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Client/Matter: -None-
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Client/Matter: -None-
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Client/Matter: -None-

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Client/Matter: -None-

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Client/Matter: -None-

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Client/Matter: -None-

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Client/Matter: -None-

88. [\[s 229\] Personation of a juror or assessor.—](#)

Client/Matter: -None-

89. [\[s 229A\] Failure by person released on bail or bond to appear in Court.—](#)

Client/Matter: -None-

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K D Gaur: Textbook on Indian Penal Code, 7th ed

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The Indian Penal Code

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

9.1 Introduction.—Public servants¹ in a democracy governed by Rule of law play an important role in the administration as they are responsible for the implementation of the plans and policies of the government. Besides discharging administrative functions, a public servant in a welfare state is responsible for execution and implementation of various social and economic welfare schemes. For instance, public servants are entrusted with the arduous (difficult) job of distribution of wealth and other benefits to the public, such as rural employment guarantee schemes, allotments of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas, licences etc. from time to time.² If they are corrupt and dishonest, the welfare of the people will be greatly jeopardised and the administration of the country cannot run efficiently and effectively.

Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in

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the *Prevention of Corruption Act, 1988* under sections 7 to 12 of *Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is, out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (sections 166, 167, 168 and 169, *IPC*); and
- (ii) Offences committed by others, though relating to public servants (sections 170 and 171, *IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

Taking note of the gravity and seriousness of the problem the Apex Court has rightly observed in *Shri Ram Singh*¹¹ that,

Corruption in a civilized society is like cancer, which if not detected in time is sure to malign the polity of the country leading to disastrous consequences. It is termed as a plague, which are not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but also aimed and targeted at them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence in social, economic and political system in an otherwise healthy, wealthy, effective and vibrating society.

I. OFFENCES RELATING TO PUBLIC SERVANT UNDER *PREVENTION OF CORRUPTION ACT, 1988*

Prevention of Corruption Act, 1988: An Overview.—The *Prevention of Corruption Act, 1988* (Act No. 49 of 1988) replaced the earlier Act of 1947.¹² The Act envisages to make the anti-corruption law more effective by widening their coverage and by strengthening the provisions so as to make the law more effective in combating corruption rampant among public servants.

The Act of 1988 *inter alia* has widened the scope of the definition of the expression “public servant” in section 2(c) and incorporated the provisions of sections 161 to 165 A of the *Indian Penal Code* in sections 7 to 12 of the Act, enhanced the penalties for these offences and has incorporated the provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced.¹³ In order to expedite the proceedings, provisions for day-to-day trial of cases¹⁴ and prohibitory

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provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included in section 19 of the Act.

The *Prevention of Corruption Act, 1988* is a small Act consisting of 31 sections divided into five chapters. Chapter I is the Preliminary Chapter consisting of two sections. Section 1 gives the title and extent of the jurisdiction of the Act to the whole of India, except the state of Jammu and Kashmir, and section 2 is a definition clause. It defines “election”, “public duty”, and “public servant” in clause (a), (b) and (c) respectively.

Chapter II consists of four sections 3 to 6. It provides for appointment of Special Judges for trial cases triable by the Court, procedure and powers of Special Judge and power to try summarily under *section 6 of the Prevention of Corruption Act, 1988*.

Chapter III consisting of ten sections commencing from *sections 7 to 16 of the Prevention of Corruption Act, 1988*¹⁵ is most important chapter of the Act. It deals with the “Offences and Penalties” for taking illegal gratifications etc., by a public servant in respect of an official act. The punishment under the *Prevention of Corruption Act, 1988* has been enhanced with a provision for a minimum punishment in place of alternative punishment prescribed under the repealed provisions of the *Penal Code* under sections 161 to 165A and the illustrations attached to the sections have been omitted.

Chapter IV consists of two sections—17 and 18, which specify authority competent to investigate any offence punishable under the Act and to inspect banker’s books etc. It is under the said provisions that the Directorate of Income Tax, Central Bureau of Investigation (CBI) and other enforcement agencies are authorised to conduct raids, seize incriminating documents, materials, open and seal bank lockers leading to unearthing of millions of dollars, currency note and other valuables.

Chapter V (sections 19 to 31), which is the last chapter of the Act, provides for provision of sanction for prosecution of a public servant and its desirability, besides other miscellaneous provisions. Section 19(1) categorically states that ‘no court shall take cognizance of an offence punishable under sections 7, 10, 11 and 13 alleged to have been committed by a public servant, except with the previous sanction of the authority designated for this purpose as specified in clauses (a) to (c) of section 19(1) of the Act.

However, clause (3) to section 19 of the Act is a saving clause and provides that on the ground of irregularity of sanction, no finding of the court can be reversed. And no court can stay the proceedings because of irregularity in sanction or any other ground.

In cases of judges of the Supreme Court and High Court, sanction is not required after retirement. However, while in service, the President of India is the competent authority to grant sanction in consultation with the Chief Justice of India. In case the sanction relates to the prosecution of the Chief Justice of India, the President will consult other judges of the Supreme Court, for the purpose. A provision for appeal and revision is available to the High Court under *section 27 of the Prevention of Corruption Act, 1988*.

Since *sections 7 to 12 of the Prevention of Corruption Act, 1988* have incorporated *sections 161 to 165A of the Penal Code* both the provisions are discussed in order to give a correct perspective of law. Corresponding sections are discussed below in detail.

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[Rep. by the Prevention of Corruption Act, 1988 (49 of 1988), sec. 31 (w.e.f. 9-9-1988).]

Section 7 PCA: Public servant taking gratification other than legal remuneration in respect of an official act.—

Whoever, being or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government

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or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or government company referred to [in clause (c) of section 2,] or with any public servant, whether named or otherwise, shall be punishable with imprisonment [which shall be not less than six months out of which may extend to 5 years and shall also be liable to fine.]

Explanations.—(a) “Expecting to be a public servant”.—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) “Gratification”.—The word “gratification” is not restricted to pecuniary gratifications or to gratification estimable in money.

(c) “Legal remuneration”.—The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government [or the organisation] which he serves, to accept.

(d) “A motive or reward for doing”.—A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within [this expression.]

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus, induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

[s 161.1] Public servant taking gratification

Section 7 of the Prevention of Corruption Act, 1988 which is replica of *section 161, IPC¹⁶* makes taking of a gratification (bribe) by a public servant in discharge of his official transaction punishable with imprisonment which shall not be less than 6 months, but may extend to 5 years and fine. A comparison of *section 7, Prevention of Corruption Act*, and *section 161, IPC* would reveal that earlier punishment for asking illegal gratification was limited to 3 years of imprisonment or with fine or with both only. A new sub-clause (e) to *section 7 of the Prevention of Corruption Act, 1988* has been added to bring within its clutches the public servants who induce a person to make him believe that his influence in the Government has obtained a title for him and thereby induces him to give the public servant money or reward for the services.

The section provides punishment for the acceptance by a public servant of an illegal gratification or bribe as a motive or reward for doing or forbearing to do an official act, showing or forbearing to show, in the exercise of his official functions favour or disfavour to any person.

[s 161.2] Ingredients

To constitute an offence under *section 7 Prevention of Corruption Act, 1988* the following conditions must exist:—

- (1) The accused at the time of committing the offence was or expected to be a public servant;
- (2) that he accepted, or obtained, or agreed to accept, or attempted to obtain from some person a gratification;
- (3) that such gratification was not a legal remuneration due to him;
- (4) that he accepted the gratification in question as a motive or reward; and

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- (5) that he accepted the gratification by inducing a person erroneously to believe that his influence in the Government has obtained a title for him.

For

- (a) doing or forbearing to do an official act,
- (b) showing or forbearing to show favour or disfavour to someone in the exercise of his official functions, or
- (c) rendering, or attempting to render, any service or disservice to some-one, with the Central or any State Government, Parliament, or the legislature of any State or with any local authority, corporation or government company referred to in clause (c) of section 2 or with any public servant.¹⁷

Bhanu Prasad: In *Bhanu Prasad*,¹⁸ the Supreme Court held that to prove the charge under *section 7 Prevention of Corruption Act, 1988*, the prosecution has to establish, that (i) the accused was a public servant, and that (ii) he had obtained illegal gratification for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to a person.

However, according to *section 20 of the Prevention of Corruption Act, 1988*¹⁹ once the amount is found (i.e., gratification or valuable thing, etc.) in possession of the accused, the burden shifts on him to explain the circumstances to prove his innocence.²⁰ The provisions relating to presumption are applicable in respect of offences under sections 7 and 11, clause (a) and (b) of *section 13, Prevention of Corruption Act, 1988*. The term “shall be presumed” means that the court is bound to take the fact as proved until evidence is adduced to disprove it and the accused interested in disproving it must produce such evidence.²¹ The presumption under *section 20, Prevention of Corruption Act, 1988*, is not only applicable after a charge is framed against an accused,²² but is also applicable at the stage when the court is considering the question under *section 245(1) of the Code of Criminal Procedure, 1973*²³ whether, any case is made out against the accused or not.

In case the amount of alleged gratification is too trivial to infer a case of corruption, the court would not draw any presumption as contemplated under sub-sections (1) and (2) of *section 20 of the Prevention of Corruption Act, 1988* against the accused. It is not necessary that the act, for which the bribe is given, be actually performed. A representation by a public servant that he has done or he will do an act, impliedly includes a representation that it was or is within his power to do that act.²⁴ A mere demand or solicitation by a public servant amounts to the commission of the offence of illegal gratification.²⁵

[s 161.3] Public servant: Meaning

The term public servant, as explained in *section 21, IPC*²⁶ may be defined to signify any person duly appointed and invested with authority to administer any part of the executive power of the Government or to execute any other public duty imposed by law, whether it be judicial, ministerial or mixed. For instance, a person employed by a Railway owned and managed by the Government of India is a public servant within the meaning of *section 21, IPC*.²⁷

M Karunanidhi: In *M Karunanidhi v UOI*,²⁸ the Chief Minister was held to be a public servant within the meaning of *section 21(12)*.²⁹ However, it is noted that the said definition is not wide enough to include a number of persons who discharge public duty. As a result, many persons easily manage to escape from the purview of anti-corruption laws, though their acts are found in no way less reprehensible than those who fall within the category of public servants. For instance, it was held in *Antulay's case*³⁰ that MLA is not a “public servant”

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within the meaning of either clause (3) or clause (7) or clause (12) of *section 21, IPC* (as MLA is not in the pay roll of the State Government that is, Executive Authority).

Thus, in order to obviate such a difficulty *Prevention of Corruption Act, 1988* in clause (c) to section 2 has widened the meaning and scope of “public servant”³¹ in general and clause 2(c)(viii) in particular, to bring within its clutches all such persons who are required to perform any public duty. Not only, therefore, must the person hold an office, but he must be authorised or required by virtue of that office to perform or those who are engaged in performance of a “public duty” irrespective of the nomenclature of the person concerned.

[s 161.4] Public Duty

Public duty is defined by section 2(b)³² of the *Prevention of Corruption Act, 1988* to mean a duty in the discharge of which the state, the public or that community at large has an interest. In a democratic form of government, it is the Member of Parliament or the State Legislature who represent the people of his or her constituency in the highest lawmaking bodies at the Centre and State respectively. Not only is he or she the representative of the people in the process of making the laws that will regulate their society, he or she is their representative in deciding how the funds of the Centre and the State (including discretionary funds given to the MPs and MLAs for development works) shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest.³³

It is on this assumption that the Apex Court in *PV Narasimha Rao v State (CBI/SPE)*³⁴ held that MPs and MLAs are public servants *vide* section 2(c)(viii) of the *Prevention of Corruption Act, 1988*. The Apex Court's earlier ruling in *Antulay* is no more valid. The meaning of public servant in *Antulay*'s case was interpreted according to *section 21, IPC*, whereas in the *PV Narasimha Rao*'s case, the meaning of “public servant” has been interpreted *vide* section 2(c)(viii) of *Prevention of Corruption Act, 1988*: While defining public servant in *section 21, IPC*, emphasis is given on the concept of employment, that is, there must be an authority employing and an authority remunerating, whereas in section 2(c) of PCA, 1988 emphasis is laid on the concept of “public duty” as stated in section 2(b) of the Act.

Thus, in order to designate a person as a public servant, *vide* section 2(c) *Prevention of Corruption Act, 1988* the following conditions must be complied with:—

- (i) Whether the person is in the service or pay-roll of the Government, or
- (ii) Whether the person is remunerated by the Government by fees or commission; or
- (iii) Whether the person is entrusted with the performance of any public duty.

If any one of the above conditions is complied with, a person may be designated as a public servant irrespective of the nature of job to which one is entrusted with, whether it is of very excited character or is very humble. For instance, a judge of the Supreme Court as well as a peon of the court is a public servant within the meaning of section 2(c) of *Prevention of Corruption Act, 1988*.

[s 161.5] Being a public servant

A public servant remains a public servant so long as he can legally exercise the power.³⁵ A police constable is a public servant within the meaning of *section 7 of Prevention of Corruption Act, 1988*. It was held in the case of *Tarapada*,³⁶ that even if a public servant is on leave he will be treated on duty for the purposes of this section. Such leave counts as a duty and so long as a person is on duty, he must be deemed to be a public servant.³⁷ A person who *de facto* discharges the duties of a public servant is liable under the section.³⁸

[s 161] Public servant taking gratification other than legal remuneration in respect of an official act.—

[s 161.6] Gratification

To attract *section 7, Prevention of Corruption Act, 1988* a person must have received any gratification as a motive or reward for doing any official act. The word “gratification” is not defined in the section or the Code but its meaning can be ascertained from the *Explanation* clause (b) which says, “the word is not restricted to pecuniary gratifications, or to gratifications estimable in money.”

Thus, it is used in its wider sense to include within its ambit anything which affords gratification or satisfaction or pleasure to the taste, appetite or the mind. Money is, of course, an important source of affording pleasure, but there are many other objects which also come within the definition. The quest for an honorary distinction, or for sexual intercourse is an example of mental and bodily desires, the satisfaction of which is gratification not estimable in money. A person may desire to marry his son to another’s daughter, who may consent to the match on condition of some official favour by getting him a promotion. In short, gratification is any benefit or reward given to influence one in order to gain undue favour in his official transactions and induces one to act contrary to the rules of honesty and integrity. A sum of money, a valuable gift in marriage or birthday party, a holiday trip, etc., amount to a “gratification” within the meaning of the term, though the recipient may not be punishable on that account.

[s 161.7] Motive or reward

Receipt of any gratification alone does not constitute the offence. It must be accompanied with the motive or reward to do or forbear to do an official act. The word “motive” refers to a future act, while “reward” is intended to apply to past service, i.e., it is an act already accomplished. The section punishes the receiving of any gratification as a motive to do or a reward for having done any such thing. As given in the *Explanation* clause “a person may receive a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done.” The payment of a sum to a public servant by a person would be bribe whether paid before or after the official act has been done or some official favour has been shown. But if the money or other illegal gratification is not a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show favour or disfavour, such transaction will not amount to an offence described in *section 161, IPC* and *section 7, Prevention of Corruption Act, 1988*.

It is enough if the public servant who receives the money takes it by holding out that he will render assistance to the giver with any other public servant and the money is paid under that belief. The receiver of the money, though in fact he may not be in a position to render such assistance, nonetheless would be liable under this section. He may not even have intended to do what he holds himself out as capable of doing, nonetheless he is guilty of the offence under this section, as stated in the *Explanation* attached to the section.

A motive or reward may be received in any form and it may be called by any name; still it is a bribe if received under the promise or on the understanding of an official favour or disfavour. A public servant accepting anything other than a legal remuneration is punishable under this section. The demand of a *dasturi* or a customary due by a civil court peon from the complainant, if he wishes him to serve the summons without an identifier, is a bribe punishable under this section.³⁹

[s 161.8] Motive need not be corrupt or oppressive

To constitute a bribe, it is not necessary that the motive should be corrupt or oppressive or that the money received should have been appropriated by the receiver.⁴⁰ Even if the money is promised to an institution in return for the favour received from the office, it amounts to a bribe. The mere fact that there has been a show of consideration would not take the act out of the purview of the section. But the payment of money to an officer as a donation to a public institution in which the officer is interested, would amount to illegal gratification only, if the payment is made either as a motive for the officer showing a favour to the accused or as a reward for having already shown the favour.

[s 161] Public servant taking gratification other than legal remuneration in respect of an official act.—

A connection between the performance of an official duty and the demand or payment of gratification⁴¹ is *sine qua non* (essential condition of a bribe), i.e., an indispensable requisite or condition of liability. In the absence of any such connection the donation will not be treated as a bribe because it was offered independent of the doing of an official duty. No offence under *section 7, Prevention of Corruption Act, 1988* (repealed *section 161, IPC*) read with *section 114* can be said to have been established. But when an investment of Rs 100 in a war loan was placed by the clerk as a condition for forwarding an application for the renewal of a licence, this amounted to an offence under this section.⁴² Similarly, when a village clerk (*Lekhpal*) took money from a tenant who had received a *taqavi* (agricultural loan) in consideration of his having written out the necessary papers and given the necessary evidence to enable him to obtain the loan, which was part of his routine duty, the clerk was held liable for bribery.⁴³

A police sub-inspector *Tilak Prakash*,⁴⁴ who entered a house along with others and arrested gamblers and house owners, but later released them on payment of money, was held liable under this section for taking a bribe and not for house trespass or extortion.

Taking of a bribe by *Kishan Lal*⁴⁵ the clerk of a judge to influence him is an offence under this section. It is immaterial, whether, as a fact he did or did not influence the judge. The question in such cases is not what the receiver did, but what he professed to do, and what the payer believed he would do, upon which he made the payment.

[s 161.9] Official act

Abdul Aziz: In *Abdul Aziz*,⁴⁶ it was held that to invoke the section, illegal gratification must be obtained while engaged in discharge of official transactions and not otherwise. Thus, when two watchmen discovered a love affair between a widow and a goldsmith at whose shop she was seen by them at night, received money from the goldsmith for holding their tongue and thereby saving him from disgrace, it was held that, as the receipt of money was unconnected with the performance of any official act, the watchmen could not be convicted of bribery. The money was received in a private matter in no way connected with the performance of their official duty.

But a doctor, who receives a sum of money from an injured person for showing simple injuries as grievous in an injury report, is guilty under this section.

Vishnu Prasad: The accused, *Vishnu Prasad*,⁴⁷ a head constable, had gone to arrest K's husband. Since he was not available in the house he carried K to a place outside the village (*Abadi*) and accepted money from her for releasing her husband.

Held, that the accused was not guilty of offence under *section 161* (which now relates to *section 7 of Prevention of Corruption Act, 1988*). *Section 7* envisages the case of a person who obtains or accepts any gratification other than legal remuneration as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person. In the instant case the act of the accused in taking K from her house to a place outside the village (*Abadi*) was not an official act. Correctly speaking, it was an abuse of the official position of the appellant. In this way it can easily be said that the accused did not demand or obtain or accept the illegal gratification as a motive for doing or forbearing to do any official act or showing any favour to K in the exercise of his official functions. The accused had simply extorted the money.

[s 161.10] Cases

Shivji Lal: In *State of Ajmer v Shivji Lal*,⁴⁸ the accused, a teacher in a railway school was prosecuted under *section 161, IPC* (*section 7 Prevention of Corruption Act, 1988*) for taking illegal gratification of Rs 50 from a man on the promise of securing for him a job in the railway workshop where the accused said he had influence.

[s 161] Public servant taking gratification other than legal remuneration in respect of an official act.—

The court observed that in order to attract *section 7, Prevention of Corruption Act, 1988* the illegal gratification must be secured as a motive or reward

- (a) for doing or forbearing to do any official act, or
- (b) for doing or forbearing to show any favour or disfavour to anyone in the exercise of his official functions, or
- (c) rendering any service or disservice to anyone with the Government or with any other public servant as such.

This shows that for a charge under *section 7, Prevention of Corruption Act*, it does not suffice to prove that a public servant accepted money from another; it is further necessary to prove that the promise was to influence the Government generally or some other public servant.

Held, the accused was not liable under *section 161, IPC (section 7, Prevention of Corruption Act, 1988)* because the third ingredient mentioned in clause (c), premier to influence the public servant is government was neither alleged nor proved against the accused. All that had been proved was that he had taken money in order to get a job for another person somewhere and mere proof of that was not enough to sustain conviction under *section 161, IPC (section 7, Prevention of Corruption Act, 1988)*.

Mahesh Prasad: In *Mahesh Prasad v State of Uttar Pradesh*,⁴⁹ the Supreme Court observed that an offence under *section 161, IPC (section 7, Prevention of Corruption Act, 1988)* is committed, if the accused has obtained a bribe on giving a promise to secure any service or favour from any other public servant, even though he may not have named any particular officer to the complainant. On the other hand, if the promise has been only to secure a job, and there is no promise of influencing any public servant named or not named, an offence under *section 161, IPC (section 7, Prevention of Corruption Act, 1988)* is not committed.

