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LEGISLATION TRACKER

Prevention of Corruption Act, 1988

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SUBJECTS COVERED

POLITY

CURATED & WRITTEN BY

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ACT NUMBER YEAR ENACTED

Act No. 49 of 1988 1988

REPLACES

Prevention of Corruption Act, 1947 and relevant provisions of the Indian Penal Code (Sections 161-165A)

KEY PROVISIONS

- 1 Definition of 'public servant' covering government employees, judges, elected representatives, and employees of public sector undertakings (Section 2(c))
- 2 Criminal misconduct by public servant including illicit enrichment and abuse of position (Section 13)
- 3 Taking gratification other than legal remuneration as an offence (Section 7)
- 4 Prior sanction required from competent authority before prosecution of public servants (Section 19)
- 5 Presumption of guilt where public servant accepts gratification (Section 20)
- 6 Attachment and forfeiture of property acquired through corruption (Section 18A — added by 2018 amendment)
- 7 Protection for bona fide complainants and whistle-blowers (Section 14 of 2018 amendment provisions)

BACKGROUND

The Prevention of Corruption Act, 1988 (PCA) is India's principal anti-corruption legislation targeting corruption among public servants. It consolidated and replaced the Prevention of Corruption Act, 1947 and repealed the anti-corruption provisions (Sections 161-165A) of the Indian Penal Code, 1860, bringing all corruption-related offences under a single statute.

Corruption has been a persistent governance challenge in India. The Santhanam Committee (1964) on Prevention of Corruption recommended strengthening anti-corruption laws and establishing vigilance machinery. Its recommendations led to the creation of the Central Vigilance Commission (CVC) in 1964 (given statutory status in 2003). The 1988 Act was enacted to widen the scope of anti-corruption law, tighten penalties, and simplify prosecution of corrupt public servants.

The Act underwent a significant overhaul through the Prevention of Corruption (Amendment) Act, 2018, which came into force on 26 July 2018. The 2018 amendment redefined criminal misconduct, introduced the offence of giving a bribe (making the bribe-giver also liable), required prior sanction even for retired officials (for acts during service), and provided for attachment and forfeiture of property obtained through corruption. The amendment was driven by India's obligations under the United Nations Convention against Corruption (UNCAC), which India ratified in 2011.

KEY CONCEPTS

- **Public Servant (Section 2(c)):** Any person in the service or pay of the government, or remunerated by the government for performance of any public duty. Includes employees of local authorities, government corporations, public sector undertakings, universities, cooperative societies, and any authority or body established by or under a Central, State, or Provincial Act. After the 2018 amendment, this also explicitly covers any person authorised by a court or tribunal.
- **Criminal Misconduct (Section 13):** After the 2018 amendment, criminal misconduct is defined as: (a) fraudulent misappropriation of property entrusted to a public servant, or (b) intentional enrichment illicitly during the period of office. The pre-2018 definition also included obtaining any valuable thing or pecuniary advantage by corrupt or illegal means, and abuse of position — these were narrowed by the amendment.
- **Undue Advantage (Section 2(d) — 2018 Amendment):** Any gratification other than legal remuneration. The term “gratification” is not limited to pecuniary gratification and includes all forms of payment, reward, or consideration.
- **Disproportionate Assets (Section 13(1)(b) post-2018):** Intentional enrichment illicitly during the period of office — when a public servant or any person on their behalf is in possession of pecuniary resources or property disproportionate to known sources of income, which the public servant cannot satisfactorily account for. The burden of proving that enrichment was not illicit is on the accused.
- **Prior Sanction (Section 19):** No court shall take cognizance of an offence under this Act alleged to have been committed by a public servant, except with the previous sanction of the competent authority. Post-2018, this protection extends to retired officials for acts committed during service, and the sanctioning authority must decide within 3 months (extendable to 4 months with reasons).

IMPORTANT PROVISIONS

- **Section 7 — Taking Undue Advantage:** Any public servant who obtains or accepts, or attempts to obtain, any undue advantage, with the intention to perform or cause performance of a public duty improperly or dishonestly, or to forbear or delay the performance of such duty, shall be punishable

with imprisonment of 3 to 7 years and fine.

- **Section 8 — Offence of Giving Bribe (2018 Amendment):** Any person who gives or promises to give an undue advantage to a public servant, intending to induce the public servant to perform a public duty improperly, shall be punishable with imprisonment up to 7 years, or fine, or both. Provided that a person compelled to give a bribe is not guilty if they report the matter within 7 days.
- **Section 9 — Commercial Organisation Offence (2018 Amendment):** If any person associated with a commercial organisation gives or promises an undue advantage to a public servant intending to obtain or retain business or gain an advantage, the commercial organisation is guilty of the offence, punishable with fine. Defence: the organisation had adequate procedures to prevent such conduct.
- **Section 13 — Criminal Misconduct:** (a) Fraudulently or dishonestly misappropriates or converts for own use any property entrusted — imprisonment 4 to 10 years with fine. (b) Intentionally enriches illicitly during the period of office — imprisonment 4 to 10 years with fine.
- **Section 17A — Prior Approval for Investigation (2018 Amendment):** No police officer shall conduct an 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 in the discharge of official functions, without previous approval of the competent authority (Central or State Government).
- **Section 18A — Attachment and Forfeiture (2018 Amendment):** Allows for attachment and forfeiture of property of a public servant and their associates that is prima facie acquired through corrupt means, on the basis of a complaint by a lawful authority. This was a new provision inspired by international anti-corruption conventions.

