



Prevention Of Corruption Act, 1988

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Introduction

Corruption is one of the anti-social elements which exist in all the country from a long time. But now days the corruption is increased when compared to other countries in India.

The government in 1960 made a committee headed by K Santhararm . It gave its report in 1962 and it observed that corruption cannot be eliminated or reduced unless precautions taken and strict implications of rules and regulations to punish the offenders are effectively followed. Preventive measures shall include like in administrative legal, social, economic and educative measures. Based on these recommendations of the committee the central government set up Central Vigilance Commission in 1964 for looking into the cases of corruption against central government.

The government of India passed Prevention of corruption Act, 1988 to fight corruption and other malpractices in government and public sector business in India. In this act the central government has the power to appoint judges to investigate and try those cases which have been committed by the following offences like:

- Offences punishable under the act
- A conspiracy to commit or an attempt to commit the offences under the act.

The act came into force in September 1988

Who can do investigation in PCA?

Investigation should be done by a police officer not below the rank of :

1. An inspector of police, in case of Delhi
2. An assistant Commissioner of Police, in case of metropolitan areas
3. A Deputy Superintendent of Police or an office of equivalent rank shall investigate an offence punishable under this Act without the order of a metropolitan magistrate or a magistrate of first class or make any arrest without warrant.

Amendments to PCA, 1988

In 2013 and 2018 for two times the amendments have brought in PCA. **The purpose of amendment in 2013 are**

1. Bribery was made a punishable offence. And the person who was compelled to bribe should report the incident to the law enforcement within seven days shall not be charged under prevention of corruption act
2. A) illicit enrichment in amassing wealth disproportionate to one's income sources
B) Fraudulent misappropriation of property
These are the two offences which were amended under criminal misconduct
3. To conduct any investigation regarding any offences allegedly conducted by public cases was made amended to take prior approval of the relevant government. And if the offender has been arrested on the spot for taking bribes then this approval is not needed.
4. The limit to conduct trial case was fixed within two years if it is handled by a special judge. The total period for the trial should last only four years.

Amendment in 2018

1. Bribery is a specific and a direct offence
2. Anyone taking bribe can also be punished with imprisonment for three to seven years and along with a fine will be levied.
3. Anyone who give bribes can also be punished with imprisonment for upto seven years and fine will be levied.
4. It tried to protect those who have been forced to pay a bribe in the event the matter is reported to law enforcement agencies within seven days.
5. It redefines criminal misconduct and will now only cover misappropriation of property and possession of disproportionate assets.
6. It acted as shield for government servants including those retired from prosecution by making it mandatory for investigating agencies such as the CBI (Central Bureau of Investigation) to take prior approval from a competent authority before conducting an inquiry against them.
7. It also states that such permissions shall not be necessary for cases involving the 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.
8. The factor of "undue advantage" will have to be established against public servant in corruption case.
9. The bribe giving commercial organizations is liable for punishment or prosecution and charitable institutions have been left out of their ambit.
10. It provides powers and procedures for the attachment and forfeiture of a corruption-accused public servant's property.
11. The trial in corruption and bribery cases should be completed within two years, even after reasoned delays the trial cannot exceed four years.

Punishment and offences

Under section 7 to 16 in chapter III of PCA, 1988 deals with offences and penalties.

1. Taking gratification other than legal remuneration will be punished if found guilty for six months imprisonment and can be extended upto five years along with a fine will also be levied.
2. Taking gratification with the purpose of influencing a public servant, through illegal and corrupt means the punishment of imprisonment not less than three to seven years and a fine also are levied.

3. Taking gratification with the purpose of wielding personal influence with public servant the punishment will not be less than six months extendable upto five years and a fine will also be levied.
4. Act of criminal misconduct by the public servant the punishment of imprisonment not less than one year to seven years and a fine also be levied.