JC Arora: In *State of Maharashtra v Jagatsing Charansing Arora*,⁵⁰ it was held that were a public servant is charged with taking a bribe as a reward for securing a job for a person in the very office in which he is working, it is not necessary that the charge must mention the other public servant who was to be approached. In such cases, it is enough to show that the money was obtained by the accused for securing the appointment applied for to bring the case under *section 161, IPC (section 7, Prevention of Corruption Act, 1988)*.

MD Gunaki: In *Mahadev Dhanappa Gunaki v State of Bombay*,⁵¹ the two appellants were charged and convicted under *section 116, IPC* read with *section 161, IPC (section 7, Prevention of Corruption Act, 1988)* and *section 34, Penal Code*, for having offered Rs 15,000 as an illegal gratification to a Police Inspector, Anti-Corruption Branch, in order that he should help them get an income tax inquiry against them dropped and that he should see that the account books attached by the anti-corruption police were returned to them.

Held, delay of two months between the first offer of a bribe and its ultimate acceptance cannot lead to any inference against the prosecution. The police authorities had per force to wait until the appellants made a further move in the matter. The police authorities cannot go out of the way and actively invite bribes in order to trap bribers. A public servant does not become *functus officio* as soon as he makes a report to his superior officer on the matter he is investigating. In other words, a public servant continues to hold his office, and has the capacity to show favour or to render a service, within the meaning of *section 161, IPC (section 7, Prevention of Corruption Act, 1988)*.

[s 161] Public servant taking gratification other than legal remuneration in respect of an official act.—

- 1 See *IPC*, section 21 for meaning of 'public servant'. Chapter II, *supra*.
- 2 *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].
- 3 See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.
- 4 Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by section 12 of the *Prevention of Corruption Act, 1988*.
- 5 See the *Prevention of Corruption Act, 1988*, section 13 dealing with the offences of criminal misconduct by a public servant.
- 6 Money involved Rs 5000 crore.
- 7 Money involved Rs 1600 crore.
- 8 Money involved Rs 1000 crore.
- 9 Money involved Rs 1000 crore.
- 10 Money involved Rs 65 crore.
- 11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]: 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].
- 12 *Prevention of Corruption Act, 1947*, which was amended twice; once by the *Criminal Law Amendment Act, 1952* and later in 1964 was found inadequate to tackle the problem of corruption rampant on a large scale amongst public servants that necessitated the enactment of *Prevention of Corruption Act 49 of 1988*, which came into force on 9 September 1988.
- 13 *Prevention of Corruption Act, 1988*, section 19(3)(a).
- 14 *Prevention of Corruption Act, 1988*, section 4(4). "...A Special Judge shall, as far as possible, hold the trial of an offence on day-to-day basis.
- 15 Relevant sections of PCA, 1988 repealing sections 161 to 165A, *IPC* which were before repeal as under:
 PCA, section 7 same as section 161, *IPC*, Public servant taking gratification other than legal remuneration in respect of an official act.
 PCA, section 8 same as section 162, *IPC*, Taking gratification, in order, by corrupt or illegal means, to influence public servant.
 PCA, section 9 same as section 163, *IPC*, Taking gratification for exercise of personal influence with public servant.
 PCA, section 10 same as section 164, *IPC*, Punishment for abetment by public servant of offences defined in section 8 or 9.
 PCA, section 11 same as section 165, *IPC*, Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.
 PCA, section 12 same as section 165A, *IPC*, Punishment for abetment of offences in section 7 or 11.
- 16 Section 161. Public Servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or

[s 161] Public servant taking gratification other than legal remuneration in respect of an official act.—

reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any local authority, corporation or Government company referred to in clause (2) of section 21, or with any public servant, as such, whether named or otherwise shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—“Expecting to be a public servant”. If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

“Gratification”.—The word “gratification” is not restricted to pecuniary gratifications, or to gratifications estimable in money.

“Legal remuneration”.—The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves, to accept.

“A motive or reward for doing”. A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations

(a) A, a Munsif, obtains from Z, a banker, a situation in Z's bank or A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b) A, holding the office of Consul in a Foreign State, accepts a lakh of rupees from the Minister of that State. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that State with the Government of India. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that State. A has committed the offence defined in this section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus, induces Z to give him money as a reward for this service. A has committed the offence defined in this section.

17 *Dalpat Singh v State of Rajasthan*, (1968) 2 SCJ 676 (678) : 1969 Cr LJ 262 (SC) : AIR 1969 SC 17 [[LNIND 1968 SC 44](#)] : (1968) 3 SCR 189 [[LNIND 1968 SC 44](#)].

18 *Bhanuprasad Hariprasad Deve v State of Gujarat*, AIR 1968 SC 1323 [[LNIND 1968 SC 119](#)] : 1968 Cr LJ 1505 : (1969) 1 SCR 22 [[LNIND 1968 SC 119](#)] . Draft Penal Code, Note E, pp 126-127; *Madan Mohan v State of Uttar Pradesh*, AIR 1954 SC 637 : 1954 Cr LJ 1656 .

19 *Section 20, PCA, 1988: Presumption where public servant accepts gratification other than legal remuneration.*—(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

20 *B Hanumantha Rao v State of Andhra Pradesh*, AIR 1992 SC 1201 [[LNIND 1992 SC 277](#)] : 1993 Supp (1) SCC 323 : (1992) 2 SCR 358 : 1992 CLR 342 .

21 *Public Prosecutor v A Thomas*, AIR 1959 Mad 166 [[LNIND 1957 MAD 79](#)] .

22 *RS Nayak v AR Antulay*, AIR 1986 SC 2045 : (1986) 2 SCC 716 [[LNIND 1987 SC 215](#)] : (1986) 2 SCR 621 : (1986) 2 SCJ 495 : 1986 CLR 266 .

23 *Section 245, CrPC, 1973* clause (1) states: “If, upon taking all the evidence referred to in section 244 (Evidence for Prosecution) the Magistrate considers, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him”

24 *Inder Dayaldas Advani v State of Bombay*, AIR 1952 Bom 58 [[LNIND 1951 BOM 64](#)] .

[s 161] Public servant taking gratification other than legal remuneration in respect of an official act.—

- 25** *Mubarak Ali v State of Madhya Pradesh*, AIR 1958 MP 157 [[LNIND 1957 MP 88](#)] .
- 26** See for text of section 21 commentary in Chapter II, *General Explanations*.
- 27** *SS Dhanoa v Delhi Municipality*, 1981 Cr LJ 871 : AIR 1981 SC 1395 [[LNIND 1981 SC 282](#)] : (1981) 3 SCC 431 [[LNIND 1981 SC 282](#)] : (1981) 3 SCR 864 : 1981 CLR 456 (SC) : 1981 CAR 206 . A goods clerk employed by a Railway Administration is a railway servant, within the meaning of section 3(6) of the Railway Act, 1890 and under section 137 of the said Act also a public servant for the purposes of the *Penal Code*.
- 28** 1979 Cr LJ 773 SC : AIR 1979 SC 898 [[LNIND 1979 SC 135](#)] : (1979) 3 SCC 431 [[LNIND 1979 SC 135](#)] : (1979) 3 SCR 254 [[LNIND 1979 SC 135](#)] .
- 29** Section 21(12) clause (a) states: "Every person—(a) in the service or pay of the Government or remuneration by fees or commission or the performance of any public duty by the Government."
- 30** *RS Nayak v AR Antulay*, AIR 1984 SC 684 [LNIND 1984 SC 43] : (1984) 2 SCC 183 [LNIND 1984 SC 43] : (1984) 2 SCR 495 [LNIND 1984 SC 43] : 1984 Cr LJ 613 : 1984 CAR 141 .
- 31** Section 2(c) of the *Prevention of Corruption Act, 1988* defines "public servant" thus:

(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 and 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 added by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 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;
- (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 (1 of 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;
- (xii) 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.

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.

- 32** Section 2(b) of the *Prevention of Corruption Act, 1988* defines 'public duty' thus:

(b) 'public duty' means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation.—In this clause 'State' includes 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 (1 of 1956).

- 33** *K Veeraswami v UOI*, (1991) 3 SCC 655 [[LNIND 1991 SC 320](#)] : (1991) 3 SCR 189 [[LNIND 1991 SC 320](#)] : 1991 Cr LJ 677 : (1992) 2 LLJ 53 [[LNIND 1991 SC 320](#)] : JT 1991 (3) SC 198 [[LNIND 1991 SC 320](#)] : (1991) 2 Scale 150 : 1991

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SCC (Cri) 734 ; *SS Dhanoa v Delhi Municipality*, 1981 Cr LJ 871 : AIR 1981 SC 1395 [[LNIND 1981 SC 282](#)] : (1981) 3 SCC 431 : (1981) 3 SCR 864 : 1981 CLR 456 (SC) : 1981 CAR 206 .

- 34 AIR 1998 SC 2120 [[LNIND 1998 SC 1259](#)] : 1998 (4) Supreme 1 : (1998) 4 SCC 626 [[LNIND 1998 SC 1259](#)] : 1998 Cr LJ 2930 : (1998) 1 SCJ 529 .
- 35 *Ajudhia Prasad v Emperor*, AIR 1928 All 752 (753).
- 36 *Superintendent and Remembrancer of Legal Affairs v Trapada Biswas*, AIR 1946 Cal 270 (271); *Venkatasubbiah Re*, AIR 1948 Mad 63 [[LNIND 1947 MAD 126](#)] (64).
- 37 *Queen v Ram Kristo Das*, (1871) 16 WR 27 (Cr).
- 38 *Pyari Mohan Das v Durga Shankar Das*, (1959) 14 E.L.R. 338 .
- 39 *Ratan Moni Dey v King Emperor*, 1905 ILR 32 Cal 292.
- 40 *Imperatrix v Appaji bin Yadavrao*, 1897 ILR 21 Bom 517.
- 41 *Crown Prosecutor v RK Pillai*, AIR 1948 Mad 281 [[LNIND 1947 MAD 69](#)] .
- 42 *BK Sen v Babu Rajeshwari Prasad*, AIR 1945 Pat 258 .
- 43 *Govt v Mahomed Hossein*, (1866) 5 WR 49 .
- 44 *Tilak Prakash Khullar v State of Haryana*, AIR 1979 SC 1820 : 1980 Supp SCC 68 : 1979 CLR 728 (SC) : 1979 Cr LJ 1120 : 1980 SCC (Cri) 131 : (1980) 1 SCC 124 . Held, a public servant (sub-inspector) entrusted with the duty to carry out investigation, if he demands a bribe, his conduct must be seriously deprecated and deserves no clemency.
- 45 *Kishan Lal*, 1904 ALJR 207.
- 46 *Empress v Abdul Aziz*, 1883 AWN 179.
- 47 *Vishnu Prasad v State of Uttar Pradesh*, 1981 Cr LJ 1489 ; *Dalpat Singh v State of Rajasthan*, (1968) 2 SCJ 676 : 1969 Cr LJ 262 (SC) : AIR 1969 SC 17 [[LNIND 1968 SC 44](#)] : (1968) 3 SCR 189 [[LNIND 1968 SC 44](#)] ; See *Hari Dev Sharma v State (Delhi Administration)*, AIR 1976 SC 1489 : (1977) 3 SCC 352 : 1976 CAR 201 : 1976 Cr LJ 1176 ; *Som Prakash v State of Delhi*, AIR 1974 SC 989 [[LNIND 1974 SC 21](#)] : (1974) 4 SCC 84 [[LNIND 1974 SC 21](#)] : (1974) 3 SCR 200 [[LNIND 1974 SC 21](#)] : 1974 Cr LJ 784 : 1974 CLR 216 (SC); In *Raghubir Singh v State of Punjab*, AIR 1979 SC 91 . Held, where a trap is laid for a public servant in a bribery case, it is desirable that the marked currency notes, which are used for the purpose of trapping, are treated with phenolphthalein powder (a special kind of powder used for trapping purposes) so that the handling of such marked currency notes by the public servant can be detected by chemical process and the court does not have to depend on oral evidence which is sometimes of a dubious character for the purpose of deciding the fate of the public servant.
- 48 AIR 1959 SC 847 [[LNIND 1959 SC 67](#)] : (1959) Supp (2) SCR 739 : 1959 SCJ 911 : 1959 Cr LJ 1127 : (1960) 1 LLJ 239 [[LNIND 1959 SC 67](#)] .
- 49 AIR 1955 SC 70 [[LNIND 1954 SC 148](#)] : (1955) 1 SCR 965 [[LNIND 1954 SC 148](#)] : 1955 SCJ 153 : 1955 Cr LJ 249 .
- 50 AIR 1964 SC 492 [[LNIND 1963 SC 181](#)] : (1964) 4 SCR 299 [[LNIND 1963 SC 181](#)] : (1964) 2 SCJ 215 : (1964) 1 Cr LJ 432 .
- 51 AIR 1953 SC 179 [[LNIND 1953 SC 15](#)] : 1953 SCJ 229 : 1953 Cr LJ 902 .

[s 162] Taking gratification, in order, by Corrupt or illegal means, to influence public servant.—

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The Indian Penal Code

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

9.1 Introduction.—Public servants¹ in a democracy governed by Rule of law play an important role in the administration as they are responsible for the implementation of the plans and policies of the government. Besides discharging administrative functions, a public servant in a welfare state is responsible for execution and implementation of various social and economic welfare schemes. For instance, public servants are entrusted with the arduous (difficult) job of distribution of wealth and other benefits to the public, such as rural employment guarantee schemes, allotments of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas, licences etc. from time to time.² If they are corrupt and dishonest, the welfare of the people will be greatly jeopardised and the administration of the country cannot run efficiently and effectively.

Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in

[s 162] Taking gratification, in order, by Corrupt or illegal means, to influence public servant.—

the *Prevention of Corruption Act, 1988* under sections 7 to 12 of *Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is, out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (sections 166, 167, 168 and 169, *IPC*); and
- (ii) Offences committed by others, though relating to public servants (sections 170 and 171, *IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

Taking note of the gravity and seriousness of the problem the Apex Court has rightly observed in *Shri Ram Singh*¹¹ that,

Corruption in a civilized society is like cancer, which if not detected in time is sure to malign the polity of the country leading to disastrous consequences. It is termed as a plague, which are not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but also aimed and targeted at them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence in social, economic and political system in an otherwise healthy, wealthy, effective and vibrating society.

I. OFFENCES RELATING TO PUBLIC SERVANT UNDER *PREVENTION OF CORRUPTION ACT, 1988*

Prevention of Corruption Act, 1988: An Overview.—The *Prevention of Corruption Act, 1988* (Act No. 49 of 1988) replaced the earlier Act of 1947.¹² The Act envisages to make the anti-corruption law more effective by widening their coverage and by strengthening the provisions so as to make the law more effective in combating corruption rampant among public servants.

The Act of 1988 *inter alia* has widened the scope of the definition of the expression “public servant” in section 2(c) and incorporated the provisions of sections 161 to 165 A of the *Indian Penal Code* in sections 7 to 12 of the Act, enhanced the penalties for these offences and has incorporated the provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced.¹³ In order to expedite the proceedings, provisions for day-to-day trial of cases¹⁴ and prohibitory

[s 162] Taking gratification, in order, by Corrupt or illegal means, to influence public servant.—

provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included in section 19 of the Act.

The *Prevention of Corruption Act, 1988* is a small Act consisting of 31 sections divided into five chapters. Chapter I is the Preliminary Chapter consisting of two sections. Section 1 gives the title and extent of the jurisdiction of the Act to the whole of India, except the state of Jammu and Kashmir, and section 2 is a definition clause. It defines “election”, “public duty”, and “public servant” in clause (a), (b) and (c) respectively.

Chapter II consists of four sections 3 to 6. It provides for appointment of Special Judges for trial cases triable by the Court, procedure and powers of Special Judge and power to try summarily under *section 6 of the Prevention of Corruption Act, 1988*.

Chapter III consisting of ten sections commencing from *sections 7 to 16 of the Prevention of Corruption Act, 1988*¹⁵ is most important chapter of the Act. It deals with the “Offences and Penalties” for taking illegal gratifications etc., by a public servant in respect of an official act. The punishment under the *Prevention of Corruption Act, 1988* has been enhanced with a provision for a minimum punishment in place of alternative punishment prescribed under the repealed provisions of the *Penal Code* under sections 161 to 165A and the illustrations attached to the sections have been omitted.

Chapter IV consists of two sections—17 and 18, which specify authority competent to investigate any offence punishable under the Act and to inspect banker’s books etc. It is under the said provisions that the Directorate of Income Tax, Central Bureau of Investigation (CBI) and other enforcement agencies are authorised to conduct raids, seize incriminating documents, materials, open and seal bank lockers leading to unearthing of millions of dollars, currency note and other valuables.

Chapter V (sections 19 to 31), which is the last chapter of the Act, provides for provision of sanction for prosecution of a public servant and its desirability, besides other miscellaneous provisions. Section 19(1) categorically states that ‘no court shall take cognizance of an offence punishable under sections 7, 10, 11 and 13 alleged to have been committed by a public servant, except with the previous sanction of the authority designated for this purpose as specified in clauses (a) to (c) of section 19(1) of the Act.

However, clause (3) to section 19 of the Act is a saving clause and provides that on the ground of irregularity of sanction, no finding of the court can be reversed. And no court can stay the proceedings because of irregularity in sanction or any other ground.

In cases of judges of the Supreme Court and High Court, sanction is not required after retirement. However, while in service, the President of India is the competent authority to grant sanction in consultation with the Chief Justice of India. In case the sanction relates to the prosecution of the Chief Justice of India, the President will consult other judges of the Supreme Court, for the purpose. A provision for appeal and revision is available to the High Court under *section 27 of the Prevention of Corruption Act, 1988*.

Since *sections 7 to 12 of the Prevention of Corruption Act, 1988* have incorporated *sections 161 to 165A of the Penal Code* both the provisions are discussed in order to give a correct perspective of law. Corresponding sections are discussed below in detail.

[s 162] Taking gratification, in order, by Corrupt or illegal means, to influence public servant.—

[Rep. by the Prevention of Corruption Act, 1988 (49 of 1988), sec. 31 (w.e.f. 9-9-1988).]

Section 8, Prevention of Corruption Act, 1988: Taking gratification, in order, by corrupt or illegal means, to influence public servant.—

Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, [whether named or otherwise,] to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government

[s 162] Taking gratification, in order, by Corrupt or illegal means, to influence public servant.—

or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or government company referred to in [clause (c) section 2] or with any public servant [whether named or otherwise] shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

[s 162.1] Gratification to influence public servant

Section 8, Prevention of Corruption Act, 1988 which is similar to *section 162, IPC*⁵² deals with the offence of a private individual taking a bribe or gratification to influence a public servant by corrupt or illegal means. The gist of the offence consists in receiving a gratification for himself or for any other person in order to improperly influence a public servant whether named or otherwise in discharge of his official transactions. The section is attracted even if the public servant does not accept the bribe.⁵³ For instance, where a sum of money was received by an accused to be delivered to the public servant as a bribe, but the accused did not deliver it to the public servant, the person was held liable under this section.⁵⁴

The acceptance of the gratification must be by corrupt or illegal means. Thus, when a person is simply a conduit or pipe line between the bribe giver and the bribe taker (i.e., public servant), the section is not attracted.

[s 162.2] Ingredients

To attract the section the following ingredients must exist:—

- (1) The accused accepted or agreed to accept, obtained or attempted to obtain for himself or anyone on his behalf, gratification.
- (2) The gratification was a motive or reward to induce a public servant by corrupt or illegal means to do, or forbear to do any official act, or to show any favour or render service to any person. The offence under this section is cognizable, non-bailable, non-compoundable and is triable by a special judge. The punishment which was up to 3 years of imprisonment, or fine, or with both under the repealed *section 162, IPC* has been enhanced up to 5 years imprisonment and fine with a minimum of six months of imprisonment.

The scope of the section has been enhanced in order to bring within the clutches of law even those public servants whose names have not been disclosed by adding “whether named or otherwise” and by substituting “clause (c) to section 2” in place of (section 21) as mentioned under *section 162, IPC*. The rest of the provisions of the repealed *section 162, IPC* have been retained under *section 8 of Prevention of Corruption Act, 1988*.

As a result the cases decided under the impugned section are relevant and applicable under the new provisions as well.

¹ See *IPC*, section 21 for meaning of ‘public servant’. Chapter II, *supra*.