LANDMARK JUDGMENTS

- **P.V. Narasimha Rao v. State (CBI/SPE) (1998):** The Supreme Court (5-judge bench) held that Members of Parliament enjoy immunity from prosecution under the PCA for speeches and votes in Parliament under Article 105(2). This controversial ruling effectively shielded MPs involved in the JMM bribery case. **Overruled in 2024** — see Sita Soren v. Union of India below.
- **State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede (2009):** The Supreme Court held that for the offence of disproportionate assets, the prosecution must establish the period of check (the time frame during which income and expenditure are assessed) with precision, and the burden then shifts to the accused to satisfactorily account for the assets.
- **Neeraj Dutta v. State (NCT of Delhi) (2023):** A 3-judge Supreme Court bench clarified that the prosecution must prove demand and acceptance of illegal gratification as facts in issue for conviction under Section 7 (pre-amendment). The presumption under Section 20 is only an additional evidential

tool and does not replace the obligation to prove the foundational facts.

- **Subramanian Swamy v. Director, CBI (2014):** The Supreme Court struck down the “single directive” requiring prior government approval before CBI could investigate officials of the rank of Joint Secretary and above, holding it unconstitutional as it was not backed by any statutory provision. This was later legislatively addressed through Section 17A in the 2018 amendment.

RECENT AMENDMENTS / DEVELOPMENTS

- **Prevention of Corruption (Amendment) Act, 2018:** Landmark changes — redefined criminal misconduct (narrowed from 5 clauses to 2); criminalised bribe-giving (Section 8); introduced corporate liability (Section 9); extended prior sanction to retired officials; added property attachment provisions; introduced 3-month time limit for sanction decisions; provided protection for coerced bribe-givers who report within 7 days.
- **Sita Soren v. Union of India (March 4, 2024):** A 7-judge Constitution Bench unanimously overruled the 1998 P.V. Narasimha Rao ruling. The Court held that MPs and MLAs do NOT enjoy parliamentary immunity under Articles 105(2) and 194(2) for acts of bribery. This removed a major legal shield that had protected legislators who accepted bribes for voting in a particular way.
- **Supreme Court on Demand and Acceptance (2024-2025):** In multiple rulings, the Supreme Court clarified that the prosecution must independently prove demand for illegal gratification as a fact in issue — mere recovery of money does not complete the chain. The presumption under Section 20 is an additional evidential tool, not a substitute for proving foundational facts. The Court also held that preliminary inquiry is not mandatory before initiating a corruption case.
- **CVC and Lokpal:** The Lokpal and Lokayuktas Act, 2013 (Lokpal appointed in 2019 — Justice Pinaki Chandra Ghose as first Lokpal) works alongside the PCA to combat corruption at the highest levels. The Central Vigilance Commission (statutory status since 2003) exercises superintendence over CBI anti-corruption investigations.
- **Digital Governance and Transparency:** Initiatives like Direct Benefit Transfer (DBT), Government e-Marketplace (GeM), and mandatory Aadhaar-linked payments have reduced corruption avenues. DBT alone has saved over Rs 2.73 lakh crore (government estimate as of 2023) by eliminating intermediaries.
- **India’s UNCAC Compliance:** India ratified the United Nations Convention against Corruption in 2011. The 2018 PCA amendment was partly driven by UNCAC obligations. India’s compliance review was completed in 2023 under the UNCAC Implementation Review Mechanism.

UPSC RELEVANCE

PCA year (1988); what it replaced (PCA 1947 + IPC Sections 161-165A); Section 7 penalty (3-7 years); criminal misconduct under Section 13; prior sanction requirement (Section 19); 2018 amendment – bribe-giving as offence; first Lokpal (Justice P.C. Ghose, 2019); Santhanam Committee (1964). **Mains GS-2:** Evaluate the effectiveness of anti-corruption legislation in India – has the PCA succeeded in deterring corruption? Analysis of the 2018 amendment: does narrowing criminal misconduct weaken the law or reduce misuse? Role of Lokpal, CVC, and CBI in anti-corruption architecture. **Mains GS-4 (Ethics):** Ethical dilemmas in public service; conflict of interest; institutional integrity; whistleblower protection gaps; corporate ethics and Section 9 liability. **Interview:** “The 2018 amendment criminalised bribe-giving but also narrowed criminal misconduct. Has it made fighting corruption easier or harder? What would an ideal anti-corruption framework look like?”

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