

Prevention of Corruption Act (PCA)

August 22, 2019

Source: *The Hindu*

Manifest pedagogy:

The issue of corruption has cost-cutting linkages with various disciplines

1. Indian society- Corruption as a social issue
2. Indian Economy- Corruption as a development issue
3. Polity and governance- Related to Transparency and Accountability
4. Ethics

Hence one needs to prepare it holistically.

In news: Prosecution nod for 80 officials under Prevention of Corruption Act (PCA) pending

Static dimensions:

- Provisions under Prevention of Corruption Act (PCA), 1988
- Recent amendments to the act
- Sanction for prosecution clause
- 2nd ARC report recommendations on Sanction for prosecution clause

Current dimensions: What is the issue about?

Content: Sanction for the prosecution of over 80 public servants, including four IAS officials, under the Prevention of Corruption Act (PCA) is awaited from various government departments for the past over four months. Two cases are pending since 2013.

According to the Central Vigilance Commission (CVC), 47 such requests were pending for more than four months as on June 30, 2019. The maximum of seven requests were with the Department of Personnel and Training (DoPT), while five were with the Uttar Pradesh government.

According to the recently released CVC's annual report, sanction for prosecution in 108 cases was given by the government departments last year. The Commission has superintendence over function of the Central Bureau of Investigation. In 2018, as per its annual report, the CBI had registered 765 cases and 134 preliminary enquiries, compared to 939 cases and 137 enquiries in 2017.

Investigation was finalised in 611 cases and 109 enquiries, while 1,541 cases and enquiries were still under probe. The conviction rate during the year was 68% against 66.9% in 2017. At the end of the year 2018, 9,255 cases were pending in various courts.

Provisions under PCA, 1988:

The Prevention of Corruption Act, 1988 is an Act of the Parliament of India enacted to combat corruption in government agencies and public sector businesses in India.

- The Central and the State Government is empowered to **appoint Special Judges** to try the following offences:

- 1) Any offence punishable under this Act.
- 2) Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified under the Act.

A Special Judge, while trying any offence punishable under the Act, shall exercise all powers and functions exercised by a District Judge under the Criminal Law Amendment Ordinance, 1944

The following are the offences under the PCA along with their **punishments**:-

1. Taking gratification other than legal remuneration in respect of an official act, and if the public servant is found guilty shall be punishable with imprisonment which shall be not less than 6 months extendable up to 5 years and shall also be liable to fine.
2. Taking gratification in order to influence public servant, by corrupt or illegal means, shall be punishable with imprisonment for a term which shall be not less than three years extendable up to seven years and shall also be liable to fine.
3. Taking gratification, for exercise of personal influence with public servant shall be punishable with imprisonment for a term which shall be not less than six months extendable up to five years and shall also be liable to fine.
4. Any public servant, who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year extendable up to 7 years and shall also be liable to fine

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

- In case of Delhi, of an Inspector of Police.
- In metropolitan areas, of an Assistant Commissioner of Police.
- Elsewhere, of a **Deputy Superintendent of Police or an officer of equivalent rank** shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a magistrate of first class, or make any arrest therefore without a warrant.

2013 amendments to the act:

- Giving bribe was made a punishable offence. Person who is compelled to give bribe who reports matter to law enforcement authorities within seven days will not be charged with this offence.

- The criminal misconduct was amended to cover two types of offences viz. illicit enrichment (such as amassing of assets disproportionate to one's known income sources) and fraudulent misappropriation of property.
- It made mandatory for taking prior approval of relevant Government or competent authority to conduct any investigation into offences alleged to have been committed by a public servant. Such approval will not be necessary in cases that involve arrest of person on spot on charge of taking a bribe.
- Trial Time limit was fixed for period within two years if it is handled by special judge. The total period for completion of trial may not exceed four years

2018 amendments to the act:

- Giving bribe is a specific and a direct offence.
- Those convicted of taking bribes can be imprisoned for three to seven years besides being fined.
- Bribe-givers have also been included in the legislation for the first time and they can be punished with imprisonment for up to seven years, a fine or both.
- It makes a provision for providing protection to 'coerced' (forced to pay a bribe) bribe-givers if the matter is reported to the concerned law enforcement agencies within a week.
- It redefines criminal misconduct and will now only cover misappropriation of property and possession of disproportionate assets.
- It **proposes a 'shield' for government servants, including those retired, from prosecution by making it mandatory for investigating agencies such as the Central Bureau of Investigation to take prior approval from a competent authority** before conducting an enquiry against them.
- However, it 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.