[s 162] Taking gratification, in order, by Corrupt or illegal means, to influence public servant.—

- 2 *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].
- 3 See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.
- 4 Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by section 12 of the *Prevention of Corruption Act, 1988*.
- 5 See the *Prevention of Corruption Act, 1988*, section 13 dealing with the offences of criminal misconduct by a public servant.
- 6 Money involved Rs 5000 crore.
- 7 Money involved Rs 1600 crore.
- 8 Money involved Rs 1000 crore.
- 9 Money involved Rs 1000 crore.
- 10 Money involved Rs 65 crore.
- 11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]: 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].
- 12 *Prevention of Corruption Act, 1947*, which was amended twice; once by the *Criminal Law Amendment Act, 1952* and later in 1964 was found inadequate to tackle the problem of corruption rampant on a large scale amongst public servants that necessitated the enactment of *Prevention of Corruption Act 49 of 1988*, which came into force on 9 September 1988.
- 13 *Prevention of Corruption Act, 1988*, section 19(3)(a).
- 14 *Prevention of Corruption Act, 1988*, section 4(4). "...A Special Judge shall, as far as possible, hold the trial of an offence on day-to-day basis.
- 15 Relevant sections of PCA, 1988 repealing sections 161 to 165A, *IPC* which were before repeal as under:
 PCA, section 7 same as section 161, *IPC*, Public servant taking gratification other than legal remuneration in respect of an official act.
 PCA, section 8 same as section 162, *IPC*, Taking gratification, in order, by corrupt or illegal means, to influence public servant.
 PCA, section 9 same as section 163, *IPC*, Taking gratification for exercise of personal influence with public servant.
 PCA, section 10 same as section 164, *IPC*, Punishment for abetment by public servant of offences defined in section 8 or 9.
 PCA, section 11 same as section 165, *IPC*, Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.
 PCA, section 12 same as section 165A, *IPC*, Punishment for abetment of offences in section 7 or 11.
- 52 **Section 162, IPC: Taking gratification, in order, by corrupt or illegal means, to influence public servant.—**
 Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Central or any State Government, or Parliament, or the Legislature of any State, or with any local authority, corporation or Government company referred to in section 21, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

[s 162] Taking gratification, in order, by Corrupt or illegal means, to influence public servant.—

53 *R Chinnaswami Iyengar v Emperor*, (1910) 11 Cr LJ 696 (Mad); *Dewan v State*, 1988 Cr LJ 1005 .

54 *Hiralal v Emperor*, (1918) 19 Cr LJ 517 ; *Tul Mohan Ram v State*, (1981) Cr LJ (NOC) 223 Del.

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[s 163] Taking gratification, for exercise or personal influence with public servant.—

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The Indian Penal Code

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

9.1 Introduction.—Public servants¹ in a democracy governed by Rule of law play an important role in the administration as they are responsible for the implementation of the plans and policies of the government. Besides discharging administrative functions, a public servant in a welfare state is responsible for execution and implementation of various social and economic welfare schemes. For instance, public servants are entrusted with the arduous (difficult) job of distribution of wealth and other benefits to the public, such as rural employment guarantee schemes, allotments of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas, licences etc. from time to time.² If they are corrupt and dishonest, the welfare of the people will be greatly jeopardised and the administration of the country cannot run efficiently and effectively.

Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in

[s 163] Taking gratification, for exercise or personal influence with public servant.—

the *Prevention of Corruption Act, 1988* under sections 7 to 12 of *Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is, out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (sections 166, 167, 168 and 169, *IPC*); and
- (ii) Offences committed by others, though relating to public servants (sections 170 and 171, *IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

Taking note of the gravity and seriousness of the problem the Apex Court has rightly observed in *Shri Ram Singh*¹¹ that,

Corruption in a civilized society is like cancer, which if not detected in time is sure to malign the polity of the country leading to disastrous consequences. It is termed as a plague, which are not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but also aimed and targeted at them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence in social, economic and political system in an otherwise healthy, wealthy, effective and vibrating society.

I. OFFENCES RELATING TO PUBLIC SERVANT UNDER *PREVENTION OF CORRUPTION ACT, 1988*

Prevention of Corruption Act, 1988: An Overview.—The *Prevention of Corruption Act, 1988* (Act No. 49 of 1988) replaced the earlier Act of 1947.¹² The Act envisages to make the anti-corruption law more effective by widening their coverage and by strengthening the provisions so as to make the law more effective in combating corruption rampant among public servants.

The Act of 1988 *inter alia* has widened the scope of the definition of the expression “public servant” in section 2(c) and incorporated the provisions of sections 161 to 165 A of the *Indian Penal Code* in sections 7 to 12 of the Act, enhanced the penalties for these offences and has incorporated the provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced.¹³ In order to expedite the proceedings, provisions for day-to-day trial of cases¹⁴ and prohibitory

[s 163] Taking gratification, for exercise or personal influence with public servant.—

provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included in section 19 of the Act.

The *Prevention of Corruption Act, 1988* is a small Act consisting of 31 sections divided into five chapters. Chapter I is the Preliminary Chapter consisting of two sections. Section 1 gives the title and extent of the jurisdiction of the Act to the whole of India, except the state of Jammu and Kashmir, and section 2 is a definition clause. It defines “election”, “public duty”, and “public servant” in clause (a), (b) and (c) respectively.

Chapter II consists of four sections 3 to 6. It provides for appointment of Special Judges for trial cases triable by the Court, procedure and powers of Special Judge and power to try summarily under *section 6 of the Prevention of Corruption Act, 1988*.

Chapter III consisting of ten sections commencing from *sections 7 to 16 of the Prevention of Corruption Act, 1988*¹⁵ is most important chapter of the Act. It deals with the “Offences and Penalties” for taking illegal gratifications etc., by a public servant in respect of an official act. The punishment under the *Prevention of Corruption Act, 1988* has been enhanced with a provision for a minimum punishment in place of alternative punishment prescribed under the repealed provisions of the *Penal Code* under sections 161 to 165A and the illustrations attached to the sections have been omitted.

Chapter IV consists of two sections—17 and 18, which specify authority competent to investigate any offence punishable under the Act and to inspect banker’s books etc. It is under the said provisions that the Directorate of Income Tax, Central Bureau of Investigation (CBI) and other enforcement agencies are authorised to conduct raids, seize incriminating documents, materials, open and seal bank lockers leading to unearthing of millions of dollars, currency note and other valuables.

Chapter V (sections 19 to 31), which is the last chapter of the Act, provides for provision of sanction for prosecution of a public servant and its desirability, besides other miscellaneous provisions. Section 19(1) categorically states that ‘no court shall take cognizance of an offence punishable under sections 7, 10, 11 and 13 alleged to have been committed by a public servant, except with the previous sanction of the authority designated for this purpose as specified in clauses (a) to (c) of section 19(1) of the Act.

However, clause (3) to section 19 of the Act is a saving clause and provides that on the ground of irregularity of sanction, no finding of the court can be reversed. And no court can stay the proceedings because of irregularity in sanction or any other ground.

In cases of judges of the Supreme Court and High Court, sanction is not required after retirement. However, while in service, the President of India is the competent authority to grant sanction in consultation with the Chief Justice of India. In case the sanction relates to the prosecution of the Chief Justice of India, the President will consult other judges of the Supreme Court, for the purpose. A provision for appeal and revision is available to the High Court under *section 27 of the Prevention of Corruption Act, 1988*.

Since *sections 7 to 12 of the Prevention of Corruption Act, 1988* have incorporated *sections 161 to 165A of the Penal Code* both the provisions are discussed in order to give a correct perspective of law. Corresponding sections are discussed below in detail.

[s 163] Taking gratification, for exercise or personal influence with public servant.—

[Rep. by the Prevention of Corruption Act, 1988 (49 of 1988), sec. 31 (w.e.f. 9-9-1988).]

Section 9, PCA: Taking gratification, for exercise or personal influence with public servant.—

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant [whether named or otherwise] to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local

[s 163] Taking gratification, for exercise or personal influence with public servant.—

authority, corporation or Government company referred to in [clause (c) of section 2] or with any public servant [whether named or otherwise], shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

[s 163.1] Taking gratification to influence public servant

Section 9, *Prevention of Corruption Act, 1988* (section 163, *IPC*)⁵⁵ is similar to section 8, *Prevention of Corruption Act, 1988* in nature, the difference between the two being only marginal. For instance, in section 8, *Prevention of Corruption Act*. The public servant is to induce by corrupt or illegal means, whereas in section 9, *Prevention of Corruption Act*. The public servant is induced by personal influence. As in the case of section 8, *Prevention of Corruption Act*. The offence under this section is cognisable, non-bailable, non-compoundable and triable by a special judge as provided under section 3(1)(a), PCA.

The section deals with taking gratification by a private individual for the exercise of personal influence over a public servant. The words “personal influence” are not defined in the Code. They mean an influence to dominate the will of a public servant akin to undue influence as defined in section 16⁵⁶ the *Indian Contract Act, 1872*.⁵⁷ Thus, when a person attempted to induce the wife of a judicial officer to take a bribe so as to influence him to show favour in the exercise of his official function, it was held that section 163 (which now relates to section 9, *Prevention of Corruption Act, 1988*) read with section 116 was attracted. Punishment under the section may extend up to 5 years of imprisonment with fine with a minimum of six months of imprisonment as against to one year imprisonment, or with fine, or with both as provided under the repealed section 163, *IPC*.

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- 1 See *IPC*, section 21 for meaning of ‘public servant’. Chapter II, *supra*.
 - 2 *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].
 - 3 See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.
 - 4 Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by section 12 of the *Prevention of Corruption Act, 1988*.
 - 5 See the *Prevention of Corruption Act, 1988*, section 13 dealing with the offences of criminal misconduct by a public servant.
 - 6 Money involved Rs 5000 crore.
 - 7 Money involved Rs 1600 crore.
 - 8 Money involved Rs 1000 crore.

[s 163] Taking gratification, for exercise or personal influence with public servant.—

9 Money involved Rs 1000 crore.

10 Money involved Rs 65 crore.

11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [LNIND 2000 SC 206]: 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [LNIND 2000 SC 206] : (2000) 1 SCR 579 [LNIND 2000 SC 206].

12 *Prevention of Corruption Act*, 1947, which was amended twice; once by the *Criminal Law Amendment Act*, 1952 and later in 1964 was found inadequate to tackle the problem of corruption rampant on a large scale amongst public servants that necessitated the enactment of *Prevention of Corruption Act* 49 of 1988, which came into force on 9 September 1988.

13 *Prevention of Corruption Act*, 1988, section 19(3)(a).

14 *Prevention of Corruption Act*, 1988, section 4(4). "...A Special Judge shall, as far as possible, hold the trial of an offence on day-to-day basis.

15 Relevant sections of PCA, 1988 repealing sections 161 to 165A, IPC which were before repeal as under:

PCA, section 7 same as section 161, IPC, Public servant taking gratification other than legal remuneration in respect of an official act.

PCA, section 8 same as section 162, IPC, Taking gratification, in order, by corrupt or illegal means, to influence public servant.

PCA, section 9 same as section 163, IPC, Taking gratification for exercise of personal influence with public servant.

PCA, section 10 same as section 164, IPC, Punishment for abetment by public servant of offences defined in section 8 or 9.

PCA, section 11 same as section 165, IPC, Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.

PCA, section 12 same as section 165A, IPC, Punishment for abetment of offences in section 7 or 11.

55 **Section 163, IPC, repealed: Taking gratification, for exercise of personal influence with public servant.—**

Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or dis-service to any person with the Central or any State Government, or Parliament, or the Legislature of any State, or with any local authority, corporation or Government company referred to in section 21, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to the Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

56 *Indian Contract Act*, 1872, section 16(1) "A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other."

57 *Indian Contract Act*, 1872, section 16(1) "A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other."

[s 164] Punishment for abetment by public servant of offences defined in section 162 or 163.—

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The Indian Penal Code

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

9.1 Introduction.—Public servants¹ in a democracy governed by Rule of law play an important role in the administration as they are responsible for the implementation of the plans and policies of the government. Besides discharging administrative functions, a public servant in a welfare state is responsible for execution and implementation of various social and economic welfare schemes. For instance, public servants are entrusted with the arduous (difficult) job of distribution of wealth and other benefits to the public, such as rural employment guarantee schemes, allotments of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas, licences etc. from time to time.² If they are corrupt and dishonest, the welfare of the people will be greatly jeopardised and the administration of the country cannot run efficiently and effectively.

Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in

[s 164] Punishment for abetment by public servant of offences defined in section 162 or 163.—

the *Prevention of Corruption Act, 1988* under sections 7 to 12 of *Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is, out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (sections 166, 167, 168 and 169, *IPC*); and
- (ii) Offences committed by others, though relating to public servants (sections 170 and 171, *IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

Taking note of the gravity and seriousness of the problem the Apex Court has rightly observed in *Shri Ram Singh*¹¹ that,

Corruption in a civilized society is like cancer, which if not detected in time is sure to malign the polity of the country leading to disastrous consequences. It is termed as a plague, which are not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but also aimed and targeted at them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence in social, economic and political system in an otherwise healthy, wealthy, effective and vibrating society.

I. OFFENCES RELATING TO PUBLIC SERVANT UNDER *PREVENTION OF CORRUPTION ACT, 1988*

Prevention of Corruption Act, 1988: An Overview.—The *Prevention of Corruption Act, 1988* (Act No. 49 of 1988) replaced the earlier Act of 1947.¹² The Act envisages to make the anti-corruption law more effective by widening their coverage and by strengthening the provisions so as to make the law more effective in combating corruption rampant among public servants.

The Act of 1988 *inter alia* has widened the scope of the definition of the expression “public servant” in section 2(c) and incorporated the provisions of sections 161 to 165 A of the *Indian Penal Code* in sections 7 to 12 of the Act, enhanced the penalties for these offences and has incorporated the provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced.¹³ In order to expedite the proceedings, provisions for day-to-day trial of cases¹⁴ and prohibitory

[s 164] Punishment for abetment by public servant of offences defined in section 162 or 163.—

provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included in section 19 of the Act.

The *Prevention of Corruption Act, 1988* is a small Act consisting of 31 sections divided into five chapters. Chapter I is the Preliminary Chapter consisting of two sections. Section 1 gives the title and extent of the jurisdiction of the Act to the whole of India, except the state of Jammu and Kashmir, and section 2 is a definition clause. It defines “election”, “public duty”, and “public servant” in clause (a), (b) and (c) respectively.

Chapter II consists of four sections 3 to 6. It provides for appointment of Special Judges for trial cases triable by the Court, procedure and powers of Special Judge and power to try summarily under *section 6 of the Prevention of Corruption Act, 1988*.

Chapter III consisting of ten sections commencing from *sections 7 to 16 of the Prevention of Corruption Act, 1988*¹⁵ is most important chapter of the Act. It deals with the “Offences and Penalties” for taking illegal gratifications etc., by a public servant in respect of an official act. The punishment under the *Prevention of Corruption Act, 1988* has been enhanced with a provision for a minimum punishment in place of alternative punishment prescribed under the repealed provisions of the *Penal Code* under sections 161 to 165A and the illustrations attached to the sections have been omitted.

Chapter IV consists of two sections—17 and 18, which specify authority competent to investigate any offence punishable under the Act and to inspect banker’s books etc. It is under the said provisions that the Directorate of Income Tax, Central Bureau of Investigation (CBI) and other enforcement agencies are authorised to conduct raids, cease incriminating documents, materials, open and seal bank lockers leading to unearthing of millions of dollars, currency note and other valuables.

Chapter V (sections 19 to 31), which is the last chapter of the Act, provides for provision of sanction for prosecution of a public servant and its desirability, besides other miscellaneous provisions. Section 19(1) categorically states that ‘no court shall take cognizance of an offence punishable under sections 7, 10, 11 and 13 alleged to have been committed by a public servant, except with the previous sanction of the authority designated for this purpose as specified in clauses (a) to (c) of section 19(1) of the Act.

However, clause (3) to section 19 of the Act is a saving clause and provides that on the ground of irregularity of sanction, no finding of the court can be reversed. And no court can stay the proceedings because of irregularity in sanction or any other ground.

In cases of judges of the Supreme Court and High Court, sanction is not required after retirement. However, while in service, the President of India is the competent authority to grant sanction in consultation with the Chief Justice of India. In case the sanction relates to the prosecution of the Chief Justice of India, the President will consult other judges of the Supreme Court, for the purpose. A provision for appeal and revision is available to the High Court under *section 27 of the Prevention of Corruption Act, 1988*.

Since *sections 7 to 12 of the Prevention of Corruption Act, 1988* have incorporated *sections 161 to 165A of the Penal Code* both the provisions are discussed in order to give a correct perspective of law. Corresponding sections are discussed below in detail.

[s 164] Punishment for abetment by public servant of offences defined in section 162 or 163.—

[Rep. by the Prevention of Corruption Act, 1988 (49 of 1988), sec. 31 (w.e.f. 9-9-1988).]

Section 10, Prevention of Corruption Act: Punishment for abetment by public servant of offences defined in section 8 or 9.—

Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets, the offence, 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 six months but which may extend to five years and shall also be liable to fine.

[s 164.1] Punishment for abetment by public servant

This section, which is similar to the repealed *section 164, IPC*⁵⁸ punishes abetment by a public servant of offences described in *sections 8 and 9, Prevention of Corruption Act*. The punishment may extend up to 5 years, with fine, with a minimum of 6 months imprisonment. In fact, *section 10, Prevention of Corruption Act, 1988* makes a specific provision of punishment of abetment described in *section 109, IPC* in the case of a public servant.

[s 164.2] Ingredients

To hold a person liable under this section the following ingredients must be established:—

- (1) The accused was a public servant
- (2) An offence under section 8 or section 9 was whether, or not committed in consequence of that abetment.
- (3) The person abetted the offence punishable under sections 8 and 9 for someone he knew to be interested or related to the person concerned.

The offence is cognizable, non-bailable, non-compoundable and triable by special Judge.

¹ See *IPC*, section 21 for meaning of 'public servant'. Chapter II, *supra*.

² *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].

³ See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.

⁴ Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by *section 12 of the Prevention of Corruption Act, 1988*.

⁵ See the *Prevention of Corruption Act, 1988*, *section 13* dealing with the offences of criminal misconduct by a public servant.

⁶ Money involved Rs 5000 crore.

⁷ Money involved Rs 1600 crore.

[s 164] Punishment for abetment by public servant of offences defined in section 162 or 163.—

8 Money involved Rs 1000 crore.

9 Money involved Rs 1000 crore.

10 Money involved Rs 65 crore.

11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]; 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].

12 *Prevention of Corruption Act*, 1947, which was amended twice; once by the *Criminal Law Amendment Act*, 1952 and later in 1964 was found inadequate to tackle the problem of corruption rampant on a large scale amongst public servants that necessitated the enactment of *Prevention of Corruption Act* 49 of 1988, which came into force on 9 September 1988.

13 *Prevention of Corruption Act*, 1988, section 19(3)(a).

14 *Prevention of Corruption Act*, 1988, section 4(4). "...A Special Judge shall, as far as possible, hold the trial of an offence on day-to-day basis.

15 Relevant sections of PCA, 1988 repealing sections 161 to 165A, IPC which were before repeal as under:

PCA, section 7 same as section 161, IPC, Public servant taking gratification other than legal remuneration in respect of an official act.

PCA, section 8 same as section 162, IPC, Taking gratification, in order, by corrupt or illegal means, to influence public servant.

PCA, section 9 same as section 163, IPC, Taking gratification for exercise of personal influence with public servant.

PCA, section 10 same as section 164, IPC, Punishment for abetment by public servant of offences defined in section 8 or 9.

PCA, section 11 same as section 165, IPC, Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.

PCA, section 12 same as section 165A, IPC, Punishment for abetment of offences in section 7 or 11.

58 Section 164, IPC, before repeal: Punishment for abetment by public servant of offences defined in sections 162 or section 163.—Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

[[s 165] Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.—

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The Indian Penal Code

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

9.1 Introduction.—Public servants¹ in a democracy governed by Rule of law play an important role in the administration as they are responsible for the implementation of the plans and policies of the government. Besides discharging administrative functions, a public servant in a welfare state is responsible for execution and implementation of various social and economic welfare schemes. For instance, public servants are entrusted with the arduous (difficult) job of distribution of wealth and other benefits to the public, such as rural employment guarantee schemes, allotments of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas, licences etc. from time to time.² If they are corrupt and dishonest, the welfare of the people will be greatly jeopardised and the administration of the country cannot run efficiently and effectively.

Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

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The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the

[[s 165] Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.—

provisions relating to sections 161 to 165A, IPC, have been deleted from the *Indian Penal Code* and incorporated in the *Prevention of Corruption Act, 1988* under sections 7 to 12 of *Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is, out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (sections 166, 167, 168 and 169, IPC); and
- (ii) Offences committed by others, though relating to public servants (sections 170 and 171, IPC).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

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The Act of 1988 *inter alia* has widened the scope of the definition of the expression “public servant” in section 2(c) and incorporated the provisions of sections 161 to 165 A of the *Indian Penal Code* in sections 7 to 12 of the Act, enhanced the penalties for these offences and has incorporated the provision that the order of the trial court

[[s 165] Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.—

upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced.¹³ In order to expedite the proceedings, provisions for day-to-day trial of cases¹⁴ and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included in section 19 of the Act.

The *Prevention of Corruption Act, 1988* is a small Act consisting of 31 sections divided into five chapters. Chapter I is the Preliminary Chapter consisting of two sections. Section 1 gives the title and extent of the jurisdiction of the Act to the whole of India, except the state of Jammu and Kashmir, and section 2 is a definition clause. It defines “election”, “public duty”, and “public servant” in clause (a), (b) and (c) respectively.