Powers of Special Judge

Under section 326 and 475 of the CRPC, deal with proceedings before a special judge and for purpose of the said provisions a special judge shall be deemed to be a magistrate. A special judge while trying any offence punishable under this Act, shall exercise all powers and functions exercised by a District Judge under the criminal law amendment ordinance, 1944. Procedure and powers of special judge are dealt under section 5 and 6 of PCA

1. A special judge may take cognizance of offences without the accused being committed to him for trial. And while trying the accused person it shall follow the procedure of CRPC for the trial of warrant cases by magistrates.
2. A special judge may with a view to obtaining the evidence of any persons supposed to have been directly or indirectly concerned in or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge, relating to the offences and to every other person concerned whether as principal or abettor the commission thereof and any pardon so tendered shall, for the purposes of sub-sections(1) to (5) of section 308 of the CRPC be deemed to have been tendered under section 307 of the code.
3. Save provided in sub-section(1) or sub-section (2) the provision of the CRPC shall so far as they are not inconsistent with this Act apply to the proceedings before a special judge and for the purpose of the said provisions the court of special judge shall be deemed to be a court of session and the person conducting a prosecution before a special judge shall be deemed to be a public prosecutor.
4. In particular and without prejudice to the generality of the provision contained in sub-section (3) the provisions of sections 326 and 475 of the CRPC,1973, shall, so far as may apply to the proceedings before a special judge and for the purposes of the said provisions, special judge shall be deemed to be a magistrate.
5. A special judge may pass upon any person convicted by him any sentence authorized by law for the punishment of the offence of which such person is convicted.
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

Cases trail by special judge

The PCA,1988 under section3 deals with the power to appoint judges and section 4 deals with case triable by special judges.

Under section 7 of the criminal law (Amendment) Act merely states that every offence shall be tried by the special judges for the area within which it was committed. So where only one special judge has been appointed for a particular area that judge alone and no other judge is competent to deal with the offence committed within the said area.

1. Notwithstanding anything contained in the CRPC,1973 or in any other law for the time being in for, 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 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 any offence specified in section 3 with which the accused may under the CRPC be charged at the same trial.
4. Notwithstanding anything contained in the code of CRPC,1973 a special judge shall as far as practicable, hold the trial of an offence on day to day basis.
5. Every offence mentioned in section 3(1) shall be tried by the special judge for the area within which it was committed.
6. The special judge has to hold the trial of an offence on day to day basis.
7. The special judge may also try any offence other than what is specified in section 3 which the accused may be under CRPC be charged at the same trial.
8. While complying with above stated offence it is to be seen that the CRPC is not bifurcated.

Important cases

1. 2G spectrum case

It is a telecommunication and a political scandal. In this scandal many politicians and government were involved. It was about the allocation of unified access service license. The former telecom minister A Raja had evaded the norms at every level and carried out the dubious 2Gscam in the year 2008. The telecom spectrum was allotted to private players through the spectrum auction which was allotted by UPA government at throw way prices to companies through corrupt and illegal means. On 21 December the special court in New Delhi after thorough examination of the case hearing what the CBI had to say and acquitted all accused in the 2G spectrum case including prime accused A Raja and Kanimozhi. The court ruled that this case was baseless. As per the judgment “ some people create a scam by artfully arranging a few selected facts and exaggerating things beyond recognition to astronomical levels. In 2018 the Enforcement Directorate and CBI filed appeals against the verdict of Delhi High court. In 2019 the defendants were given time to file their response on the appeal challenging their acquittal in the case and on October 2020, the high court will begin day to day hearings and later shifted to hearing on January 2021.

2. Ketan Desai

It is known as medical scam. The CBI recently arrested MCI (medical Council of India) former president Ketan Desai and three others under this act for allegedly accepting a bribe to permit Paitala based Gyan Sagar Medical College to recruit a fresh batch of students without having an adequate infrastructure. This happened during the UPA government was in power, when Mr Ketan desai was arrested who was the president of the world Medical association was suspended.

Conclusion

From this we know that the government of India has taken various steps in preventing the corrupt practice and passed many acts and legislations with regard to bring a strict control in the work place to accept or receive the bribe and person who give and receive also will be punished strictly. As it attracts to the offence of socio –economic white collar crime and disturb the harmony in the society and hinders the progress of the country.