- In any corruption case against a public servant, the factor of “undue advantage” will have to be established.
- The trial in cases pertaining to the exchange of bribes and corruption should be completed within two years. Further, even after reasoned delays, the trial cannot exceed four years.
- It covers bribe-giving commercial organisations to be liable for punishment or prosecution. However, charitable institutions have been left out of its ambit.
- It provides powers and procedures for the attachment and forfeiture of a corruption-accused public servant’s property.

Sanction for prosecution clause: Lack of Clarity

- Requirement of sanction to investigate certain public servants of the union government was introduced through a government notification.
- The **Criminal Procedure Code 1973 and the Prevention of Corruption Act 1988** provide that to prosecute a public servant, permission or sanction has to be secured from the government (central or state) for which the official works.
- Arguments that are often advanced in favour of such sanctions are that these ensure that (a) frivolous and vexatious cases are not filed, (b) public officials are not harassed, and (c) the efficacy of administrative machinery is not tampered with

Views of court

- In Vineet Narain vs. Union of India 1997, the government had argued that the Act instituting the CBI, Delhi Special Police Establishment Act 1946 (DSPE Act),

granted the power of superintendence, and therefore direction, of the CBI to the central government. The Court in this case struck down the requirement of sanction to investigate. It held that “supervision” by the government could not extend to control over CBI’s investigations. As for prosecution, the Court affixed a time frame of three months to grant sanction.

Government overturned it

- Following that judgment, the DSPE Act was amended in 2003, specifically requiring the CBI to secure a sanction before it investigated certain public servants.
- More recently, the Lokpal and Lokayukta Act ,2013 states that “No prosecution under the Act shall be initiated against any public servant accused of any offence alleged to have been committed by him in the discharge of his official duty, and no court shall take cognizance of such offence except with the previous sanction of the Lokpal.”
- And final nail in the coffin came up in the recent amendment to the PoCA act which **proposed a ‘shield’ for government servants, including those retired, from prosecution by making it mandatory for investigating agencies such as the Central Bureau of Investigation to take prior approval from a competent authority** before conducting an enquiry against them

2nd ARC recommendations on “Sanction for prosecution” clause:

a) Prior sanction should not be necessary for prosecuting a public servant who has been trapped red-handed or in cases of possessing assets disproportionate to the known sources of income. (**Not accepted** – Prior sanction would be necessary for prosecuting a public servant who has been trapped red-handed or in cases of possessing assets disproportionate to the known sources of income. However, in cases of entrapment, sanction

for prosecution should be given at the earliest, and in no case it should be more than 3 months from the date on which the prosecution sanction is sought)

(b) The Prevention of Corruption Act should be amended to ensure that sanctioning authorities are not summoned and instead the documents can be obtained and produced before the courts by the appropriate authority. **(Accepted)**

(c) The Presiding Officer of a House of the Legislature should be designated as the sanctioning authority for MPs and MLAs respectively. **(Not accepted** – All the matters related to electoral reforms or legislative issues are being addressed in a comprehensive manner in various other fora. Hence, it is decided that Govt. need not take any decision in this regard)

(d) The requirement of prior sanction for prosecution now applicable to serving public servants should also apply to retired public servants for acts performed while in service. **(Accepted)**.

(e) In all cases where the Government of India is empowered to grant sanction for prosecution, this power should be delegated to an Empowered Committee comprising the Central Vigilance Commissioner and the Departmental Secretary to Government. In case of a difference of opinion between the two, the matter could be resolved by placing it before the full Central Vigilance Commission. In case, sanction is required against a Secretary to Government, then the Empowered Committee would comprise of Cabinet Secretary and the Central Vigilance Commissioner. Similar arrangements may also be made at the State level. **(Not accepted** – Keeping in view the objective to extend prior protection to honest civil servants, the power to accord sanction may continue as per the present provision with the authority competent to remove him)