Chapter II consists of four sections 3 to 6. It provides for appointment of Special Judges for trial cases triable by the Court, procedure and powers of Special Judge and power to try summarily under *section 6 of the Prevention of Corruption Act, 1988*.

Chapter III consisting of ten sections commencing from *sections 7 to 16 of the Prevention of Corruption Act, 1988*¹⁵ is most important chapter of the Act. It deals with the “Offences and Penalties” for taking illegal gratifications etc., by a public servant in respect of an official act. The punishment under the *Prevention of Corruption Act, 1988* has been enhanced with a provision for a minimum punishment in place of alternative punishment prescribed under the repealed provisions of the *Penal Code* under sections 161 to 165A and the illustrations attached to the sections have been omitted.

Chapter IV consists of two sections—17 and 18, which specify authority competent to investigate any offence punishable under the Act and to inspect banker's books etc. It is under the said provisions that the Directorate of Income Tax, Central Bureau of Investigation (CBI) and other enforcement agencies are authorised to conduct raids, seize incriminating documents, materials, open and seal bank lockers leading to unearthing of millions of dollars, currency note and other valuables.

Chapter V (sections 19 to 31), which is the last chapter of the Act, provides for provision of sanction for prosecution of a public servant and its desirability, besides other miscellaneous provisions. Section 19(1) categorically states that ‘no court shall take cognizance of an offence punishable under sections 7, 10, 11 and 13 alleged to have been committed by a public servant, except with the previous sanction of the authority designated for this purpose as specified in clauses (a) to (c) of section 19(1) of the Act.

However, clause (3) to section 19 of the Act is a saving clause and provides that on the ground of irregularity of sanction, no finding of the court can be reversed. And no court can stay the proceedings because of irregularity in sanction or any other ground.

In cases of judges of the Supreme Court and High Court, sanction is not required after retirement. However, while in service, the President of India is the competent authority to grant sanction in consultation with the Chief Justice of India. In case the sanction relates to the prosecution of the Chief Justice of India, the President will consult other judges of the Supreme Court, for the purpose. A provision for appeal and revision is available to the High Court under *section 27 of the Prevention of Corruption Act, 1988*.

Since *sections 7 to 12 of the Prevention of Corruption Act, 1988* have incorporated *sections 161 to 165A of the Penal Code* both the provisions are discussed in order to give a correct perspective of law. Corresponding sections are discussed below in detail.

59[[s 165] Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.—

[Rep. by the Prevention of Corruption Act, 1988 (49 of 1988), sec. 31 (w.e.f. 9-9-1988).]

Section 11, Prevention of Corruption Act: Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.—
Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for

[[s 165] Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.—

himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

[s 165.1] Public servant obtaining valuable thing, without consideration

This section (corresponding to repealed 165, *IPC*)⁶⁰ prohibits a government servant from taking a bribe indirectly in the shape of presents, whereas, *section 7, Prevention of Corruption Act, 1988* as stated earlier, is directed against a public servant taking a bribe directly. Section 11 punishes the taking of presents as a motive or reward for abuse of office. Under this section the question of motive or reward is immaterial. It punishes the acceptance by a public servant of valuable things without consideration or for an inadequate consideration from any person who has linkage with the official transaction of himself or of any public servant to whom he is subordinate.

However, to invoke *section 11, Prevention of Corruption Act, 1988* it is not necessary that the accused must be subordinate to that other public servant with respect to that very official function with which that proceeding or business has connection.

RG Jacob: For instance in *RG Jacob v Republic of India*, AIR 1963 SC 550 [[LNIND 1962 SC 514](#)],⁶¹ the appellant, who was an Assistant Controller of Imports, was convicted under *section 165, IPC* (which is now *section 11, Prevention of Corruption Act, 1988*). He had accepted two bags of cement and Rs 50 from a person who was concerned in an appeal to the Joint Controller of Imports and Exports against an order rejecting his application for an export permit, and that he had promised to use his influence and help that person in getting the export permit.

The court rejected the appellant's contention that he, being only an Assistant Controller of Imports, had no connection with the issue of export permits, and that the offence under *section 165, IPC* (*section 11, Prevention of Corruption Act, 1988*) was not established, because he was not subordinate to the Joint Chief Controller of Imports and Exports in regard to his official functions in connection with export permits.

Held, the word "subordinate" in *section 165, IPC* (*section 11, Prevention of Corruption Act, 1988*) means only administratively subordinate, and not functionally subordinate. The offence is complete when a public servant accepts any valuable thing without consideration from a person concerned in a proceeding or business before another public servant to whom he is subordinate.

To invoke *section 11, Prevention of Corruption Act, 1988* it is not necessary that the accused must be subordinate to that other public servant with respect to that very official function with which that proceeding or business has connection. In other words, the section is invoked where a public servant accepts a valuable thing either on nominal consideration, or without consideration, from third parties who have any business before him and from an officer subordinate to him.

As given in illustration (a) to the repealed *section 165, IPC* the Collector, who hires the house of Z on a nominal rent of Rs 50 per month as against the actual rent of Rs 200 per month because Z has a settlement case pending before the collector, is guilty under this section for taking a valuable thing without adequate consideration. Thus, he is punishable.

[[s 165] Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.—

[s 165.2] Ingredients

To sustain a charge under this section the following ingredients must be established:—

- (1) The accused was a public servant at the time of the commission of the offence;
- (2) He accepted or agreed to accept or attempted to obtain for himself or for someone else a valuable thing;
- (3) He gave no consideration or adequate consideration for such valuable thing to the owner of such thing.

The offence is cognizable, non-bailable, non-compoundable and triable by special judge. Punishment may extend up to five years of imprisonment with fine with a minimum of six month of imprisonment, as against three years of imprisonment or fine or both provided under the repealed *section 165, IPC*.

- 1 See *IPC*, section 21 for meaning of 'public servant'. Chapter II, *supra*.
- 2 *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].
- 3 See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.
- 4 Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by *section 12 of the Prevention of Corruption Act, 1988*.
- 5 See the *Prevention of Corruption Act, 1988*, *section 13* dealing with the offences of criminal misconduct by a public servant.
- 6 Money involved Rs 5000 crore.
- 7 Money involved Rs 1600 crore.
- 8 Money involved Rs 1000 crore.
- 9 Money involved Rs 1000 crore.
- 10 Money involved Rs 65 crore.

[[s 165] Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.—

11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]: 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].

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13 *Prevention of Corruption Act*, 1988, section 19(3)(a).

14 *Prevention of Corruption Act*, 1988, section 4(4). "...A Special Judge shall, as far as possible, hold the trial of an offence on day-to-day basis.

15 Relevant sections of PCA, 1988 repealing sections 161 to 165A, *IPC* which were before repeal as under:

PCA, section 7 same as section 161, *IPC*, Public servant taking gratification other than legal remuneration in respect of an official act.

PCA, section 8 same as section 162, *IPC*, Taking gratification, in order, by corrupt or illegal means, to influence public servant.

PCA, section 9 same as section 163, *IPC*, Taking gratification for exercise of personal influence with public servant.

PCA, section 10 same as section 164, *IPC*, Punishment for abetment by public servant of offences defined in section 8 or 9.

PCA, section 11 same as section 165, *IPC*, Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.

PCA, section 12 same as section 165A, *IPC*, Punishment for abetment of offences in section 7 or 11.

59 Section 165 was earlier amended by Act 46 of 1952, section 2 (w.e.f. 28-7-1952).

60 **Section 165, *IPC*, repealed: Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.—**Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustrations

(a) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b) A, a Judge, buys of Z, who has a case pending in A's court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

61 *RG Jacob v Republic of India*, AIR 1963 SC 550 [[LNIND 1962 SC 514](#)] .

[[s 165A] Punishment for abetment of offences defined in section 161 or section 165.—

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The Indian Penal Code

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

9.1 Introduction.—Public servants¹ in a democracy governed by Rule of law play an important role in the administration as they are responsible for the implementation of the plans and policies of the government. Besides discharging administrative functions, a public servant in a welfare state is responsible for execution and implementation of various social and economic welfare schemes. For instance, public servants are entrusted with the arduous (difficult) job of distribution of wealth and other benefits to the public, such as rural employment guarantee schemes, allotments of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas, licences etc. from time to time.² If they are corrupt and dishonest, the welfare of the people will be greatly jeopardised and the administration of the country cannot run efficiently and effectively.

Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in

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the *Prevention of Corruption Act, 1988* under sections 7 to 12 of *Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is, out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (sections 166, 167, 168 and 169, *IPC*); and
- (ii) Offences committed by others, though relating to public servants (sections 170 and 171, *IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

Taking note of the gravity and seriousness of the problem the Apex Court has rightly observed in *Shri Ram Singh*¹¹ that,

Corruption in a civilized society is like cancer, which if not detected in time is sure to malign the polity of the country leading to disastrous consequences. It is termed as a plague, which are not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but also aimed and targeted at them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence in social, economic and political system in an otherwise healthy, wealthy, effective and vibrating society.

I. OFFENCES RELATING TO PUBLIC SERVANT UNDER *PREVENTION OF CORRUPTION ACT, 1988*

Prevention of Corruption Act, 1988: An Overview.—The *Prevention of Corruption Act, 1988* (Act No. 49 of 1988) replaced the earlier Act of 1947.¹² The Act envisages to make the anti-corruption law more effective by widening their coverage and by strengthening the provisions so as to make the law more effective in combating corruption rampant among public servants.

The Act of 1988 *inter alia* has widened the scope of the definition of the expression “public servant” in section 2(c) and incorporated the provisions of sections 161 to 165 A of the *Indian Penal Code* in sections 7 to 12 of the Act, enhanced the penalties for these offences and has incorporated the provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced.¹³ In order to expedite the proceedings, provisions for day-to-day trial of cases¹⁴ and prohibitory

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provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included in section 19 of the Act.

The *Prevention of Corruption Act, 1988* is a small Act consisting of 31 sections divided into five chapters. Chapter I is the Preliminary Chapter consisting of two sections. Section 1 gives the title and extent of the jurisdiction of the Act to the whole of India, except the state of Jammu and Kashmir, and section 2 is a definition clause. It defines “election”, “public duty”, and “public servant” in clause (a), (b) and (c) respectively.

Chapter II consists of four sections 3 to 6. It provides for appointment of Special Judges for trial cases triable by the Court, procedure and powers of Special Judge and power to try summarily under *section 6 of the Prevention of Corruption Act, 1988*.

Chapter III consisting of ten sections commencing from *sections 7 to 16 of the Prevention of Corruption Act, 1988*¹⁵ is most important chapter of the Act. It deals with the “Offences and Penalties” for taking illegal gratifications etc., by a public servant in respect of an official act. The punishment under the *Prevention of Corruption Act, 1988* has been enhanced with a provision for a minimum punishment in place of alternative punishment prescribed under the repealed provisions of the *Penal Code* under sections 161 to 165A and the illustrations attached to the sections have been omitted.

Chapter IV consists of two sections—17 and 18, which specify authority competent to investigate any offence punishable under the Act and to inspect banker’s books etc. It is under the said provisions that the Directorate of Income Tax, Central Bureau of Investigation (CBI) and other enforcement agencies are authorised to conduct raids, cease incriminating documents, materials, open and seal bank lockers leading to unearthing of millions of dollars, currency note and other valuables.

Chapter V (sections 19 to 31), which is the last chapter of the Act, provides for provision of sanction for prosecution of a public servant and its desirability, besides other miscellaneous provisions. Section 19(1) categorically states that ‘no court shall take cognizance of an offence punishable under sections 7, 10, 11 and 13 alleged to have been committed by a public servant, except with the previous sanction of the authority designated for this purpose as specified in clauses (a) to (c) of section 19(1) of the Act.

However, clause (3) to section 19 of the Act is a saving clause and provides that on the ground of irregularity of sanction, no finding of the court can be reversed. And no court can stay the proceedings because of irregularity in sanction or any other ground.

In cases of judges of the Supreme Court and High Court, sanction is not required after retirement. However, while in service, the President of India is the competent authority to grant sanction in consultation with the Chief Justice of India. In case the sanction relates to the prosecution of the Chief Justice of India, the President will consult other judges of the Supreme Court, for the purpose. A provision for appeal and revision is available to the High Court under *section 27 of the Prevention of Corruption Act, 1988*.

Since *sections 7 to 12 of the Prevention of Corruption Act, 1988* have incorporated *sections 161 to 165A of the Penal Code* both the provisions are discussed in order to give a correct perspective of law. Corresponding sections are discussed below in detail.

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[Rep. by the Prevention of Corruption Act, 1988 (49 of 1988), sec. 31 (w.e.f. 9-9-1988).]]

Section 12, Prevention of Corruption Act: Punishment for abetment of offences defined in section 7 or section 11.—Whoever abets any offence punishable under section 7 or section 11 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 six months but which may extend to five years and shall also be liable to fine.

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[s 165A.1] Punishment for abetment of offences

This section (corresponding to the repealed section 165A⁶³) is intended to make abetment of offences punishable under sections 7 or/and 11. It makes express provision for punishment of abetment in cases of bribery and such abetment has been made a specific offence.⁶⁴ Thus, the person offering a bribe will be punished under this section with imprisonment which may extend to 5 years, and fine, with a minimum of 6 months.

But if the principal offender is acquitted, a charge of abetment based on “aid” (and not instigation and conspiracy) will not stand under *section 12 Prevention of Corruption Act, 1988* and the person abetted will be acquitted.⁶⁵

[s 165A.2] Ingredients

To establish a charge under this section the prosecution must prove that—

- (1) The accused abetted the offence; and
- (2) That the offence abetted was one under *section 7* or *section 11 Prevention of Corruption Act, 1988*. However, it is not necessary to establish that the offence abetted was actually committed.

Section 13, Prevention of Corruption Act: Criminal misconduct by a public servant.—

(1) A public servant is said to commit the offence of criminal misconduct—

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive a reward such is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

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(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provision of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

COMMENTS

(1) Criminal misconduct.—This section (corresponding to *section 5 of the Prevention of Corruption Act, 1947*) creates a new offence called “criminal misconduct” by a public servant in the discharge of his duties. The offence consists of different facets of misconduct of a public servant enumerated in clauses (a) to (e) of sub-section (1) of section 13. Sub-section (2) to section 13 is a penal provision, which prescribes the punishment, which may extend to seven years of imprisonment and fine with a minimum of one year of sentence.

Clauses (a) and (b) of section 13(1) are more or less based on sections 7 and 11 of *Prevention Corruption Act, 1988* (repealed *sections 161 and 165, IPC*) but creates new offences by somewhat enlarging the scope of those sections. These clauses make the case of a public servant habitually accepting or obtaining illegal gratification a distinct offence.

Clause (c) of the sub-section (1) to section 13 creates a new offence called “criminal misappropriation” and is much wider in its amplitude than *section 405, IPC* which makes criminal breach of trust an offence of general nature. It is not confined to a single act of misappropriation but may also embrace in its fold many similar acts committed by one accused.⁶⁶

Clause (d) to section 1 to section 13 makes of obtaining any valuable thing for pecuniary advantage by corrupt or illegal means or by otherwise abusing his official position punishable.

Clause (e) of sub-section 1 to section 13 is for all practical purposes same as *section 409, IPC* which deals with criminal breach of trust by public servant or by banker, merchant or agent etc. The pecuniary advantage need not necessarily be connected with the performance of public servants’ official duty, as compared to section 7, *Prevention Corruption Act, 1988*.⁶⁷

(2) Ingredients.—To establish a charge under this clause the prosecution must prove that—

- (1) The accused was a public servant.
- (2) The nature and extent of pecuniary resources or property which are found in his possession.
- (3) It must be proved as to what were his known sources of income, i.e., known to the prosecution.

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- (4) It must prove quite objectively the resources or property found in possession of the accused were disproportionate to their known sources of income.

MK Reddy: It was held in *MK Reddy*,⁶⁸ that once the prosecution has established the charge as stated above, the accused is liable for the offence of criminal misconduct, unless the accused proves his innocence by giving a satisfactory account for such resources or property. According to explanation clause attached to the sub-section (1) to section 13, (the Act of 1947 did not contain such a provision), the “known sources of income” of public servant, for the purpose of satisfying the court, should be “any lawful source”; and the receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable to such public servant at the relevant time. A public servant cannot now escape from the tentacles of section 13(1)(e) of Prevention Corruption Act by showing other legally forbidden sources, *albeit* such resources are outside the purview of clauses (a) to (d) of sub-section (1) of section 13 of *Prevention Corruption Act, 1988*.

(3) Property Disproportionate to known source of Income.—In *P Nallamma*,⁶⁹ the Apex Court held that a non-public servant can be liable for abetting a public servant. In the impugned case some of the former Ministers including the former Speaker of the Tamil Nadu Government were being prosecuted before the Special Courts in Madras under section 13(1)(e), *Prevention of Corruption Act, 1988* for amassing wealth disproportionate to their known source of income for which they are unable to account. In all such cases, some of their kith and kin are also being arraigned as co-accused under *section 109, IPC* for abetment to commit the said offences. The appellants’ kith and kin moved the court for pre-trial exoneration on the ground that they are not liable to be prosecuted under *Prevention Corruption Act, 1988* as they are not public servant.

Rejecting the petition, the Apex Court held that the offence of acquiring and being in possession of disproportionate (income) assets can be abetted by another including one who is not a public servant and the only mode of prosecution of such offender is through the trial envisaged in the *Prevention Corruption Act, 1988*.

(4) Bribe Taker MPs are exempted from prosecution: PV Narasimha Rao.—In *PV Narasimha Rao*,⁷⁰ one of the most controversial decisions in recent years, the Apex Court made a distinction between a “bribe taker Member of Parliament” and a “bribe giver member of Parliament”. The Hon’ble Court by a majority of three to two held that in the former case a Member of Parliament enjoys immunity under *Article 105(2) of the Constitution* from being prosecuted before a criminal court for an offence involving acceptance of bribe for the purpose of speaking or giving his vote in Parliament in any committee thereof, whereas in the latter case of bribe giver Member of Parliament the immunity does not extend.

However, the minority judgment held both “bribe giver” and “bribe taker” M.Ps. equally liable for the offence. In brief the facts of the case are as mentioned below.

On 28 February 1996, one Shri Ravindra Kumar of Rashtriya Mukti Morcha filed a complaint dated 1 February 1996, with Central Bureau of Investigation (“CBI”) wherein it was alleged that in July 1993 a criminal conspiracy was hatched by PV Narasimha Rao, Satish Sharma, Ajit Singh, Bhajan Lal, VC Shukla, RK Dhawan, DK Adikeshavalu, M Veerappa Moily, MLA and Chief Minister of Karnataka, Mr Ravonna, Lalit Suri to prove a majority of the Government on the floor of the House on 28 July 1993 by bribing Members of Parliament of different political parties, individuals and groups of an amount of over Rs 3 crore and that in furtherance of the said criminal conspiracy a sum of Rs 1.10 crore was handed over by the aforementioned persons to Suraj Mandal and others.⁷¹

The special judge designate on the basis of records, came to the conclusion that there were sufficient evidence to justify framing of charges, to initiate prosecution of all the above named persons for criminal conspiracy under *section 120B, IPC* and section 7 (public servant taking gratification), section 12 (punishment for abetment of offences defined under section 7 or section 11) and section 13(2) read with section 13(1)(d)(iii) of the *Prevention of Corruption Act, 1988*. Before the special judge an objection was raised on behalf of the accused persons that the jurisdiction of the Court to try the case was barred under *Article 105(2)*⁷² of the *Constitution*

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because the trial is in respect of matters which relate to the privileges and immunities of the House of Parliament (Lok Sabha) and its members inasmuch as the foundation of the charge sheets is the allegation of acceptance of bribes by some Members of Parliament for voting against the “No Confidence Motion” and that the controversy to be decided in this case would be in respect of the motive and action of Members of Parliament pertaining to the vote given by them in relation to the “No Confidence Motion”.

The special judge rejected the said contention on the ground that in the present case voting pattern of the accused persons was not under adjudication and they were sought to be tried for their illegal acts committed outside Parliament, i.e., demanding and accepting the bribe for exercising their franchise in a particular manner, and the accused persons are not being prosecuted for exercising their right of vote but they are being prosecuted on the allegations that they while holding a public office demanded and accepted illegal gratification for exercising their franchise in a particular manner which is an offence punishable under the Act, 1988 and that *Article 105 of the Constitution* does not provide any protection to the accused persons.

Revision petition filed by the appellant against the said order of the special judge having been dismissed by the Delhi High Court, the accused moved the apex court to quash the charges by virtue of the provisions of *Article 105 of the Constitution* as they are immune from prosecution and, that in any event they cannot be prosecuted under the *Prevention of Corruption Act, 1988*. Since the matter involved the question of interpretation of *Constitution*, the case was referred to a *Constitution Bench* of five judges.

