

PUBLIC SERVANT DEFINITION UNDER PREVENTION OF CORRUPTION ACT 1988 - EVOLUTION SCOPE AND CHALLENGES

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Prevention of Corruption Act 1988 was enacted as a strong and effective machinery to prevent corruption among public servant. It replaced the earlier legislation, Prevention of Corruption Act 1947. Since both these legislations are exclusively to deal with corruption of public servants, it is very relevant to define the term 'public servant' explicitly for the better administration of the Act. 'Public servant' must be considered with a unique perspective in all anti-corruption laws, since being a public servant is the core deciding factor at the threshold of each one's liability.

Prevention of Corruption Act 1988: Evolution and History

As a consequence of various wars there was a scarcity of necessary goods, which had necessitated a post-war reconstruction by imposing certain controls and extensive schemes. Huge sums of money were entrusted with public servants in these programs. This wide discretion may have had enticed them to the glittering shine of wealth and property. The existing legislations including the provisions of the Indian Penal Code were found to be inadequate to deal with the growing menace of corruption. A Specific legislation exclusively to combat corruption was the need of the hour. Hence the Prevention of Corruption Act 1947 (herein after called PC Act) was enacted. The preamble of the Act clearly states that the Act has been passed for more effective control and prevention of bribery and corruption. Bribery is addressed as a form of corruption which is rampant among public servants. On the other hand, the Act does not define the term 'public servant' even if 'public servants' alone will fall under the purview of the mischief in this Act. For the purpose of the interpretation of the term public servant it has adopted the definition given under section 21 of IPC. In *State of M.P v M.V Narasimhan*¹, after considering the object of the legislation the Supreme Court had observed certain fundamental difference between the Indian Penal Code and the PC Act 1947. It was held that the PC Act 1947 was not in *pari materia* with IPC. PC Act 1947 is a self-contained statute with its own provision and created a specific offence of criminal misconduct, which was quite different from the offence of bribery as defined in the Indian Penal Code. The prevention of Corruption Act is a specific legislation intended to eradicate the evil of corruption among public servant whereas the penal code is a penal legislation which is wider and is

¹ AIR 1975 SC 1835

generally applicable. No doubt, the PC Act has contained certain penal provisions but it was in effect a social piece of legislation aiming at the eradication of corruption among public servant.

However the Prevention of Corruption Act 1947 was specially designed to prevent corrupt activities among public servant, it failed in its object. But in spite of the legislation the menace of corruption is going on increasing. The demand for a new legislation with much more stringent provisions to wipe out the evil of corruption was raised from various corners. In order to overcome the situation the government of India in the year 1962 appointed a committee under the chairmanship of Sri. K. Santhanam to study the functioning of the Act and suggest recommendations for better performance. The committee submitted its report in the year 1964.

The Committee found serious draw backs in the functioning of the Act and number of major changes were proposed. The Santhanam Committee report was a turning point in the history of anti-corruption laws in India. Based on the recommendations of the Santhanam Committee the present legislation Prevention of Corruption Act 1988 was enacted. It has incorporated the prevention of corruption Act 1947, the criminal law amendment Act 1952 and Sections 161-to 165-A of the Indian Penal Code with modifications. The new Act enlarged the scope of the definition of 'public servant' and amended the criminal law amendment Act 1944. A perusal of the statement of Objects and Reasons behind the enactment of the Prevention of Corruption Act 1988, reveals that the legislators wanted to amend the existing anti-corruption laws with a view to make them more effective by extending the scope and ambit of the definition of 'public servant' and bring within its sweep each and every person who hold an office by virtue of which he is required to perform any public duty. Thus the underlying idea was to eradicate the menace of corruption.²

Definition of the term 'Public Servant'

The definition of term public servant is significant in two aspects. The first aspect is, it is treated as the operating part of the legislation and the provisions of the Act is applicable only when the person booked under the prevention of corruption act is coming under the definition of public servant given in the Act. The second aspect is that the person booked under prevention of corruption Act comes within the ambit of the expression 'public servant' then he is entitled to enjoy the protection given under section 19 of the PC Act 1988. More clearly section 2(c) of the Prevention of Corruption Act 1988³ gives a wider interpretation to the term

² *L.K Advani v. Central Bureau of Investigation* 1997 Cri LJ 2559(Delhi).

