रजिस्ट्री सं॰ डी॰ एल॰—(एन)04/0007/2003—18 REGISTERED NO. DL—(N)04/0007/2003—18

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II — खण्ड 1
PART II — Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं॰ 28] नई दिल्ली, बृहस्पतिवार, जुलाई 26, 2018/ श्रावण 4, 1940 (शक)
No. 28] NEW DELHI, THURSDAY, JULY 26, 2018/SHRAVANA 4, 1940 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 26*th July,* 2018/*Shravana* 4, 1940 (*Saka*)

The following Act of Parliament received the assent of the President on the 26th July, 2018, and is hereby published for general information:—

THE PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2018

NO. 16 OF 2018

[26*th July,* 2018.]

An Act further to amend the Prevention of Corruption Act, 1988.

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

Short title and commencement.

1. (*1*) This Act may be called the Prevention of Corruption (Amendment) Act, 2018.

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

Amendment of section 2.

49 of 1988.

2. In the Prevention of Corruption Act, 1988 (hereinafter referred to as the principal Act), in section 2,—

(*i*) after clause (*a*), the following clause shall be inserted, namely:—

'(*aa*) "prescribed" means prescribed by rules made under this Act and the expression "prescribe" shall be construed accordingly;';

(*ii*) after clause (*c*), the following clause shall be inserted, namely:—

'(*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.'.

Amendment of section 4.

3. In section 4 of the principal Act, for sub-section (*4*), the following sub-section shall be substituted, namely:—

"(*4*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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: 2 of 1974.

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.''.

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

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

Offence relating to public servant being bribed.

''7. Any public servant who,—

(*a*) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(*b*) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(*c*) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,

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

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2.—For the purpose of this section,—

(*i*) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(*ii*) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

"7A. Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.

8. (*1*) Any person who gives or promises to give an undue advantage to another person or persons, with intention—

Offence relating to bribing of a public servant.

(*i*) to induce a public servant to perform improperly a public duty; or

(*ii*) to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committeed by commercial organisation, such commercial organisation shall be punishable with fine.

Illustration.—A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

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

(*2*) Nothing in sub-section (*1*) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the later.

9. (*1*) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending—

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

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

(*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 in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

(*2*) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under section 8, whether or not such person has been prosecuted for such 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;

(*c*) a person is said to be associated with the commercial organisation, if such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitutes an offence under sub-section (*1*).

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 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 has performed services for or on behalf of the commercial organisation.

(*4*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under sections 7A, 8 and this section shall be cognizable. 2 of 1974.

(5) The Central Government shall, in consultation with the concerned stakeholders including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary which can be put in place for compliance by such organisations.

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

10. Where an offence under section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer shall be of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.—For the purposes of this section, ''director'', in relation to a firm means a partner in the firm.''.

Amendment of section 11.

5. In section 11 of the principal Act,—

(*i*) in the marginal heading, for the words ''valuable thing'', the words ''undue advantage'' shall be substituted;

(*ii*) the words ''or agrees to accept'' shall be omitted;

(*iii*) for the words ''valuable thing'', the words ''undue advantage'' shall be substituted;

(*iv*) for the words ''official functions'', the words ''official functions or public duty'' shall be substituted.

Substitution of new section for section 12.

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

Punishment for abetment of offences.

"12. 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.".

Amendment of section 13.

7. In section 13 of the principal Act, for sub-section (*1*), 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 any property 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.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly 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 of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.—The expression ''known sources of income'' means income received from any lawful sources.".

Substitution of new section for section 14.

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

Punishment for habitual offender.

"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 five years but which may extend to ten years and shall also be liable to fine.".

Amendment of section 15.

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

Amendment of section 16.

10. In section 16 of the principal Act,—

(*a*) for the words, brackets and figures, "sub-section (*2*) of section 13 or section 14", the words, figures and brackets "section 7 or section 8 or section 9 or section 10 or section 11 or sub-section (*2*) of section 13 or section 14 or section 15" shall be substituted;

(*b*) for the word, brackets and letter "clause (*e*)", the word, brackets and letter "clause (*b*)" shall be substituted.

Amendment of section 17.

11. In section 17 of the principal Act, in the second proviso, for the words, brackets, letter and figure "clause (*e*) of sub-section (*1*)", the words, brackets, letter and figure "clause (*b*) of sub-section (*1*)" shall be substituted.

Insertion of new section 17A.

12. After section 17 of the principal Act, the following section shall be inserted, namely:—

Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.

"17A. (*1*) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

(*a*) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(*b*) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(*c*) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.''.

Insertion of new Chapter IVA.

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

'CHAPTER IV A

ATTACHMENT AND FORFEITURE OF PROPERTY

Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act.

18A. (*1*) Save as otherwise provided under the Prevention of Money Laundering Act, 2002, the provisions of the Criminal Law Amendment Ordinance, 1944 shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act. 15 of 2003. Ord. 38 of 1944.

(*2*) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 shall have effect, subject to the modification that the references to "District Judge" shall be construed as references to "Special Judge".'. Ord. 38 of 1944.

Amendment of section 19.

14. 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, 11, 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 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 and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding: 2 of 1974.

Provided further that in the case of request from the person other than a police officer or an officer of an investigation 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 any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, presecribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (*1*), the expression "public servant" includes such person—

(*a*) who has ceased to hold the office during which the offence is alleged to have been committed; or

(*b*) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.".

Substitution of new section for section 20.

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

Presumption where public servant accepts any undue advantage.

''20. Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11.".

Amendment of section 23.

16. In section 23 of the principal Act,—

(*a*) in the marginal heading, for the word, figures, brackets and letter "section 13 (*1*) (*c*)", the word, figures, brackets and letter "section 13 (*1*) (*A*)" shall be substituted;

(*b*) for the word, brackets and letter "clause (*c*)", the word, brackets and letter "clause (*a*)" shall be substituted.

Omission of section 24.

17. Section 24 of the principal Act shall be omitted.

Insertion of new section 29A.

18. After section 29 of the principal Act, the following section shall be inserted, namely:—

Power to make rules.

"29A. (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) guidelines which can be put in place by commercial organisation under section 9;".

(*b*) guidelines for sanction of prosecution under sub-section (*1*) of section 19;".

(*c*) any other matter which is required to be, or may be, prescribed.

(*3*) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the

rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.".

Amendment of Act 15 of 2003.

19. In the Prevention of Money Laundering Act, 2002, in Part A of the Schedule, for Paragraph 8, the following Paragraph shall be substituted, namely:—

"PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Section	Description of offence.
7.	Offence relating to public servant being bribed.
7A.	Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.
8.	Offence relating to bribing a public servant.
9.	Offence relating to bribing a public servant by a commercial organisation.
10.	Person in charge of commercial organisation to be guilty of offence.
11.	Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant.
12.	Punishment for abetment of offences.
13.	Criminal misconduct by a public servant.
14.	Punishment for habitual offender.".

———

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.

UPLOADED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI–110002
AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI–110054.

GMGIPMRND—1063GI(S3)—26-07-2018.

MANOJ KUMAR Digitally signed by MANOJ KUMAR Date: 2018.07.26 21:22:06 +05'30'