As stated earlier, the court by a majority of three to two held that the bribe-taker M.Ps. Mr Suraj Mandal, Mr Shibu Soren, Mr Simon Marandi, Mr Shilendra Mehto, Mr Ram Lakhan Yadav and their friends enjoy immunity from prosecution. On the other hand, bribe giver MPs, namely PV Narasimha Rao, former Union Minister Satish Sharma, former Karnataka Chief Minister M Veerappa Moily, Mr Ram Linga Reddy, former Haryana Chief Minister Bhajan Lal, Buta Singh, NM Ravanna, DK Adikeshvulu and MM Thimmogwda were held liable for trial under *section 120(b) IPC* (conspiracy) and *section 12 of Prevention of Corruption Act, 1988* for which no prior sanction for their criminal prosecution was needed. Section 12 relates to abatement of offence of taking gratification.

A distinction was made between a bribe taker MP who casts vote in favour of “no confidence” motion and a bribe-taker MP who does not cast vote when fate of Narasimha Rao government came to be decided on the floor of the House. Ajit Singh, who did not cast vote, accordingly was held not entitled to immunity under *Article 105(2) of the Constitution*.

The Apex Court by a majority of 3 to 2 of the permitted prosecution alleged “bribe givers” under *section 12 Prevention of Corruption Act, 1988* read with *section 120B IPC* for which no prior sanction was needed—but quashed charges of corruption against “bribe takers” due to immunity under *Article 105(2) of Constitution* except one MP viz., Mr Ajit Singh, who did not cast vote.

With due respect, it is submitted that the majority judgment (3 to 2) in *PV Narasimha Rao's* case granting immunity from prosecution to the alleged bribe giver MP's under *Article 105(2) of the Constitution* for helping *PV Narasimha Rao's* minority government survive a “no confidence” motion in Lok Sabha has given a wrong signal and demoralised those citizens who were expecting a stern action against corrupt law makers. Perhaps the Justices failed to realise the seriousness of the crime and the dangers it poses to parliamentary democracy. Needless to say, the object underlying protection under *Article 105(2) of the Constitution* accorded by the framers of the *Constitution* is in respect of *bona fide* acts like free speech and fearless voting in the House to genuine lawmakers against malicious prosecution and not for protecting bribe takers for acting in a particular way or making a speech on some consideration and casting vote on receiving gratification.

No doubt, parliamentary independence is necessary for healthy functioning of a parliamentary democracy, which is a part of the basic structure of our *Constitution*. Nevertheless, a claim to immunity from prosecution under *Article 105(2)* by the MP's. who had allegedly taken bribe for an act in the House would place such members above the law. The majority judgment has made a distinction between a citizen and an MP (Member

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of Parliament), the former subject to the rigours of corruption laws, while MPs being beyond it. A distinction between a common man and law-maker in a democracy is untenable. Such a grant of immunity would not only be repugnant to healthy functioning of parliamentary democracy, but would also be subversive of the rule of law, another basic feature of the *Constitution*, which signifies that howsoever high one may be, he or she is not above the law.

The majority nullifies the very basis of anti-corruption laws, which have been enacted to root out corruption rampant on a large scale in the country. When lawmakers themselves are not accountable for their criminal acts, there is no justification whatsoever-moral, ethical or legal to hold others accountable for such acts. By common sense and conviction, both bribe givers and bribe takers must face charge equally.

The minority judgment of SC Aggarwal and Dr AS Anand JJ rejecting the claim for immunity from prosecution of bribe takers for supporting the minority Government of PV Narasimha Rao has rightly said that it would be ironic if a claim for immunity from prosecution founded on the need to ensure the independence of Parliament in exercising their right to speak or cast their vote in Parliament, could be put forward by a member who has bartered away his independence by agreeing to speak or vote in a particular manner in lieu of illegal gratification. By claiming the immunity, such a member would only be seeking a license to indulge in such corrupt act. The minority judgment rightly aired its concern saying there appears to be no reason why legislators in India should be beyond the pale of laws governing bribery and corruption, when all public functionaries are subject to such laws.⁷³

In fact, the message, which may not be correct, went across the common man that the Supreme Court has put its seal on MPs right to take bribe for acting in a particular way, making a speech on some consideration and casting their vote on receiving gratification.

Perhaps it is high time that the law-makers, taking note of the strong public opinion against the majority judgment in *PV Narasimha Rao*.⁷⁴ (JMM Bribery case), and resentment amongst jurists, scholars and legal scientists, overrule the said judgment by making appropriate amendments in the *Constitution*. The scope and extent of Parliamentary privileges under *Articles 105 and 164* of the *Constitution* accorded to Members of Parliament and State Legislators respectively should be streamlined, to set an example that in a democracy a common man is as much important as a lawmaker and the Rule of Law is applicable to both equally. In fact, a lawmaker should be held more accountable than a common man for giving or accepting a bribe and punishment in such cases be enhanced, to set an example.

In pursuance of the majority verdict in JMM bribery case, *PV Narasimha Rao* and *Buta Singh*⁷⁵ were prosecuted under sections 120(b), *IPC* for criminal conspiracy and under sections 7, 12 and 13(2) of the *Prevention of Corruption Act, 1988* in the court of special judge, Ajit Bharihoke, Delhi. They were sentenced to three years rigorous imprisonment with fine of Rs 2 lakh for bribing Members of Parliament of different political parties for casting vote in Parliament against "No Confidence motion". The court said the act by its very nature amounts to cutting at the roots of the democratic system provided by the *Constitution*. Refuting the plea of a lenient attitude in punishment, the court said:

Their act... is a crime of grave nature because by bribing JMM MPs, accused Rao with help of Singh tried to purchase the right to remain in power and rule the country.

The Judge said—

The two were being punished to discourage corruption in public life, particularly in high places. This is to send a message to the society that corruption is not a low risk business but a high risk business.

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Vinayak Nanda: The finding of the court is supported by the judgment of the Supreme Court in the *State of Jammu and Kashmir v Vinayak Nanda*,⁷⁶ wherein the court ruled out the plea of leniency in corruption cases and said:

Corruption at any level, by any person, of any magnitude is condemnable which cannot be ignored by the judicial courts, when proved. No leniency is require a to be shown in proved cases under the *Prevention of Corruption Act*, which itself treats the offences under it of a special nature to be treated differently than the general penal offences. The convicts of the offences under the Act are to be dealt with heavy hand and deterrent rod. No populous or sympathetic approach is needed in such cases. The only exception is in the existence of special circumstances for awarding the minimum sentence.⁷⁷

This was a welcome judgment and would have given right signal to those who subvert the *Constitution* by adopting nefarious means. However, the judgment, as expected has been set aside by Delhi High Court giving benefit of doubt to the accused Rao and Buta Singh that finally ended the long drawn struggle for justice culminating in fiasco.

(5) Assets in Excess of “known source of income”.—SH Shashittal: In *Seeta Hemchandra Shashittal*,⁷⁸ the accused a public servant was charged under section 13(2) read with section 13(1)(e), *Prevention of Corruption Act, 1988* for acquiring assets in 1986 which were far in excess of his “known source of income”. Wife and mother of the public servant were charged for abetment of the said offence. It appears investigation of case took four years, sanction for prosecution two years and two years delay was caused in filing of charge against the accused. The accused person filed a writ (*vide Article 226 of the Constitution*) in the High Court for quashing the charge on the ground of inordinate delay of eight years in filing charge in contravention of speedy trial mandated by *Article 21 of the Constitution*.

While endorsing the petitioner's contention that delay in criminal proceeding is anti-thesis to the constitutional protection enshrined in *Article 21 of the Constitution*, the court must consider each case on its own facts. Applying the general rule, the court said in the impugned case, delay of 4 years in investigation of offences under the *Prevention of Corruption Act, 1988* against the public servant and his wife etc., is not unreasonable *vis-a-vis* volume of evidence involved to be investigated. No doubt, the delay of two years in getting sanction for prosecuting the public servant is unreasonable. But the proceedings cannot be quashed because that will amount to miscarriage of justice by adopting unscrupulous methods by public servants to circumvent the process of law. However, the court quashed the criminal proceedings against two other ladies, *viz.*, mother and mother-in-law just for abetment.

Section 14, PCA: Habitual committing of offence under sections 8, 9 and 12.—

Whoever habitually commits—

(a) an offence punishable under section 8 or section 9; or

(b) an offence punishable under section 12,

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

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COMMENTS

Habitual offenders.—Section 14 provides for severe punishment in case of habitual offenders in respect of offences prescribed under sections, 8, 9 and 12 of the Act of 1988 so as to deter them from indulging in crimes again and again.

The section prescribes a minimum punishment of two years of imprisonment which may extend to seven years and fine if found guilty.

Section 15, Prevention of Corruption Act: Punishment for attempt.—Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

COMMENTS

Punishment for attempt to Dishonestly misappropriates or converts to his own use by illegal means property.—In view of seriousness of the offence of criminal misconduct *section 15 Prevention of Corruption Act, 1988* prescribes punishment for attempts to commit an offence punishable under clauses (c) and (d) of sub-section (1) to section 13 of the Act. The punishment may extend to three years of imprisonment with fine.

Section 16, Prevention of Corruption Act: Matters to be taken into consideration for fixing fine.—Where a sentence of fine is imposed under sub-section (2) of section 13 or section 14, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

Section 19, Prevention of Corruption Act: Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

[[s 165A] Punishment for abetment of offences defined in section 161 or section 165.—

(3) Notwithstanding anything contained in the *Code of Criminal Procedure, 1973* (2 of 1974),—

(a) no finding, sentence or order passed by a special judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of similar nature.

COMMENTS

(1) Sanction Rationale.—Section 19 of the Act (corresponding to section 6 of the repealed Prevention Corruption Act of 1947) prescribes that ‘no court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant except with the previous sanction of the authority specified in clause (a), (b) or (c) of sub-section (1) of section 19. The object underlying such provisions is to save the public servant from the harassment of frivolous or unsubstantial allegations. The policy underlying section 19 and similar sections⁷⁹ is that there should not be unnecessary harassment of a public servant.⁸⁰ The court must ensure as to whether a valid sanction has been obtained to prosecute the public servant for the offence alleged to have been committed by him. A trial without sanction renders the proceedings *void ab initio*. But the *terminus a quo* for a valid sanction is the time when the court is called upon to take cognizance of the offence. If, therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the court is called upon to take cognizance of the offence committed by him as a public servant, he has ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him. The relevant date with reference to which a valid sanction is a *sine qua non* (necessary requirement) for taking cognizance of an offence committed by a public servant as required by section 19 is the date on which the court is called upon to take cognizance of the offence of which he is accused.

(2) Requirement of Sanction.—Sanction would be necessary under section 19, *Prevention Corruption Act, 1988* only when at the time a court is asked to take cognizance, not only an offence must have been committed by a public servant, but the person accused must still be a public servant removable from his office by a

[[s 165A] Punishment for abetment of offences defined in section 161 or section 165.—

competent authority. In *K Veeraswami v UOI*,⁸¹ while construing the provisions of earlier Act of 1947 relating to sanction the Apex Court held that no sanction was necessary for prosecution of the appellant since he had retired from service after attaining the age of superannuation and was not a public servant on the date of filing the charge sheet.

Habibulla Khan: In *Habibulla Khan v State of Orissa*,⁸² the Apex Court has clarified the law relating to the requirement of sanction for launching a criminal prosecution. The appellant, who was a Minister in the State of Orissa was being prosecuted for the misconduct allegedly committed by him during his tenure as the member of the Council of Ministers and not in his capacity as an MLA. The court accordingly held that the provisions of sanction in such a case is not required *vide* section 19 of the *Prevention Corruption Act, 1988*.

(3) Authority to Grant Sanction.—The power to grant sanction is conferred on the authority competent to remove the public servant from his office and section 19 and section 6 *Prevention Corruption Act, 1947* requires a sanction before taking cognizance of offences committed by a public servant. A grant of sanction is not an ideal formality but a solemn and sacrosanct act which removes the umbrella of protection of government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants. Legislature clearly provided that, authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office.

(4) Sanction of one authority required.—**AR Antulay:** In *AR Antulay*,⁸³ the Supreme Court held that where accused holds more than one public office, sanction of the authority competent to remove the accused from the office allegedly misused or abused, is alone necessary and not that all competent authorities for prosecution for misusing or abusing one office under sections 7, 10, 11 and 13, *Prevention Corruption Act, 1988* (corresponding to sections 161, 164 and 165, *IPC* and section 5, *Prevention Corruption Act, 1947*). In the impugned case the special judge after a protracted hearing discharged Antulay on the ground that since at the time of the commission of the alleged offence, AR Antulay was both Chief Minister and MLA and at the time of taking cognizance of the offence only MLA, he cannot be prosecuted unless there has been previous sanction from the Governor, who has the competence to remove him as Chief Minister and the Maharashtra Legislature, which alone can remove him as an MLA. Of course, the Governor of Maharashtra granted the sanction to prosecute Antulay in respect of specific charges set out in the order. But there was no sanction from the Legislative Assembly which exercises power over an MLA. Allowing the petition, the court said sanction from the Governor was sufficient to prosecute the accused, sanction by the Maharashtra Assembly was not required as held by the special judge.

(5) No sanction required for prosecution of MPs and MLAs.—**RS Nayak:** The Supreme Court in *RS Nayak*,⁸⁴ held that MPs and MLAs are now included in definition of “public servant” *vide* section 2(c)(viii) of *Prevention Corruption Act, 1988* as they are required to perform “public duty”, unlike section 21, *IPC* under which they were excluded from the purview of the category of public servant.

PV Narasimha Rao: The Supreme Court in *Narasimha Rao*,⁸⁵ held that no doubt sanction for prosecution of MPs and MLAs under sections 7, 10, 11, 13, 15, *Prevention Corruption Act, 1988*, *vide* section 19(1) of Act is necessary for prosecution; but as there is no authority competent to remove the MP and MLA to grant sanction, the court can take cognizance *suo motu* without a sanction. But before filing charge sheets prosecuting agency should obtain permission from the Chairman of Rajya Sabha or Speaker of Lok Sabha for the same (and in case of MLAs from the Speaker of the Assembly).

(6) No probation for convicted corrupt: Ratan Lal Arora.—In *State through SP, New Delhi v Ratan Lal Arora*⁸⁶ (2004), a two-judges Bench of the Supreme Court refused to extend benefit of probation to an offender convicted for taking gratification (bribe) under sections 7 and 13(2) of the *Prevention of Corruption Act, 1988*. The accused, serving in DESU, was convicted for demanding and accepting bribe of Rs 1500 and sentenced by the trial Court to undergo rigorous imprisonment for 20 months and a fine of Rs 2000.

[[s 165A] Punishment for abetment of offences defined in section 161 or section 165.—

The High Court in view of peculiar circumstances and conditions of the accused, his being in unhappy family condition, the amount being paltry and that the accused had retired during the trial itself and turned to be of 64 years and remained in jail for 22 days granted the benefit of probation under *section 360 of the Criminal Procedure Code*.

Rejecting the High Court's observation the Supreme Court held all these reasons as not proper for going below the minimum sentence prescribed for the offence, in case of corruption.

No doubt, corruption should be viewed seriously and must be dealt with strong hand, but considering the case perhaps the Apex Court should not have become rigid and interfered with the High Court's finding. Justice should not be harsh and counterproductive.

- 1 See *IPC*, section 21 for meaning of 'public servant'. Chapter II, *supra*.
- 2 *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].
- 3 See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.
- 4 Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by *section 12 of the Prevention of Corruption Act, 1988*.
- 5 See the *Prevention of Corruption Act, 1988*, *section 13* dealing with the offences of criminal misconduct by a public servant.
- 6 Money involved Rs 5000 crore.
- 7 Money involved Rs 1600 crore.
- 8 Money involved Rs 1000 crore.
- 9 Money involved Rs 1000 crore.
- 10 Money involved Rs 65 crore.
- 11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]: 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].

[[s 165A] Punishment for abetment of offences defined in section 161 or section 165.—

12 *Prevention of Corruption Act*, 1947, which was amended twice; once by the *Criminal Law Amendment Act*, 1952 and later in 1964 was found inadequate to tackle the problem of corruption rampant on a large scale amongst public servants that necessitated the enactment of *Prevention of Corruption Act* 49 of 1988, which came into force on 9 September 1988.

13 *Prevention of Corruption Act*, 1988, section 19(3)(a).

14 *Prevention of Corruption Act*, 1988, section 4(4). "...A Special Judge shall, as far as possible, hold the trial of an offence on day-to-day basis.

15 Relevant sections of PCA, 1988 repealing sections 161 to 165A, IPC which were before repeal as under:

PCA, section 7 same as section 161, IPC, Public servant taking gratification other than legal remuneration in respect of an official act.

PCA, section 8 same as section 162, IPC, Taking gratification, in order, by corrupt or illegal means, to influence public servant.

PCA, section 9 same as section 163, IPC, Taking gratification for exercise of personal influence with public servant.

PCA, section 10 same as section 164, IPC, Punishment for abetment by public servant of offences defined in section 8 or 9.

PCA, section 11 same as section 165, IPC, Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.

PCA, section 12 same as section 165A, IPC, Punishment for abetment of offences in section 7 or 11.

62 Section 165A was earlier inserted by Act 46 of 1952, section 3 (w.e.f. 28-7-1952).

63 **Section 165A, IPC, before repeal: Punishment for abetment of offence defined in section 161 or section 165.—** Whoever, abets any offence punishable under section 161 or section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

64 *Bhagwan Singh v State of Rajasthan*, AIR 1976 SC 985 : (1976) 1 SCC 15 : 1975 CAR 309 : 1976 Cr LJ 713 .

65 *Faguna Kanta Nath v State of Assam*, AIR 1959 SC 673 [[LNIND 1959 SC 2](#)] : 1959 Supp (2) SCR 1 : 1959 SCJ 643 : 1959 Cr LJ 917 . See KD Gaur, *Criminal Law: Cases and Materials*, 3rd Edn, pp 654-655 for detailed discussion of the subject.

66 *Om Prakash v State of Uttar Pradesh*, AIR 1957 SC 458 [[LNIND 1957 SC 2](#)] : 1957 SCR 423 [[LNIND 1957 SC 2](#)] : (1957) SCJ 289 : 1957 Cr LJ 557 .

67 *State of Uttar Pradesh v Kanhaiya Lal*, 1976 Cr LJ 1230 .

68 *M Krishna Reddy v State, Dy. Superintendent of Police, Hyderabad*, AIR 1993 SC 313 : (1972) 4 SCC 45 : 1992 CLR 613 : (1992) 3 SCJ 4 .

69 *P Nallammal v State*, AIR 1999 SC 2556 [[LNIND 1999 SC 660](#)] : (1999) 6 SCC 559 [[LNIND 1999 SC 660](#)] : 1999 Cr LJ 3967 : 1999 CLR 505 (SC).

70 AIR 1998 SC 2120 [[LNIND 1998 SC 1259](#)] : (1998) 4 SCC 626 [[LNIND 1998 SC 1259](#)] : 1998 Cr LJ 2930 : (1998) 1 SCJ 529 ; The majority judgment was delivered by Bharucha, S Rajendra Babu and GN Ray JJ and minority by SC Aggarwal and Dr AS Anand JJ. In the General Election for the Tenth Lok Sabha held in 1991 the Congress (I) party emerged as the single largest party and it formed the Government with PV Narsimha Rao as the Prima Minister. In the Monsoon Session of Lok Sabha in July 1993 a No Confidence Motion was moved against the Government by Shri Ajay Mukhopadhyaya, a CPI (M) MP. At that time the effective strength of the House (Lok Sabha) was 528 and Congress (I) party had 251 members. It was short by 14 members for simple majority. The motion of 'No Confidence' was taken up for discussion in the Lok Sabha on 20 July 1993 and the debate continued till 28 July 1993. The motion was thereafter put to vote. The motion was defeated with 251 members voting in favour of the motion, while 265 voting against it.

71 On the basis of the complaint the CBI registered four cases under section 13(2) read with section 13(1)(d)(iii) of the *Prevention of Corruption Act* of 1988 against Suraj Mandal, Shibu Soren, Simon Marandi and Shailender Mahto. Members of the Lok Sabha owing allegiance to the Jharkhand Mukti Morcha (The JMM), and Ram Lakhan Singh Yadav, Anadi Charan Das, Abhay Pratap Singh and Haji Gulam Mohammed, Members of the Lok Sabha owing allegiance to the Janta Dal, Ajit Singh group (the JD, AS) voted against the no-confidence motion. Ajit Singh, a Member of the Lok Sabha owing allegiance to the JD, AS abstained from voting thereon.

72 *Article 105(2), Constitution of India*—No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

73 See KD Gaur, *Criminal Law: Cases and Materials*, 5th Edn, 2008, pp 765-779, for cases relating to corruption.

74 AIR 1998 SC 2120 [[LNIND 1998 SC 1259](#)] : (1998) 4 SCC 626 [[LNIND 1998 SC 1259](#)] : 1998 Cr LJ 2930 : (1998) 1 SCJ 529 .

75 All other accused were acquitted in the absence of convicting proof of their participation in the Act of bribery to MPs.