³ Section 2(c) of Prevention of Corruption Act 1988, (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;
- (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;

public servant and made an attempt to cover maximum number of officials within its sweep. It will be helpful to punish the corrupt public officials by the provisions of the Act. On the other hand the Act guarantees a statutory protection to an honest public servant by introducing a special provision under section 19 of the Prevention of Corruption Act 1988 to demand a previous sanction from the competent authority in order to prosecute a public servant charged under the provisions of PC Act 1988.

The Prevention of Corruption Act 1988 - History of evolution and its object

Regarding the history of the legislation the Supreme Court⁴ has observed that during first and second war, corruption was rampant among public servants. Initially it was confined to the bureaucracy they get variety of opportunities to deal with financial and connected matters in the form of contracts licenses, grants etc. and it was observed that corruption rate was going on increasing and it spreads in all most all walks of life even after the end of the war. The existing laws and provisions of Indian Penal Code were found inadequate to curb the growing menace of corruption and situation demands a strong and effective legislation to prevent the evil of corruption which leads to the enactment of the prevention of corruption Act 1947. This act is a social piece of legislation designed to prevent corrupt activities among public servant and to punish them. The preamble of the legislation clearly mentioned that the Act has been passed for more effective prevention of bribery and corruption. . By the course of time it has been realized that present Act also was inefficient to prevent the growing menace of corruption.

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- (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 cooperative 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;
 - (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;
 - (xi) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner 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.
 - (xii) 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.

⁴ *State of M.P v Ram Singh*, AIR 2000 SC 870

Thus in the year of 1962, a committee was appointed by government of India under the chairmanship of Sri. K. Santhanam to study the functioning of the Act and to suggest recommendations for better performance. The committee submitted its report in the year 1964. The committee found serious draw backs in the functioning of the Act and number of changes were proposed. Based on the recommendations of the committee the prevention of corruption Act 1988 was enacted. It incorporated the PC Act 1947, the Criminal Law Amendment Act 1952 and sec .161 to 165-A of the Indian penal Code with modifications. The new Act enlarged the scope of the definition of the expression 'Public Servant' and amended Criminal Law Amendment Ordinance 1944. While replacing the 1947 Act by the new Act of 1988 the legislator wanted to make the provisions of the Act more effective and strong. In *Jayalalithaa v. Union of India*⁵ the Supreme Court clearly explains the urgency of legislation like PC Act 1988 in place of the old Act 1947 and held that it is aiming at speedy trial of offences punishable under the Act in public interest. In *L.K Advani v Central Bureau of Investigations*⁶ the Delhi High Court expressed its opinion that a perusal of the statement of Object and Reasons behind the enactment of the Prevention of Corruption Act 1988, reveals that the legislators wanted to amend the anti- corruption laws with a view to make them more effective by extending the scope and ambit of the definition of 'public servant' and to bring within its sweep each and every person who held an office by virtue of which he was required to perform any public duty. Thus the underlying idea was to eradicate the evil of corruption.

