

Prevention of Corruption Act, 1988

[49 OF 1988*]

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

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

CHAPTER I

PRELIMINARY

Short title and extent.

- (1) This Act may be called the Prevention of Corruption Act, 1988.
- (2) It extends to the whole of India ¹[***] and it applies also to all citizens of India outside India.

Definitions.

2. In this Act, unless the context otherwise requires,—

- (a) “election” means any election, by whatever means held under any law for the purpose of selecting members of Parliament or of any Legislature, local authority or other public authority;
- ²[(a) “prescribed” means prescribed by rules made under this Act and the expression “prescribe” shall be construed accordingly;]
- (b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation.—In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617[†] of the Companies Act, 1956 (1 of 1956);

*Dated 9-9-1988.

1. Words “except the State of Jammu and Kashmir” omitted by the Jammu and Kashmir Reorganization Act, 2019, w.e.f. 31-10-2019.
2. Inserted by the Prevention of Corruption (Amendment) Act, 2018, w.e.f. 26-7-2018.

[†]Now see Section 2(45) of the Companies Act, 2013.

(c) “public servant” means—

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) any person in the service or pay of a local authority;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617[†] of the Companies Act, 1956 (1 of 1956);
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or Commissioner appointed by such court;
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617[†] of the Companies Act, 1956 (1 of 1956);
- (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any university and any person whose services have been availed of by a university or any other public authority in connection with holding or conducting examinations;
- (xii) any person who is an office bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner

[†] Now *see* Section 2(45) of the Companies Act, 2013.

established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1.—Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

³[(d) “undue advantage” means any gratification whatever, other than legal remuneration.

Explanation.— For the purposes of this clause,—

- (a) the word “gratification” is not limited to pecuniary gratifications or to gratifications estimable in money;
- (b) the expression “legal remuneration” is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.]

COMMENTS

SECTION NOTES

2.1 Public Servant [Section 2(c)]

- ◆ Section 2(c) gives an exhaustive definition of “public servant”.
- ◆ *Explanation 1* and *Explanation 2* below section 2 further clarify the definition.
- ◆ Public servant means a person falling under any of the 12 enumerated descriptions in the definition.
- ◆ One is a public servant only if one falls within any of the 12 categories/descriptions of public servants enumerated in the definition in section 2(c).
- ◆ persons falling under any of the 12 descriptions are public servants, whether appointed by the Government or not. [*Explanation 1*]
- ◆ every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation is a public servant. [*Explanation 2*]

CASE LAWS

- ◆ **Definition of ‘Public Servant’ Extended to Private Bank Employees** - In this case, the Supreme Court clarified that the definition of ‘public servant’ under the Prevention of Corruption Act, 1988, is broader than the definition under the Indian Penal Code and includes certain private sector roles. The respondent, Ramesh Gelli, an executive director in a private bank, argued he was not a public servant under section 2(c) of the Act. However, the Court ruled that the intent of the Prevention of Corruption Act is to cover a wider range of individuals in positions of trust and influence over public

3. Inserted by the Prevention of Corruption (Amendment) Act, 2018, w.e.f. 26-7-2018.

resources, thereby classifying executives in licensed private banking institutions as public servants under this Act for prosecution purposes. — *Central Bureau of Investigation v. Ramesh Gelli* AIR ONLINE 2023 SC 1261.

CHAPTER II

APPOINTMENT OF SPECIAL JUDGES

Power to appoint Special Judges.

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

- (a) any offence punishable under this Act; and
- (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a Special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973[†] (2 of 1974).

COMMENTS

SECTION NOTES

- ◆ Section 4(1) mandates that the following cases are triable by Special Judges only:
 - (a) any offence punishable under this Act;
 - (b) any conspiracy to commit any offence in (a) above;
 - (c) any attempt to commit any offence in (a) above; and
 - (d) any abetment of any offence in (a) above.
- ◆ This section empowers the Central Government or any State Government to appoint Special Judges.
- ◆ The power is to be exercised by notification in the Official Gazette.
- ◆ The government can designate Special Judges for specific geographical areas or specific cases or groups of cases as required.

STATE AMENDMENT

ARUNACHAL PRADESH

■ Section 3

In sub-section (2) after the words “Code of Criminal Procedure, 1973” the words “or a Deputy Commissioner preferably with legal background and sufficient judicial experience” shall be inserted.—[Vide *Arunachal Pradesh Prevention of Corruption (Amendment) Act, 1989, w.e.f. 6-6-1990.*]

[†] Now Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023).

Cases triable by Special Judges.

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

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

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

4[(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)†, the trial of an offence shall be held, as far as practicable, on day-to-day basis and an endeavour shall be made to ensure that the said trial is concluded within a period of two years:

Provided that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so:

Provided further that the said period may be extended by such further period, for reasons to be recorded in writing but not exceeding six months at a time; so, however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate.]

COMMENTS

SECTION NOTES

4.1 Exclusive Jurisdiction of Special Judges: [Sub-Section (1)]

- ◆ Section 4(1) mandates that the following cases are triable by Special Judges only:
 - (a) any offence punishable under this Act;
 - (b) any conspiracy to commit any offence in (a) above;
 - (c) any attempt to commit any offence in (a) above; and
 - (d) any abetment of any offence in (a) above.
- ◆ Section 4(1) overrides any other law, including the Code of Criminal Procedure, 1973 (now the Bharatiya Nagarik Suraksha Sanhita, 2023).

4.2 Jurisdiction Based on Location and Specific Appointment [Sub-section (2)]

- ◆ A Special Judge's jurisdiction typically aligns with the area in which the offence occurred.
- ◆ Alternatively, if a Special Judge is appointed for a particular case or group of cases, that Special Judge has exclusive jurisdiction over those cases.
- ◆ In areas with multiple Special Judges, the Central Government can specify which Special Judge will handle a particular case or group of cases.

4. Substituted by the Prevention of Corruption (Amendment) Act, 2018, w.e.f. 26-7-2018. Prior to its substitution, sub-section (4) read as under:

"(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a Special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis."

† Now Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023).