[[s 165A] Punishment for abetment of offences defined in section 161 or section 165.—

- 76** 2000 (1) Supreme 187 : AIR 2001 SC 611 [[LNIND 2001 SC 156](#)] : 2001 Cr LJ 957 : JT 2001 (2) SC 351 [[LNIND 2001 SC 156](#)] : (2001) 1 Scale 2002 .
- 77** *Seeta Hemchandra Shashittal v State of Maharashtra*, (2000) 1 Supreme Today 661 : 2001 SCC 525 SC : AIR 2001 SC 1246 [[LNIND 2001 SC 403](#)] : 2001 Cr LJ 1242 SC.
- 78** *Seeta Hemchandra Shashittal v State of Maharashtra*, (2000) 1 Supreme Today 661 : 2001 SCC 525 SC : AIR 2001 SC 1246 [[LNIND 2001 SC 403](#)] : 2001 Cr LJ 1242 SC.
- 79** *Criminal Procedure Code, 1973 section 197* provides a provision or sanction for prosecution in case of judges and public servants.
- 80** *CR Bansi v State of Maharashtra*, AIR 1971 SC 176 : (1971) 3 SCR 236 [[LNIND 1970 SC 483](#)] : 1971 Cr LJ 662 : 1971 CAR 105 : (1970) 3 SCC 537 [[LNIND 1970 SC 483](#)] .
- 81** (1991) 3 SCC 655 [[LNIND 1991 SC 320](#)] : (1991) 3 JT 198 : (1991) 2 Scale 150 : 1991 SCC (Cri) 734 : 1991 Cr LJ 677 (SC) : (1991) 3 SCR 189 [[LNIND 1991 SC 320](#)] : (1992) 2 LLJ 53 [[LNIND 1991 SC 320](#)] ; *Times of India*, 25 January 1996 p 1. The CBI charge sheeted three former Union Ministers – Madhav Rao Scindia, VC Shukla and Balram Jhakar for allegedly receiving large amount of money in the *Hawala Kickback's* case. Since they resigned from their posts no sanction was required for their prosecution under section 19, *Prevention Corruption Act, 1988*.
- 82** AIR 1995 SC 1124 [[LNIND 1995 SC 192](#)] : (1995) 2 SCC 437 [[LNIND 1995 SC 192](#)] ; *RS Nayak v AR Antulay*, AIR 1984 SC 684 [LNIND 1984 SC 43] : (1984) 2 SCC 183 [LNIND 1984 SC 43] : (1984) 2 SCR 495 [LNIND 1984 SC 43] : 1984 Cr LJ 613 ; *SA Venkataraman v State*, AIR 1958 SC 107 [[LNIND 1957 SC 134](#)] : 1958 SCR 1037 : 1958 SCJ 594 : 1958 Cr LJ 254 : (1958) 2 LLJ 1 [[LNIND 1957 SC 134](#)] .
- 83** *RS Nayak v AR Antulay*, AIR 1984 SC 684 [LNIND 1984 SC 43] : (1984) 2 SCC 183 : (1984) 2 SCR 495 [LNIND 1984 SC 43] : 1984 Cr LJ 613 : 1984 CAR 141 . The complainant RS Nayak moved the Governor of Maharashtra on September 1980 requesting him to grant sanction to prosecute AR Antulay (who was Chief Minister of Maharashtra from 1980 to 20 January 1982) as required by section 6 of *Prevention Corruption Act, 1947* (corresponding to section 19, *Prevention Corruption Act, 1988*) under *sections 161, 165, IPC* (repealed) and section 5, *Prevention Corruption Act, 1947*. The Governor finally granted sanction for prosecution on 28 July 1982 to prosecute Antulay in respect of charges set out in the order.
- 84** *RS Nayak v AR Antulay*, AIR 1984 SC 684 [LNIND 1984 SC 43] : (1984) 2 SCC 183 : (1984) 2 SCR 495 [LNIND 1984 SC 43] : 1984 Cr LJ 613 : 1984 CAR 141 .
- 85** *PV Narasimha Rao v State (CBI/SPE)*, AIR 1998 SC 2120 [[LNIND 1998 SC 1259](#)] : (1998) 4 SCC 626 [[LNIND 1998 SC 1259](#)] : 1998 Cr LJ 2930 : (1998) 1 SCJ 529 : (1998) 4 Supreme 1 .
- 86** (2004) 5 Scale 67 [[LNIND 2004 SC 556](#)] : 2004 Cr LJ 2015 : AIR 2004 SC 2364 [[LNIND 2004 SC 556](#)] : (2005) Cal LT 24 (SC) : (2004) 4 SCC 590 [[LNIND 2004 SC 556](#)] *Doraiswamy Raju and Arijit Pasayat JJ.*

[s 166] Public servant disobeying law, with intent to cause injury to any person.—

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The Indian Penal Code

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

9.1 Introduction.—Public servants¹ in a democracy governed by Rule of law play an important role in the administration as they are responsible for the implementation of the plans and policies of the government. Besides discharging administrative functions, a public servant in a welfare state is responsible for execution and implementation of various social and economic welfare schemes. For instance, public servants are entrusted with the arduous (difficult) job of distribution of wealth and other benefits to the public, such as rural employment guarantee schemes, allotments of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas, licences etc. from time to time.² If they are corrupt and dishonest, the welfare of the people will be greatly jeopardised and the administration of the country cannot run efficiently and effectively.

Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in the *Prevention of Corruption Act, 1988* under *sections 7 to 12 of Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is,

[s 166] Public servant disobeying law, with intent to cause injury to any person.—

out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (*sections 166, 167, 168 and 169, IPC*); and
- (ii) Offences committed by others, though relating to public servants (*sections 170 and 171, IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

Taking note of the gravity and seriousness of the problem the Apex Court has rightly observed in *Shri Ram Singh*¹¹ that,

Corruption in a civilized society is like cancer, which if not detected in time is sure to malign the polity of the country leading to disastrous consequences. It is termed as a plague, which are not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but also aimed and targeted at them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence in social, economic and political system in an otherwise healthy, wealthy, effective and vibrating society.

II. OFFENCES RELATING TO PUBLIC SERVANT UNDER *INDIAN PENAL CODE*

[s 166] Public servant disobeying law, with intent to cause injury to any person.—

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

ILLUSTRATION

[s 166] Public servant disobeying law, with intent to cause injury to any person.—

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

[s 166.1] Disobedience of Law by Public Servant

This section makes disobedience by public servant of any direction of law with intent to cause injury to any person an offence. The disobedience must be wilful and should be of an express direction of the law. Disobedience of an order itself is not sufficient to attract the section. To bring an act of disobedience within the purview of the section it must be proved that the accused have abetted an offence, and the offence abetted fall under section 161 or section 165 (*sections 7 and 10, Prevention of Corruption Act, 1988*).

The offence made punishable under the section consists of wilful disobedience of an express direction of the law.⁸⁷ A mere breach of departmental rules or regulations not having the force of law cannot fall under this section. The section contemplates breach of some statutory duty with a view to causing injury to any person. The offence is non-cognizable, bailable but not compoundable and is triable by a Magistrate of first class. The punishment may extend to imprisonment of either description for a period of three years, or with fine, or with both.

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- 1 See *IPC*, section 21 for meaning of 'public servant'. Chapter II, *supra*.
 - 2 *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].
 - 3 See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.
 - 4 Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by section 12 of the *Prevention of Corruption Act, 1988*.
 - 5 See the *Prevention of Corruption Act, 1988*, section 13 dealing with the offences of criminal misconduct by a public servant.
 - 6 Money involved Rs 5000 crore.
 - 7 Money involved Rs 1600 crore.
 - 8 Money involved Rs 1000 crore.
 - 9 Money involved Rs 1000 crore.

[s 166] Public servant disobeying law, with intent to cause injury to any person.—

10 Money involved Rs 65 crore.

11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]: 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].

87 *Appaji Narayan*, (1895) Unr Re Cr C 674.

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[[s 166A] Public servant disobeying direction under law.—

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The Indian Penal Code

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

9.1 Introduction.—Public servants¹ in a democracy governed by Rule of law play an important role in the administration as they are responsible for the implementation of the plans and policies of the government. Besides discharging administrative functions, a public servant in a welfare state is responsible for execution and implementation of various social and economic welfare schemes. For instance, public servants are entrusted with the arduous (difficult) job of distribution of wealth and other benefits to the public, such as rural employment guarantee schemes, allotments of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas, licences etc. from time to time.² If they are corrupt and dishonest, the welfare of the people will be greatly jeopardised and the administration of the country cannot run efficiently and effectively.

Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in the *Prevention of Corruption Act, 1988* under *sections 7 to 12 of Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is, out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code

[[s 166A] Public servant disobeying direction under law.—

and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (*sections 166, 167, 168 and 169, IPC*); and
- (ii) Offences committed by others, though relating to public servants (*sections 170 and 171, IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

Taking note of the gravity and seriousness of the problem the Apex Court has rightly observed in *Shri Ram Singh*¹¹ that,

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II. OFFENCES RELATING TO PUBLIC SERVANT UNDER *INDIAN PENAL CODE*

⁸⁸[[s 166A] Public servant disobeying direction under law.—

Whoever, being a public servant,—

- (a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
- (b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
- (c) fails to record any information given to him under sub-section (1) of *section 154 of the Code of Criminal Procedure, 1973 (2 of 1974)*, in relation to cognizable offence punishable under section

[[s 166A] Public servant disobeying direction under law.—

326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, ⁸⁹[section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509,

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.]

Section 166A has been inserted in the Code *vide Criminal Law (Amendment) Act, 2013* to make a public servant criminally liable if he:

- (a) knowingly disobeys any direction of law which prohibits him from requiring the attendance at any place of any person. For investigation of any matter;
 - (b) knowingly disobeys any direction of law regulating the manner in which the investigation shall be conducted;
 - (c) fails to record any information given to him under *section 154, CrPC* in related to any cognizable offence punishable under sections 354D, 370, 370A, 376A, 376B, 376C, 376D and 376E or *section 501, IPC*. Punishment in such a case shall not be less than 6 months but may extend to 2 years and fine.
-

1 See *IPC*, section 21 for meaning of 'public servant'. Chapter II, *supra*.

2 *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].

3 See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.

4 Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by *section 12 of the Prevention of Corruption Act, 1988*.

5 See the *Prevention of Corruption Act, 1988*, *section 13* dealing with the offences of criminal misconduct by a public servant.

6 Money involved Rs 5000 crore.

7 Money involved Rs 1600 crore.

[[s 166A] Public servant disobeying direction under law.—

8 Money involved Rs 1000 crore.

9 Money involved Rs 1000 crore.

10 Money involved Rs 65 crore.

11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]; 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].

88 Ins by Act 13 of 2013, section 3 (w.r.e.f. 3-2-2013).

89 Subs. by Act 22 of 2018, section 2, for “section 376B, section 376C, section 376D” (w.r.e.f. 21-4-2018).

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[[s 166B] Punishment for non-treatment of victim.—

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CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

9.1 Introduction.—Public servants¹ in a democracy governed by Rule of law play an important role in the administration as they are responsible for the implementation of the plans and policies of the government. Besides discharging administrative functions, a public servant in a welfare state is responsible for execution and implementation of various social and economic welfare schemes. For instance, public servants are entrusted with the arduous (difficult) job of distribution of wealth and other benefits to the public, such as rural employment guarantee schemes, allotments of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas, licences etc. from time to time.² If they are corrupt and dishonest, the welfare of the people will be greatly jeopardised and the administration of the country cannot run efficiently and effectively.

Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in the *Prevention of Corruption Act, 1988* under *sections 7 to 12 of Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is, out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code

[[s 166B] Punishment for non-treatment of victim.—

and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (*sections 166, 167, 168 and 169, IPC*); and
- (ii) Offences committed by others, though relating to public servants (*sections 170 and 171, IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

Taking note of the gravity and seriousness of the problem the Apex Court has rightly observed in *Shri Ram Singh*¹¹ that,

Corruption in a civilized society is like cancer, which if not detected in time is sure to malign the polity of the country leading to disastrous consequences. It is termed as a plague, which are not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but also aimed and targeted at them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence in social, economic and political system in an otherwise healthy, wealthy, effective and vibrating society.

II. OFFENCES RELATING TO PUBLIC SERVANT UNDER *INDIAN PENAL CODE*

⁹⁰[[s 166B] Punishment for non-treatment of victim.—

Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of *section 357C of the Code of Criminal Procedure, 1973 (2 of 1974)*, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.]

Section 166B, IPC fixes criminal liability on hospitals, run by Central, State Governments or local bodies to

[[s 166B] Punishment for non-treatment of victim.—

provide the first aid or medical treatment, free of cost to victims of any offence falling under sections 326A, 376, 376A, 376B, 376C, 376D or 376E, *IPC* and inform the police of such incident immediately. Failure to comply with statutory obligation carries punishment that may extend up to 1 year of imprisonment or with fine or both.

- 1 See *IPC*, section 21 for meaning of 'public servant'. Chapter II, *supra*.
- 2 *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].
- 3 See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.
- 4 Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by section 12 of the *Prevention of Corruption Act, 1988*.
- 5 See the *Prevention of Corruption Act, 1988*, section 13 dealing with the offences of criminal misconduct by a public servant.
- 6 Money involved Rs 5000 crore.
- 7 Money involved Rs 1600 crore.
- 8 Money involved Rs 1000 crore.
- 9 Money involved Rs 1000 crore.
- 10 Money involved Rs 65 crore.
- 11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]: 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].
- 90 Subs by Act 21 of 2000, section 91 and Sch. I, for certain words (w.e.f. 7-10-2000).

[s 167] Public servant framing an incorrect document with intent to cause injury.—

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The Indian Penal Code

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

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Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in the *Prevention of Corruption Act, 1988* under *sections 7 to 12 of Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is,

[s 167] Public servant framing an incorrect document with intent to cause injury.—

out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (*sections 166, 167, 168 and 169, IPC*); and
- (ii) Offences committed by others, though relating to public servants (*sections 170 and 171, IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

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Taking note of the gravity and seriousness of the problem the Apex Court has rightly observed in *Shri Ram Singh*¹¹ that,

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II. OFFENCES RELATING TO PUBLIC SERVANT UNDER *INDIAN PENAL CODE*

[s 167] Public servant framing an incorrect document with intent to cause injury.—

Whoever, being a public servant, and being, as ⁹¹[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

[s 167.1] Framing Incorrect Document to cause Injury

This section makes preparing, framing or translating of an incorrect document or electronic record by a public servant with intent to cause injury punishable. The gist of the offence consists of an intention to cause injury to any person by perversion of his duty by a public servant. To invoke the section:

- (1) the accused must be a public servant,
- (2) entrusted with the preparation of a document or electronic record,
- (3) which he frames or translates in an incorrect manner,
- (4) and does so knowingly,
- (5) with the intent or knowledge that it is likely that he will thereby cause an injury.

To convict a person under this section there must be statutory duty for him to prepare the document or electronic record in question and he must prepare it in the manner and with the intent as described above.⁹² The offence is cognizable, bailable, non-compoundable and triable by a Magistrate of first class. Punishment may extend up to three years of imprisonment, or fine, or both.

¹ See *IPC*, section 21 for meaning of 'public servant'. Chapter II, *supra*.

² *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].

³ See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.

⁴ Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by section 12 of the *Prevention of Corruption Act, 1988*.

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⁶ Money involved Rs 5000 crore.

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[s 167] Public servant framing an incorrect document with intent to cause injury.—

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11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]: 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].

91 Subs. by Act 21 of 2000, section 91 and Sch I, for certain words (w.e.f. 17-10-2000).

92 *Shankar Rao Mohile*, AIR 1952 Bom 196 .

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[s 168] Public servant unlawfully engaging in trade.—

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The Indian Penal Code

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

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Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

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[s 168] Public servant unlawfully engaging in trade.—

and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (*sections 166, 167, 168 and 169, IPC*); and
- (ii) Offences committed by others, though relating to public servants (*sections 170 and 171, IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

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II. OFFENCES RELATING TO PUBLIC SERVANT UNDER *INDIAN PENAL CODE*

[s 168] Public servant unlawfully engaging in trade.—

Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

[s 168.1] Public Servant engaging in trade

[s 168] Public servant unlawfully engaging in trade.—

This section makes provision for the punishment of those public servants who are legally bound not to engage in trade, but engage in trade contrary to the conditions of service. The punishment may extend to imprisonment for one year, or with fine, or with both. The reason for making such activities of public servants punishable is to preclude their neglect of duties. Secondly, given their official position they can easily obtain unfair advantage over other traders.

[s 168.2] Ingredients

To attract the section,

- (i) the accused must be a public servant,
- (ii) as such public servant be bound not to trade, and
- (iii) have engaged in trade.

[s 168.3] Trade

MD Thakkar: The word “trade” implies a trade or business habitually or systematically carried on and not an isolated transaction. In *State of Gujarat v MD Thakkar*,⁹³ the accused was serving as a Tracer in the office of the Sub-Divisional Soil Conservation Officer, Bhavnagar from 12 December 1965 to 6 February 1968. While still in service as a Tracer, he applied on 19 January 1969 to the Railway Authorities, Bhavnagar to receive training as an apprentice Electrical Signal Maintainer. His application was accepted by the Divisional Assistant Signal and Telecommunication Engineer. The accused obtained leave from the Sub-Divisional Soil Conservation Officer for the period 13 February 1967 to 5 February 1968 and joined as an apprentice to receive training at Ajmer. On completion of the training the accused obtained leave from the Western Railway from 5 February 1968 and resumed duty in the office of the Soil Conservation Officer, Bhavnagar and resigned from that service with effect from 6 February 1968.

He obtained pay and allowances from the Soil Conservation Officer for the period 16 December 1967 to 7 February 1968, and also drew the stipend admissible to trainee apprentices from the Railway for the said period.

Held, even if the wider interpretation were to be put on the word “trade” in *section 168, IPC* the engagement of respondent as an apprentice trainee would not bring him within the purview of the expression “trade”. The fact remains that during the period of this apprenticeship the respondent was carrying on no trade as a means of livelihood within the meaning of *section 168, Indian Penal Code*.

The appellant (respondent) had entered into an agreement with the Railway Administration not for the purpose of engaging in trade, business, or profession, but for the sole purpose of receiving training so that on completion of the training he could be employed by the Railway Administration. The mere fact that he was paid a stipend during the training period as an apprentice, did not make him an employee of the Railway Administration.⁹⁴

¹ See *IPC*, section 21 for meaning of ‘public servant’. Chapter II, *supra*.

[s 168] Public servant unlawfully engaging in trade.—

- 2 *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].
- 3 See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.
- 4 Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by *section 12 of the Prevention of Corruption Act, 1988*.
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- 6 Money involved Rs 5000 crore.
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- 11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]: 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].
- 93 AIR 1980 SC 1167 [[LNIND 1980 SC 69](#)] : (1980) 2 SCC 322 [[LNIND 1980 SC 69](#)] : (1980) 2 SCR 317 : (1980) CAR 151 : 1980 Cr LJ 919 .
- 94 AIR 1980 SC 1167 [[LNIND 1980 SC 69](#)] : (1980) 2 SCC 322 : (1980) 2 SCR 317 : (1980) CAR 151 : 1980 Cr LJ 919 .

[s 169] Public servant unlawfully buying or bidding for property.—

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- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in the *Prevention of Corruption Act, 1988* under *sections 7 to 12 of Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is, out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code

[s 169] Public servant unlawfully buying or bidding for property.—

and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (*sections 166, 167, 168 and 169, IPC*); and
- (ii) Offences committed by others, though relating to public servants (*sections 170 and 171, IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

Taking note of the gravity and seriousness of the problem the Apex Court has rightly observed in *Shri Ram Singh*¹¹ that,

Corruption in a civilized society is like cancer, which if not detected in time is sure to malign the polity of the country leading to disastrous consequences. It is termed as a plague, which are not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but also aimed and targeted at them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence in social, economic and political system in an otherwise healthy, wealthy, effective and vibrating society.

II. OFFENCES RELATING TO PUBLIC SERVANT UNDER *INDIAN PENAL CODE*

[s 169] Public servant unlawfully buying or bidding for property.—

Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

[s 169.1] Public Servant unlawfully buying property

This section is an extension of section 168. It prohibits a public servant from purchasing or bidding for property which he is legally bound not to purchase. The scope of the section is limited to property sold by a public servant in his official capacity. This is based on the principle that, as he is placed in an advantageous position over others, he might influence the sale in his favour. But if the sale is unconnected with the official position of the public servant, he is not prohibited from bidding or purchasing the property and the section is not attracted. For instance, purchase of an impounded pony by a police officer,⁹⁵ and of a buffalo belonging to a district board at an auction by a member of the board, were neither covered under this section.⁹⁶

[s 169.2] Ingredients

To attract the section and fix liability:

- (1) The accused must be a public servant;
- (2) As such, he was bound not to bid for the property in question at an auction;
- (3) He purchased or bid for that property either in his name or in the name of another or jointly or in shares with others.

The offence is non-cognizable, bailable and triable by a Magistrate of first class. The punishment may extend to imprisonment for a period of two years, or fine, or both, and the property if purchased shall be confiscated.

