 Union and is not removable from his office save by or with the sanction of the Central Government, of the Central 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 the State 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 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.

**6A. Particulars in a charge in relation to an offence under Section 5(1)**

(c)- Notwithstanding anything contained in the Code of Criminal Procedure, 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 a charge of one offence within the meaning of Section 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 169 or Section 165A of the Indian Penal Code, or under 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.

**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, 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 (1,1) of Section 3, 4, 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 Section 435 has been made by a party to the proceeding;

(c) in sub-section (1) of Section 435, before the Explanation, the following proviso had been inserted, namely :-

"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 subsection (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 given 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 or under sub-section (2) 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.