The definition of the expression public servant as envisaged under section 21 IPC. This provision contains 12 categories of persons expressly as public servants.⁷ However the

⁵ AIR 1999 SC

⁶ 1997 Cri LJ 2559 (Delhi)

⁷ S.21 IPC, The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:

1. ***
2. Every Commissioned Officer in the Military, Naval or Air Forces of India;
3. Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons. any adjudicatory functions;
4. Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;
5. Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;
6. Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;
7. Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
8. Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
9. Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;
10. Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

definition clearly stated that a judge is a public servant, every juryman, a panchayath member are specifically stated as public servants. Both Centre and state government employees are included within the definition. Though certain categories of persons are included in the definition, it excludes some important functionaries from the purview of the Act. There has been a lot of controversy as to whether an elected member of a legislative Assembly or an elected member of a parliament is public servant so as to invoke provisions of the PC Act 1947. In order to understand this issue it is better to go through observation of the honorable Supreme Court in *R. S Nayak v. A.R.Antulay*⁸. The constitution bench of the Supreme Court had traced the history of clause (12) of section 21 of IPC and observed that Indian penal code was a legislation enacted in the year 1860 and at that time there was no legislative assemblies as such hence the definition does not include an M L A within the ambit of the definition. In the present case the Supreme Court then considered the Legislative Bodies Corrupt Practices Act 1925 which was formed as per the recommendations of Reforms Enquiry Committee known as the Mudiman Committee. The committee unanimously held the view that corrupt activities of the members of the legislature should be made as penal offences under ordinary criminal law till then it was not an offence.

While tracing the history of section 21 of IPC the Supreme Court of India then observed that clause 12 was added in section 21 of IPC by the Criminal Law (Amendment) Act, 1958⁹. This provision also does not comprehend M.L.A within its reach.

The Supreme Court went on examining the Anti- Corruption (Amendment) Act 1964 to find out whether it contains any provision in its language or any expression so as to incorporate M.L.A in its consideration. It was noticed that clause 12 (a) of section 21 IPC explains as

- (i) If he is in the service of the Government; or (ii) he is in the pay of the Government or (iii) he is remunerated by fees or commission for the performance of any public duty by the Government. After a deep analysis of the language used in all categories of explanation the apex Court come to a conclusion that even though M.L.A receives pay and allowances, he is not in the pay of the state Government because of the M.L.A is not incorporated in concept of state government and further observed that no doubt the M.L.A performs a public duty for which he is remunerated and it is under the constitution not by the executive hence Supreme

11. Every person who holds any office in 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;

12. Every person

- a. in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;
- b. in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

⁸ [AIR 1984SC684]

⁹ “Every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central, provincial or state Act or of a Government Companies Act or of a Government Company as defined in S.617 of the Companies Act, 1956.

Court held that M.L.A was not a public servant within the scope of clause 12(a) of section 21 IPC similarly the Supreme Court rule out clauses (7) and (3) of section 21 IPC. Hence after examining the provision in different angles in *A.R. Antulay v R.S Nayak*¹⁰ the constitution bench of Supreme Court held that M.L.A was not a public servant within the meaning of the expression in clauses 12(a),(3),(7) of section 21 of IPC

In fact, it is the limitation of a Legislation enacted exclusively to address the wide spread corruption among public servant, even in this largest democratic country. There was no provision in the Prevention of Corruption Act 1947, to include elected representatives who are supposed to be more responsible and accountable to the people. Unfortunately, in a democratic pattern of society legislators were slipped away from the reach of the legislation only because of the defective definition of public servant which does not cover them.

Role of Santhanam Committee in the history of evolution of S.21 IPC

The Committee seriously considered the definition of public servant under section 21 of IPC, as it is the terms of reference. The Committee after a thorough study submitted its report in the year 1964. It had proposed number of major amendments in the existing legislation. The report of the Santhanam Committee was considered as the basic document in the evolution process of the anti-corruption laws in India. Regarding the definition of the term 'public servant' it had recommended three amendments in clauses 3, 9 and 12 of section 21 of IPC, so as to include the ministers of all rank of central and state level and parliamentary secretaries under the ambit of the definition. But the Committee had not recommended including "M.L.A" within the said definition.

Regarding the position of a Municipal councilor, the Supreme Court in *R.B. Kulkarni v State of Maharashtra*¹¹ decided the matter based on the following criteria, ie.

1. A public servant is an authority that must be appointed by government or a semi-governmental body whom should be in the pay or salary of the same.
2. A public servant is to discharge his duties in accordance within the rules and regulations made by the government.