- ¹ See *IPC*, section 21 for meaning of 'public servant'. Chapter II, *supra*.
- ² *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].
- ³ See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.
- ⁴ Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by section 12 of the *Prevention of Corruption Act, 1988*.
- ⁵ See the *Prevention of Corruption Act, 1988*, section 13 dealing with the offences of criminal misconduct by a public servant.
- ⁶ Money involved Rs 5000 crore.
- ⁷ Money involved Rs 1600 crore.

[s 169] Public servant unlawfully buying or bidding for property.—

8 Money involved Rs 1000 crore.

9 Money involved Rs 1000 crore.

10 Money involved Rs 65 crore.

11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]; 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].

95 *Rajkristo Biswa*, (1871) 16 WR (Cr) 62.

96 *Suraj Narain Chaube*, AIR 1938 Bom 565 .

[s 170] Personating a public servant.—

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CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

9.1 Introduction.—Public servants¹ in a democracy governed by Rule of law play an important role in the administration as they are responsible for the implementation of the plans and policies of the government. Besides discharging administrative functions, a public servant in a welfare state is responsible for execution and implementation of various social and economic welfare schemes. For instance, public servants are entrusted with the arduous (difficult) job of distribution of wealth and other benefits to the public, such as rural employment guarantee schemes, allotments of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas, licences etc. from time to time.² If they are corrupt and dishonest, the welfare of the people will be greatly jeopardised and the administration of the country cannot run efficiently and effectively.

Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in the *Prevention of Corruption Act, 1988* under *sections 7 to 12 of Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is, out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code

[s 170] Personating a public servant.—

and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (*sections 166, 167, 168 and 169, IPC*); and
- (ii) Offences committed by others, though relating to public servants (*sections 170 and 171, IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

Taking note of the gravity and seriousness of the problem the Apex Court has rightly observed in *Shri Ram Singh*¹¹ that,

Corruption in a civilized society is like cancer, which if not detected in time is sure to malign the polity of the country leading to disastrous consequences. It is termed as a plague, which are not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but also aimed and targeted at them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence in social, economic and political system in an otherwise healthy, wealthy, effective and vibrating society.

II. OFFENCES RELATING TO PUBLIC SERVANT UNDER *INDIAN PENAL CODE*

[s 170] Personating a public servant.—

Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[s 170.1] Personating to hold public office

[s 170] Personating a public servant.—

This section seeks to punish a person who pretends to hold any public office as a public servant, or falsely personates any other person holding such office, and in such assumed character does or attempt to do so any act under colour of such office. Personation alone is not sufficient to constitute the offence. It must be accompanied by some overt act or attempt to do such act on the part of the offender.⁹⁷ The gist of the offence consists in false assumption of the role of the public servant.

[s 170.2] Ingredients

The section requires the following conditions to fix liability:

- (1) The accused falsely pretend to be or personated a public servant;
- (2) He did so knowingly;
- (3) When he did so, he attempted to do something under colour of such office.

An offence under this section is cognizable, non-bailable, non-compoundable, and is triable by any Magistrate, and is punishable with imprisonment which may extend to two years, or fine, or both. When a person falsely personated himself as a constable and under the colour of such pretended office collected fees from the villager he was held liable under this section.⁹⁸

- ¹ See *IPC*, section 21 for meaning of 'public servant'. Chapter II, *supra*.
- ² *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].
- ³ See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.
- ⁴ Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, *IPC* (repealed) replaced by section 12 of the *Prevention of Corruption Act, 1988*.
- ⁵ See the *Prevention of Corruption Act, 1988*, section 13 dealing with the offences of criminal misconduct by a public servant.
- ⁶ Money involved Rs 5000 crore.
- ⁷ Money involved Rs 1600 crore.
- ⁸ Money involved Rs 1000 crore.

[s 170] Personating a public servant.—

9 Money involved Rs 1000 crore.

10 Money involved Rs 65 crore.

11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]: 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].

97 *Sukhdev Pathak v Emperor*, AIR 1918 Pat 653 .

98 *Lakshminarayan Tripathi v Emperor*, AIR 1943 Pat 378 .

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[s 171] Wearing garb or carrying token used by public servant with fraudulent intent.—

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The Indian Penal Code

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

9.1 Introduction.—Public servants¹ in a democracy governed by Rule of law play an important role in the administration as they are responsible for the implementation of the plans and policies of the government. Besides discharging administrative functions, a public servant in a welfare state is responsible for execution and implementation of various social and economic welfare schemes. For instance, public servants are entrusted with the arduous (difficult) job of distribution of wealth and other benefits to the public, such as rural employment guarantee schemes, allotments of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas, licences etc. from time to time.² If they are corrupt and dishonest, the welfare of the people will be greatly jeopardised and the administration of the country cannot run efficiently and effectively.

Chapter IX had earlier in *sections 161 to 171, IPC* dealt with two classes of offences:—

- (1) Offences committed by public servants (*IPC, sections 161, 164, 165, 166, 167, 168 and 169*), and
- (2) Offences committed by others, though relating to public servants (*IPC*), *sections 162, 163, 164, 165A, 170 and 171*).

The underlying object behind these offences is to ensure honesty and a high standard of integrity among public servants. However, this chapter is not exhaustive, since the state can make rules for the conduct of its servants, though it cannot regulate the morality of the public beyond that implied in the Code.³

9.2 Giving and Taking of a Bribe an offence: The authors of the Code were not in favour of making the act of giving a bribe an offence⁴ unlike receiving a bribe. The reason was that in many cases the giver has no option. It assumes the nature of extortion. But the Legislature preferred to make both the giver and the taker of a bribe criminally liable to avoid complications. The law perhaps needs change on this count. In genuine cases, the bribe giver may be exempted from criminal liability altogether. Public servants are also prohibited from using their offices for personal benefits even indirectly.⁵ However, it was noticed that the *Penal Code* provisions were not effective enough to deal with growing corruption on a large scale among the public servants. Accordingly, to check corruption rampant in the country. *Prevention of Corruption Act, 1988* was enacted deleting the previous Act of 1947. And the provisions relating to *sections 161 to 165A, IPC*, have been deleted from the *Indian Penal Code* and incorporated in the *Prevention of Corruption Act, 1988* under *sections 7 to 12 of Prevention of Corruption Act, 1988* making the provisions more stringent. As a result the number of sections under this chapter have been reduced to half, that is,

[s 171] Wearing garb or carrying token used by public servant with fraudulent intent.—

out of twelve sections 161 to 165A and 166 to 171, only six sections 166 to 171 are left in Chapter IX of the Code and rest of the sections 161 to 165A have been deleted and incorporated in *Prevention of Corruption Act, 1988*. These provisions might be grouped into two parts:—

- (i) Offences committed by public servants (*sections 166, 167, 168 and 169, IPC*); and
- (ii) Offences committed by others, though relating to public servants (*sections 170 and 171, IPC*).

Since offences relating to public servants have now been dealt in (i) the *Prevention of Corruption Act, 1988* as well as under (ii) the *Indian Penal Code*, it is proposed to give a brief account of both the enactments.

9.3 Corruption and its Magnitude.—An idea about the magnitude of corruption which has many facets can be visualised from some of the instances of corruption reported in recent years. The effect of such corruptions in the society are alarming and has disastrous effect on the political stability, economy of the country and health of the people at large, such as Medicine Equipment Scam,⁶ Wakf Scam,⁷ Fodder Scam,⁸ Share Scam,⁹ Defence Scam starting from Bofors Scam¹⁰ and many more. India is perhaps amongst the top three countries in corruption in the world.

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II. OFFENCES RELATING TO PUBLIC SERVANT UNDER *INDIAN PENAL CODE*

[s 171] Wearing garb or carrying token used by public servant with fraudulent intent.—

Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

[s 171] Wearing garb or carrying token used by public servant with fraudulent intent.—

[s 171.1] Wearing garb used by public servant

This section punishes the wearing of the garb or carrying a token used by a public servant with fraudulent intent, that is, with intention to pass off as such public servant. The intention is the gist of the offence.

[s 171.2] Ingredients

To charge a person under this section the following must be proved:—

- (1) The accused wore a garb or carried a token used by certain classes of persons;
- (2) The accused did not belong to that class of public servant and was not entitled to wear such garb or token;
- (3) The accused wore the garb or carried a token with the intention or knowledge that it was likely to be believed that he was a public servant belonging to that class.

The provisions will not be applicable in case of persons wearing garb or carrying token used by public servants in case of films, or shows depicting the character and role of a supposed public officer, or a minister. This is because the element of fraud is missing and the object is to depict the role of an officer to the public in society. The intention is not to take an advantage but to show to the public the current state of affairs in the society.

The offence is cognizable, bailable but not compoundable and is triable by any Magistrate. Punishment may extend to 3 months of imprisonment, or a fine up to two hundred rupees, or both.

- 1 See IPC, section 21 for meaning of 'public servant'. Chapter II, *supra*.
- 2 *Common Cause, A Registered Society v UOI*, (1996) 6 SCC 530 [[LNIND 1996 SC 1542](#)] (553) : AIR 1996 SC 3538 [[LNIND 1996 SC 1542](#)].
- 3 See Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485.
- 4 Hari Singh Gour, *Penal Law of India*, 11th Edn, (2000), vol II, pp 1483-1485. A person who gives a bribe is punished as an abettor under sections 109, 211(9) and 165A, IPC (repealed) replaced by section 12 of the *Prevention of Corruption Act, 1988*.
- 5 See the *Prevention of Corruption Act, 1988*, section 13 dealing with the offences of criminal misconduct by a public servant.
- 6 Money involved Rs 5000 crore.

[s 171] Wearing garb or carrying token used by public servant with fraudulent intent.—

7 Money involved Rs 1600 crore.

8 Money involved Rs 1000 crore.

9 Money involved Rs 1000 crore.

10 Money involved Rs 65 crore.

11 *State of Madhya Pradesh v Shri Ram Singh*, AIR 2000 SC 870 [[LNIND 2000 SC 206](#)]: 2000 Cr LJ 401 : (2001) 1 Scale 396 : (2000) 5 SCC 88 [[LNIND 2000 SC 206](#)] : (2000) 1 SCR 579 [[LNIND 2000 SC 206](#)].

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[s 171A] “Candidate”, “Electoral right” defined.—

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The Indian Penal Code

¹[CHAPTER IXA OF OFFENCES RELATING TO ELECTIONS]

Chapter IXA dealing with offences relating to elections² is a later addition to the *Penal Code* by the Indian Election Offences and Inquiries Act, 1920.³ It was enacted with a view to provide for the punishment for malpractices in an election and for the conduct of inquiries in disputed elections.

It would be proper to state the Select Committee's view as to the desirability of having such offences in the Code. The Committee observed:

We feel there are distinct advantages at the present time, when election is to play so important a part in the new public life of India, that the public conscience should be markedly drawn to the danger of corrupt practices in relation to franchise, whether that franchise relates to legislative or other bodies. We feel it is of the greatest importance that the principle of the purity of the franchise should be insisted on in the general criminal law of the country and that it should not be left to local legislatures to deal with.

It is a small chapter consisting of sections 171A to 171-I. *Section 171A, IPC* is a definition clause and *sections 171B, 171C, 171D* and *171-I, IPC* explain offences relating to bribery, undue influence, personation and false statements in an election, and *sections 171E, IPC* and *171F, IPC* prescribe punishment for the offences of bribery, undue influence, personation and failure to keep statement of election accounts. Thus, the *Penal Code* in this Chapter seeks to punish the following six offences relating to elections:—

- (1) Bribery (section 171B, and E).
- (2) Undue influence (section 171C, and F).
- (3) Personation at elections (section 171D).
- (4) False statement in connection with an election (section 171G).
- (5) Illegal payment in connection with an election (section 171H).
- (6) Failure to maintain election accounts (section 171I).

[s 171A] “Candidate”, “Electoral right” defined.—

The scope of the provisions of the chapter is wide. It applies not only to the elections of legislative bodies but also to the memberships of metropolitan councils, municipalities, district boards, panchayats and other public bodies. It provides for the punishment of malpractices in connections with elections and attempts to safeguard the purity of the franchise. The ordinary criminal courts will have jurisdiction to decide cases under the chapter.⁴

With the attainment of independence on 15 August 1947 and the adoption of democracy based on adult suffrage, a need for comprehensive legislation to regulate the conduct of elections to various elective bodies, and institutions was felt. Accordingly, the *Representation of the People Act*, 43 of 1950 and 43 of 1951 providing detailed provisions for the conduct of elections both for the Parliament and the State Legislature was enacted.⁵ A separate legislation for the election of President and Vice-President of India has also been provided.⁶ To decide election disputes expeditiously section 100 of the Representation of Peoples Act of 1951 gives original jurisdiction to the High Courts and the civil courts have been barred from entertaining election petitions. The provisions relating to Representation of Peoples Act, 1951 and Chapter IXA, *IPC* are complementary and should be read together. The Act of 1951 contains certain additional penalties for offences, such as bribery and undue influence, as envisaged under sections 171E and 171F, *IPC*.

[s 171A] “Candidate”, “Electoral right” defined.—

For the purposes of this Chapter—

7[(a)] “candidate” means a person who has been nominated as a candidate at an election;]

(b) “electoral right” means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at any election.

[s 171A.1] “Candidate”

Section 171A, *IPC* defines “candidate”⁸ as a person who has been duly nominated and also a person who holds himself as a prospective candidate, provided he subsequently files his nomination. He remains a candidate even if he withdraws after he holds out as a prospective candidate.⁹ The present section has been substituted by Act 40 of 1975, section 9.

[s 171A.2] “Election right”

The words “electoral right” means the right of a person to stand or not to stand or to withdraw his candidature and his right to vote or abstain from voting at an election.¹⁰

[s 171A.3] Election

Election has been defined in *Explanation 3 to section 21 of the Indian Penal Code*.¹¹ The definition is wide enough to include any election for the purpose of selecting members of any legislative, municipal or other public authority, where such a system is prescribed by any law.

¹ Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

[s 171A] “Candidate”, “Electoral right” defined.—

- 2 Indian Elections Offices and Inquiries Act, 39 of 1920, section 2.
- 3 Amendment Bill, 1919, 9 and 10 Geo SC 104. See *Gazette of India*, (1920) Pt V, dated 4-9-1920, pp 177-178 for the Statement of Object and Reasons.
- 4 *State v Siddharath Ganguram*, AIR 1956 MB 241 (243).
- 5 *Constitution of India* in Pt XV, Articles 324 to 329 provides for an independent machinery, known as an Election Commission, to ensure fair elections in the country.
- 6 Presidential and Vice-Presidential Elections Act, 1952.
- 7 Subs. by Act 40 of 1975, section 9, for clause (a) (w.e.f. 6-8-1975).
- 8 *Indira Nehru Gandhi v Raj Narain*, AIR 1975 SC 2299 [[LNIND 1975 SC 432](#)] : (1976) 2 SCR 3971 : 1975 Supp SCC 1 . See KD Gaur, Criminal Law Cases and Materials, 8th Edn, 2015 pp 894-898 for facts of the case. Section 171A, IPC was amended retrospectively. The definition of “candidate” in section 79(b) of the Representation of People Act, 1951 was “candidate” means a person who has been or claim to have been duly nominated as a candidate at any election. And any such person shall be deemed to have been a candidate as from the time when, with the election in the prospect, he began to hold himself as a prospective candidate. The definition of “candidate” in the Indian Penal Code, section 171A was similar to section 79(b) of the Representation of People Act, 1951.
- 9 The term “candidate” has been defined in the English Municipal Corporation Act, 1882. *S Khader v Muniswami*, AIR 1955 SC 775 [[LNIND 1955 SC 52](#)] : (1955) 2 SCR 469 [[LNIND 1955 SC 52](#)] .
- 10 *AK Choudhury v Emperor*, AIR 1938 Cal 274 .
- 11 See Chapter II, section 21, IPC Explanation 3 *supra* for meaning of Election.

[s 171B] Bribery.—

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It would be proper to state the Select Committee's view as to the desirability of having such offences in the Code. The Committee observed:

We feel there are distinct advantages at the present time, when election is to play so important a part in the new public life of India, that the public conscience should be markedly drawn to the danger of corrupt practices in relation to franchise, whether that franchise relates to legislative or other bodies. We feel it is of the greatest importance that the principle of the purity of the franchise should be insisted on in the general criminal law of the country and that it should not be left to local legislatures to deal with.

It is a small chapter consisting of sections 171A to 171-I. *Section 171A, IPC* is a definition clause and *sections 171B, 171C, 171D and 171-I, IPC* explain offences relating to bribery, undue influence, personation and false statements in an election, and *sections 171E, IPC and 171F, IPC* prescribe punishment for the offences of bribery, undue influence, personation and failure to keep statement of election accounts. Thus, the *Penal Code* in this Chapter seeks to punish the following six offences relating to elections:—

- (1) Bribery (section 171B, and E).
- (2) Undue influence (section 171C, and F).
- (3) Personation at elections (section 171D).
- (4) False statement in connection with an election (section 171G).
- (5) Illegal payment in connection with an election (section 171H).
- (6) Failure to maintain election accounts (section 171I).

[s 171B] Bribery.—

The scope of the provisions of the chapter is wide. It applies not only to the elections of legislative bodies but also to the memberships of metropolitan councils, municipalities, district boards, panchayats and other public bodies. It provides for the punishment of malpractices in connections with elections and attempts to safeguard the purity of the franchise. The ordinary criminal courts will have jurisdiction to decide cases under the chapter.⁴

With the attainment of independence on 15 August 1947 and the adoption of democracy based on adult suffrage, a need for comprehensive legislation to regulate the conduct of elections to various elective bodies, and institutions was felt. Accordingly, the *Representation of the People Act*, 43 of 1950 and 43 of 1951 providing detailed provisions for the conduct of elections both for the Parliament and the State Legislature was enacted.⁵ A separate legislation for the election of President and Vice-President of India has also been provided.⁶ To decide election disputes expeditiously section 100 of the Representation of Peoples Act of 1951 gives original jurisdiction to the High Courts and the civil courts have been barred from entertaining election petitions. The provisions relating to Representation of Peoples Act, 1951 and Chapter IXA, *IPC* are complementary and should be read together. The Act of 1951 contains certain additional penalties for offences, such as bribery and undue influence, as envisaged under sections 171E and 171F, *IPC*.

[s 171B] Bribery.—

(1) Whoever—

- (i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or
- (ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right;

commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

- (2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.
- (3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

[s 171B.1] Bribery

Section 171B, IPC defines “bribery”¹² as the giving or acceptance of a gratification either as a motive or as a reward to any person, to induce him to stand or not to stand as a candidate or to withdraw from the contest or to vote or not to vote at an election. It also includes offers or agreements to give or offer and attempts to procure a gratification for any person. Gratification, as already explained in *section 7 of the Prevention of Corruption Act, 1988*, includes an offer of gratification. It is not restricted to pecuniary gratification or to gratifications estimable in money.¹³

Money paid by a candidate to a club to pay off its debts and to retain its premises with the object of inducing its

[s 171B] Bribery.—

members to vote in his favour,¹⁴ paying travelling expenses of a voter on condition that he must vote for the payer,¹⁵ and payment to deter a voter from voting¹⁶ are bribes. But payment to election agents and payment of election expenses to a candidate do not constitute bribery within the meaning of this section.

Even a single act of bribery by or with the knowledge and consent of the candidate or by his agent, however insignificant that act might be, is sufficient to invalidate an election.¹⁷

[s 171B.2] “Treating”

“Treating” in common language means entertaining a person, which amounts to bribery. In the case of an election, the giving of refreshment and entertainment to voters with the view of influencing a person to cast his vote in favour of a particular candidate is bribery punishable under this section.¹⁸ The *Explanation* to section 171E defines “treating” as a form of bribery when the gratification consists in food, drink, entertainment, etc.

- 1** Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.
- 2** Indian Elections Offices and Inquiries Act, 39 of 1920, section 2.
- 3** Amendment Bill, 1919, 9 and 10 Geo SC 104. See *Gazette of India*, (1920) Pt V, dated 4-9-1920, pp 177-178 for the Statement of Object and Reasons.
- 4** *State v Siddharath Ganguram*, AIR 1956 MB 241 (243).
- 5** *Constitution of India* in Pt XV, Articles 324 to 329 provides for an independent machinery, known as an Election Commission, to ensure fair elections in the country.
- 6** Presidential and Vice-Presidential Elections Act, 1952.
- 12** See the *Representation of People Act*, 1951 section 123(1) for definition of bribery; Ratanlal and Dhirajlal, *Law of Crimes*, 23rd Edn, vol 1, p 594.
- 13** *Mohansingh v Bhanwarlal*, AIR 1964 SC 1366 [[LNIND 1963 SC 224](#)] : (1964) 5 SCR 12 [[LNIND 1963 SC 224](#)] ; *Banka Behari v Chittaranjan*, AIR 1963 Ori 83 [[LNIND 1962 ORI 42](#)] ; *Moolchand v Rulia Ram Pannalal*, AIR 1963 Punj 516 .
- 14** *Pillai v Dangali*, AIR 1942 Rang 52 .
- 15** *Cooper v Slade*, (1857) 6 HIC 746.
- 16** *Warcester*, (1810) C and D 183.