On the basis of these two principles it was held that a Municipal councilor is a person elected by the people and functions undeterred by the commands or edicts of a governmental authority .The mere fact of payment of allowance by way of honorarium does not convert his status in to that of a public servant. And held that a municipal councilor could not be tried under the provisions of PC Act 1947

Thus in effect, these two judgments protect the elected representatives from the purview of the Act.

¹⁰ AIR 1988 SC 1531

¹¹ AIR 1985 SC 1655 at pp1655-1656

So the problem of corruption relating to elected representatives remains unresolved. Besides this the 1947 Act found wholly incapable of meeting the growing menace of corruption in public life. In this backdrop the Prevention of Corruption Act 1988 was enacted based on the recommendations of the Santhanam Committee report.

Changes introduced by the Prevention of Corruption Act 1988, in respect of the term public servant.

A major change was introduced by defining the term public servant in section 2(c) of the Prevention of Corruption Act 1988. The preamble and sections 30, 31 of the Prevention of Corruption Act 1988, makes it clear that the intention of the legislature was to consolidate and amend the law relating to the prevention of bribery and corruption among public servant in addition to this other newly added and enlarged provisions in clauses (ix), (x), (xi) and (xii) of section 2(c). It further extended the meaning and scope of the expression public servant by introducing the concept of “public duty”. The scope of the expression widens further more. “Public duty” means a duty in which the state, the public or the community at large has an interest. The definition now include the office-bearers of the registered co-operative societies receiving any financial aid from the government, or from a Government corporation or company, the employees of universities, Public Service Commissions and Banks etc within the definition public servant.

Controversy regarding whether an MLA is a public servant was again raised in *Habibulla Khan v State of Orissa*¹² and the special judge hold that MLA does not hold an office and also does not hold any public duty hence not a public servant within the limited meaning of clause (viii) of section 2(c) of the Act of 1988. According to the Orissa High Court, the two requirements to be satisfied to attract the above said provisions are (i) an MLA must hold an office of profit and (ii) he must perform public duty by virtue of that office. The High Court after considering various provisions in the constitution and provisions of Representations of the Peoples Act 1950 concerning the nature of work of an MLA held that an MLA is a public servant under PC Act 1988.

Subsequently in *L.K.Advani v Central Bureau of Investigation*¹³ was held by a single Bench of Delhi High Court MP is a public servant within the ambit of section 2(c) (viii) of the Act of 1988. A similar question was raised in *P V Narasimha Rao v State*¹⁴ the Supreme Court held that a MP is a public servant. In an earlier decision the Supreme Court held that a chief minister is a public servant¹⁵. Likewise in a number of judgments the Supreme Court by interpreting the term public servant and the term public duty brought a large group of officials within the scope of the prevention of corruption Act 1988. Thus a public prosecutor is a public servant¹⁶. In state of *Punjab v Karmal Singh* (2008(9) SCC114) the Supreme Court clearly

¹² 1993Cri LJ 3604(Ori)(DB)

¹³ AIR 1997 Cri LJ 2559(Delhi)

¹⁴ AIR 1998 SC 2120

¹⁵ *M. Karunanidhi v Union of India* AIR 1979 SC 898

¹⁶ *State of Maharashtra v Suresh Gopala Rao Gawali* 2008 Cri LJ (NOC) 292(Bom)

explained the essential ingredients necessary to constitute a public servant under prevention of corruption Act thereby do justice to the object of the legislation. It is important to note that the judiciary has played a prominent role in interpreting the term public servant in bringing the politicians and elected representatives within the purview of the legislation now the definition include employees of nationalised banks, railway employees, employees of state electricity board ,employees of public sector units ,university employees, employees of registered co-operative societies etc.

Thus it is concluded that the underlying idea behind the Act was to eradicate corruption, the object of the Act is laudable one. The meaning of public servant cannot be restricted so as to escape persons who are holding public office from the ambit of the legislation.