[s 171B] Bribery.—

17 *HV Kamath v Nihal Singh*, AIR 1970 SC 211 [[LNIND 1969 SC 91](#)] : (1969) 1 SCR 601 : (1989) 3 SCR 813 ; *Abdul Hussain v Shamsul Huda*, (1975) 4 SCC 533 [[LNIND 1974 SC 428](#)] : AIR 1975 SC 1612 [[LNIND 1974 SC 428](#)] : (1975) 3 SCR 106 [[LNIND 1974 SC 428](#)] . The object of offer must be directly or indirectly to induce an elector to vote or not to vote at an election.

18 *Langford*, (1870) 5 M and H 15. See Gour, Hari Singh, Penal Law of India, 10th Edn, vol II, pp 1485-1482.

[s 171C] Undue influence at elections.—

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The Indian Penal Code

¹[CHAPTER IXA OF OFFENCES RELATING TO ELECTIONS

Chapter IXA dealing with offences relating to elections² is a later addition to the *Penal Code* by the Indian Election Offences and Inquiries Act, 1920.³ It was enacted with a view to provide for the punishment for malpractices in an election and for the conduct of inquiries in disputed elections.

It would be proper to state the Select Committee's view as to the desirability of having such offences in the Code. The Committee observed:

We feel there are distinct advantages at the present time, when election is to play so important a part in the new public life of India, that the public conscience should be markedly drawn to the danger of corrupt practices in relation to franchise, whether that franchise relates to legislative or other bodies. We feel it is of the greatest importance that the principle of the purity of the franchise should be insisted on in the general criminal law of the country and that it should not be left to local legislatures to deal with.

It is a small chapter consisting of sections 171A to 171-I. *Section 171A, IPC* is a definition clause and *sections 171B, 171C, 171D and 171-I, IPC* explain offences relating to bribery, undue influence, personation and false statements in an election, and *sections 171E, IPC and 171F, IPC* prescribe punishment for the offences of bribery, undue influence, personation and failure to keep statement of election accounts. Thus, the *Penal Code* in this Chapter seeks to punish the following six offences relating to elections:—

- (1) Bribery (section 171B, and E).
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- (3) Personation at elections (section 171D).
- (4) False statement in connection with an election (section 171G).
- (5) Illegal payment in connection with an election (section 171H).
- (6) Failure to maintain election accounts (section 171I).

[s 171C] Undue influence at elections.—

The scope of the provisions of the chapter is wide. It applies not only to the elections of legislative bodies but also to the memberships of metropolitan councils, municipalities, district boards, panchayats and other public bodies. It provides for the punishment of malpractices in connections with elections and attempts to safeguard the purity of the franchise. The ordinary criminal courts will have jurisdiction to decide cases under the chapter.⁴

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[s 171C] Undue influence at elections.—

- (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.
 - (2) Without prejudice to the generality of the provisions of sub-section (1), whoever—
 - (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or
 - (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).
 - (3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.
-

[s 171C.1] Undue influence

This section defines undue influence at elections.¹⁹ The offence is punishable under *section 171F, IPC* with imprisonment for a term which may extend to one year, or with fine, or with both. The gist of the offence of undue influence at an election consists in:

- (i) voluntary interference, or
- (ii) attempted interference

[s 171C] Undue influence at elections.—

- (iii) with the right of any person to stand, or not to stand, or withdraw from being a candidate, or to vote or refrain from voting.²⁰

This covers all threats of injury to a person or property and all illegal methods of persuasion and any interference with the liberty of the candidates or the electors. Inducing or attempting to induce a person to believe that he will become the object of Divine displeasure or of spiritual censure is also interference with the free exercise of the electoral right.²¹ It is not however interference within the meaning of sub-clause (1) to section 171C, IPC to make a declaration of public policy or a promise of public action.²²

The second sub-clause is merely explanatory of the general definitions given in the first sub-clause and does not restrict the generality of the words used there.²³ Section 171C is very wide. It is the gravity of the charge which will be the determining factor in deciding whether the allegations fall under section 171C or not. Where a person, in order to prevent another from voting or to force him to vote, either beats him or threatens to cause injury to his person or his property, this constitutes undue influence.²⁴

The crux of the offence under section 171C consists in voluntary interference or attempt at interference with free exercise of an electoral right. Canvassing in favour of a candidate would not be undue influence.²⁵ The right of a candidate or his supporters to canvass and support by propounding their programmes does not interfere with the free exercise of the electoral right, for although it might influence a person's mind to some extent, such canvassing does not amount to tyranny over the mind.²⁶ Similarly, the brother of the Raja of Puri using a religious symbol and proclaiming that he was the crown jewel and a moving representation of Lord Jagannath of Orissa and asking voters to vote for him could not come within this section.²⁷

If a religious head priest gives his views that a particular candidate is more worthy of confidence of voters, such statement does not amount to exhibiting undue influence. But if he issues a direction or *furman* and calls upon voters to vote for only one particular candidate and any disobedience of his mandate would cause Divine displeasure, this would fall under section 171C, IPC.²⁸

A careful reading of section 171C, IPC would leave the impression that mere influence on a voter in making his choice for one candidate or the other, would not amount to interference with the free exercise of electoral right, since canvassing in favour of a particular candidate is intended to influence the choice of a voter. Yet canvassing in favour of a candidate is not exercising undue influence. So long as the leader of a party asks electors to vote for a particular candidate belonging to his party or an allied party, this does not amount to exercise of undue influence. Similarly, a message stating that an election should be boycotted would not amount to interference within the meaning of section 171C. The voters are still free to vote for the candidate they desire in spite of the message.²⁹

Zakir Hussain: In *Babu Rao Patel v Zakir Hussain*,³⁰ it was held that a letter addressed by the then Prime Minister, Mrs Indira Gandhi, to all the Members of Parliament to vote for a candidate belonging to her party for the office of the President did not constitute undue influence. Similarly, a letter issued by the chief whip addressed to all members of his party in Parliament to give first preference only to the party candidate and to no other in presidential and vice-presidential elections does not amount to undue influence. The court observed that such requests or advices do not amount to interference with the free exercise of electoral right because the electors still remain free to do as they desire in spite of the advice or instructions.

VV Giri: In *Shiv Kripal Singh v VV Giri*,³¹ Supreme Court held that mere dissemination of the pamphlet does not amount to undue influence or interference with any electoral right punishable under sections 171 and 171C IPC, the main ground of attack was undue influence alleged to have been committed by the returned candidate, his supporters and agents. It was alleged that a number of supporters of Shri VV Giri with his consent or connivance, published and freely distributed a pamphlet in which very serious allegations were made against Sri Sanjiva Reddy, a rival candidate, which amounted to corrupt practice. The pamphlet allegedly created in the minds of the voters the impression that were Shri Reddy elected to the office of President, Rashtrapati Bhavan

[s 171C] Undue influence at elections.—

would become a centre of vice and immorality, and that he would assume dictatorial powers and bring an end to democracy in India. It was alleged that Sri VV Giri failed to dissociate himself with the pamphlet even though news regarding the pamphlet had appeared in almost all newspapers in the country and had evoked great public criticism.

It was further alleged that Shri VV Giri repeatedly stated that a man of character and integrity should have been selected, thus stating in well-guarded language that Shri Reddy was not a man of character. A further allegation was that a number of persons occupying ministerial positions in the Central Government misused their positions for furthering the prospects of Sri VV Giri by telephoning a large number of electors and openly telling them that, if they did not vote for Shri VV Giri, they would lose their patronage or if they voted in a certain manner, they would receive Government's patronage. Another allegation was that two Muslim ministers in the Central Government were threatened by Muslim electors that if Shri Reddy, who was allegedly usage to the position of a Jan Sangh candidate, were elected to the office of the President the fate of the Muslim community would be sealed and that the community would face constant threat of extinction.

The Court, however, held that there was no evidence whatsoever to show that the respondent had any connection with the pamphlet, or with its distribution, or that it was distributed with his knowledge and connivance. A threat to exercise undue influence must be deliberately uttered with the intention of carrying it into effect, and the loss to be inflicted must not be too remote.³²

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- 1 Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.
 - 2 Indian Elections Offices and Inquiries Act, 39 of 1920, section 2.
 - 3 Amendment Bill, 1919, 9 and 10 Geo SC 104. See *Gazette of India*, (1920) Pt V, dated 4-9-1920, pp 177-178 for the Statement of Object and Reasons.
 - 4 *State v Siddharath Ganguram*, AIR 1956 MB 241 (243).
 - 5 *Constitution of India* in Pt XV, Articles 324 to 329 provides for an independent machinery, known as an Election Commission, to ensure fair elections in the country.
 - 6 Presidential and Vice-Presidential Elections Act, 1952.
 - 19 See *Representation of People Act, 1951*, section 123(1), for definition of “undue influence”.
 - 20 *Baburao Patel v Zakir Hussain*, (1968) 2 SCR 133 [[LNIND 1967 SC 314](#)] (145) : AIR 1968 SC 904 [[LNIND 1967 SC 314](#)] .
 - 21 Statement of Objects and Reasons, *Gazette of India* (1920), Pt V, p 135, section 9.
 - 22 *Shiv Kripal Singh v VV Giri*, AIR 1970 SC 2093 : (1970) 2 SCC 576 : (1971) 2 SCR 197 [[LNIND 1970 SC 367](#)] .

[s 171C] Undue influence at elections.—

- 23** Statement of Objects and Reasons to Act 39 of 1920.
- 24** *Marsh Moriolk*, (1869) O M and H 240.
- 25** *Baburao Patel v Zakir Hussain*, (1968) 2 SCR 133 [[LNIND 1967 SC 314](#)] (145) : AIR 1968 SC 904 [[LNIND 1967 SC 314](#)] .
- 26** *Shiv Kripal Singh v VV Giri*, AIR 1970 SC 2093 : (1970) 2 SCC 576 : (1971) 2 SCR 197 [[LNIND 1970 SC 367](#)] . See KD Gaur, *Criminal Law Cases and Materials*, 8th Edn, 2015, pp 891-894 for facts of the case.
- 27** *Sri Raj Deb v Sri Gangadhar Mohapatra*, AIR 1964 Ori 1 [[LNIND 1962 ORI 29](#)] : 1964 Cr LJ 57 .
- 28** *Ram Dial v Sant Lal*, AIR 1959 SC 855 [[LNIND 1959 SC 73](#)] : 1959 Supp (2) SCR 748 : 1959 SCJ 916 [[LNIND 1959 SC 73](#)] ; *Narbada Prasad v Chaganlal*, AIR 1969 SC 395 [[LNIND 1968 SC 180](#)] .
- 29** *M Ambalgam v State of Tamil Nadu*, (1981) Cr LJ 1179 Mad (HC).
- 30** *Babu Rao Patel v Zakir Husain*, AIR 1968 SC 904 [[LNIND 1967 SC 314](#)] : (1968) 2 SCR 133 [[LNIND 1967 SC 314](#)] (145).
- 31** *Shiv Kripal Singh v VV Giri*, AIR 1970 SC 2093 : (1970) 2 SCC 576 : (1971) 2 SCR 197 [[LNIND 1970 SC 367](#)] . See KD Gaur, *Criminal Law Cases and Materials*, 5th Edn, 2008, pp 785-788 for facts of the case.
- 32** *Colmen v Welpole and Lacon*, (1869) 21 LT 246 .

[s 171D] Personation at elections.—

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It would be proper to state the Select Committee's view as to the desirability of having such offences in the Code. The Committee observed:

We feel there are distinct advantages at the present time, when election is to play so important a part in the new public life of India, that the public conscience should be markedly drawn to the danger of corrupt practices in relation to franchise, whether that franchise relates to legislative or other bodies. We feel it is of the greatest importance that the principle of the purity of the franchise should be insisted on in the general criminal law of the country and that it should not be left to local legislatures to deal with.

It is a small chapter consisting of sections 171A to 171-I. *Section 171A, IPC* is a definition clause and *sections 171B, 171C, 171D* and *171-I, IPC* explain offences relating to bribery, undue influence, personation and false statements in an election, and *sections 171E, IPC* and *171F, IPC* prescribe punishment for the offences of bribery, undue influence, personation and failure to keep statement of election accounts. Thus, the *Penal Code* in this Chapter seeks to punish the following six offences relating to elections:—

- (1) Bribery (section 171B, and E).
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- (3) Personation at elections (section 171D).
- (4) False statement in connection with an election (section 171G).
- (5) Illegal payment in connection with an election (section 171H).
- (6) Failure to maintain election accounts (section 171I).

[s 171D] Personation at elections.—

The scope of the provisions of the chapter is wide. It applies not only to the elections of legislative bodies but also to the memberships of metropolitan councils, municipalities, district boards, panchayats and other public bodies. It provides for the punishment of malpractices in connections with elections and attempts to safeguard the purity of the franchise. The ordinary criminal courts will have jurisdiction to decide cases under the chapter.⁴

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[s 171D] Personation at elections.—

Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence or personation at an election:

³³ [Provided that nothing in this section shall apply to a person who has been authorised to vote as proxy for an elector under any law for the time being in force in so far as he votes as a proxy for such elector.]

[s 171D.1] Personation at elections

This section defines personation at elections. The offence is punishable under *section 171F, IPC* with imprisonment for a term which may extend to one year, or with fine, or with both. The essence of the offence of false personation is that the offender pretends to be other than what he really is. Accordingly, the section does not come into play when the candidate or his agent does not claim to be the voter himself, when he makes a cross against the name of a particular candidate.³⁴

[s 171D.2] Ingredients

To constitute an offence under this section the following ingredients must exist:—

- (1) The accused applied for a ballot paper at an election and voted in the name of any other person, whether living or dead, or in a fictitious name, or
- (2) Having voted once at such election applied at the said election for another voting paper,
- (3) Attempted or abetted, procured or attempted to procure the voting by any other person in any such way.

However, the *bona fide* belief that a person could vote twice at an election as his name was included in two lists was held to be a good defence to the charge of personation at an election under *sections 171 and 171F, IPC*.³⁵

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- ¹ Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.
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 - ⁴ *State v Siddharath Ganguram*, AIR 1956 MB 241 (243).
 - ⁵ *Constitution of India* in Pt XV, *Articles 324 to 329* provides for an independent machinery, known as an Election Commission, to ensure fair elections in the country.
 - ⁶ Presidential and Vice-Presidential Elections Act, 1952.
 - ³³ Ins. by Act 24 of 2003, section 5 (w.e.f. 22-9-2003).
 - ³⁴ *Vinjamuri Partha Sarathi v P Ramchandra Rao*, AIR 1956 AP 65 .
 - ³⁵ *Pantam Venkayya v Emperor*, AIR 1930 Mad 246 [[LNIND 1929 MAD 296](#)] .

[s 171E] Punishment for bribery.—

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- (5) Illegal payment in connection with an election (section 171H).
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[s 171E] Punishment for bribery.—

Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation.—“Treating” means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

[s 171E.1] Punishment for bribery

Whereas *section 171B, IPC* defines the offence of bribery, this section prescribes the punishment for the same. The section makes a distinction in punishment with respect to bribery in general and bribery by treating. In the case of the former punishment may extend up to one year of imprisonment, or fine, or both, while in the case of the latter to fine only.

The offence is non-cognizable, bailable, non-compoundable and triable by a Magistrate of the first class. A complaint is necessary for prosecution under this section.

¹ Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

² Indian Elections Offices and Inquiries Act, 39 of 1920, section 2.

[s 171E] Punishment for bribery.—

- 3 Amendment Bill, 1919, 9 and 10 Geo SC 104. See *Gazette of India*, (1920) Pt V, dated 4-9-1920, pp 177-178 for the Statement of Object and Reasons.
- 4 *State v Siddharath Ganguram*, AIR 1956 MB 241 (243).
- 5 *Constitution of India* in Pt XV, Articles 324 to 329 provides for an independent machinery, known as an Election Commission, to ensure fair elections in the country.
- 6 Presidential and Vice-Presidential Elections Act, 1952.

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[s 171F] Punishment for undue influence or personation at an election.—

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Chapter IXA dealing with offences relating to elections² is a later addition to the *Penal Code* by the Indian Election Offences and Inquiries Act, 1920.³ It was enacted with a view to provide for the punishment for malpractices in an election and for the conduct of inquiries in disputed elections.

It would be proper to state the Select Committee's view as to the desirability of having such offences in the Code. The Committee observed:

We feel there are distinct advantages at the present time, when election is to play so important a part in the new public life of India, that the public conscience should be markedly drawn to the danger of corrupt practices in relation to franchise, whether that franchise relates to legislative or other bodies. We feel it is of the greatest importance that the principle of the purity of the franchise should be insisted on in the general criminal law of the country and that it should not be left to local legislatures to deal with.

It is a small chapter consisting of sections 171A to 171-I. *Section 171A, IPC* is a definition clause and *sections 171B, 171C, 171D and 171-I, IPC* explain offences relating to bribery, undue influence, personation and false statements in an election, and *sections 171E, IPC and 171F, IPC* prescribe punishment for the offences of bribery, undue influence, personation and failure to keep statement of election accounts. Thus, the *Penal Code* in this Chapter seeks to punish the following six offences relating to elections:—

- (1) Bribery (section 171B, and E).
- (2) Undue influence (section 171C, and F).
- (3) Personation at elections (section 171D).
- (4) False statement in connection with an election (section 171G).
- (5) Illegal payment in connection with an election (section 171H).
- (6) Failure to maintain election accounts (section 171I).

[s 171F] Punishment for undue influence or personation at an election.—

The scope of the provisions of the chapter is wide. It applies not only to the elections of legislative bodies but also to the memberships of metropolitan councils, municipalities, district boards, panchayats and other public bodies. It provides for the punishment of malpractices in connections with elections and attempts to safeguard the purity of the franchise. The ordinary criminal courts will have jurisdiction to decide cases under the chapter.⁴

With the attainment of independence on 15 August 1947 and the adoption of democracy based on adult suffrage, a need for comprehensive legislation to regulate the conduct of elections to various elective bodies, and institutions was felt. Accordingly, the *Representation of the People Act*, 43 of 1950 and 43 of 1951 providing detailed provisions for the conduct of elections both for the Parliament and the State Legislature was enacted.⁵ A separate legislation for the election of President and Vice-President of India has also been provided.⁶ To decide election disputes expeditiously section 100 of the Representation of Peoples Act of 1951 gives original jurisdiction to the High Courts and the civil courts have been barred from entertaining election petitions. The provisions relating to Representation of Peoples Act, 1951 and Chapter IXA, *IPC* are complementary and should be read together. The Act of 1951 contains certain additional penalties for offences, such as bribery and undue influence, as envisaged under sections 171E and 171F, *IPC*.

[s 171F] Punishment for undue influence or personation at an election.—

Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

[s 171F.1] Punishment for undue influence

This section prescribes punishment for the offence of undue influence and personation at an election as defined in sections 171C and 171D. Punishment may extend up to one year, or fine, or both.

The offence of undue influence is non-cognizable, bailable, non-compoundable and triable by a Magistrate of first class.

¹ Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

² Indian Elections Offices and Inquiries Act, 39 of 1920, section 2.

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⁴ *State v Siddharath Ganguram*, AIR 1956 MB 241 (243).

[s 171F] Punishment for undue influence or personation at an election.—

- 5 *Constitution of India* in Pt XV, Articles 324 to 329 provides for an independent machinery, known as an Election Commission, to ensure fair elections in the country.
- 6 Presidential and Vice-Presidential Elections Act, 1952.

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[s 171G] False statement in connection with an election.—

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[s 171G] False statement in connection with an election.—

Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

[s 171G.1] False statement

This section prohibits making of a false statement in relation to the personal character or conduct of a candidate at an election. To prove a charge of false statement the following must be established.

- (1) Election process has commenced;
- (2) The accused made or published a statement in relation to the personal character or conduct of any candidate;
- (3) Such statement was false and the accused either knew or believed it to be false or did not believe it to be true; and
- (4) He made it or published it with the intention to influence the outcome of the election.

Punishment may extend to one-year imprisonment, or fine, or both.

[s 171G] False statement in connection with an election.—

- 1 Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.
- 2 Indian Elections Offices and Inquiries Act, 39 of 1920, section 2.
- 3 Amendment Bill, 1919, 9 and 10 Geo SC 104. See *Gazette of India*, (1920) Pt V, dated 4-9-1920, pp 177-178 for the Statement of Object and Reasons.
- 4 *State v Siddharath Ganguram*, AIR 1956 MB 241 (243).
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[s 171H] Illegal payments in connection with an election.—

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We feel there are distinct advantages at the present time, when election is to play so important a part in the new public life of India, that the public conscience should be markedly drawn to the danger of corrupt practices in relation to franchise, whether that franchise relates to legislative or other bodies. We feel it is of the greatest importance that the principle of the purity of the franchise should be insisted on in the general criminal law of the country and that it should not be left to local legislatures to deal with.

It is a small chapter consisting of sections 171A to 171-I. *Section 171A, IPC* is a definition clause and *sections 171B, 171C, 171D* and *171-I, IPC* explain offences relating to bribery, undue influence, personation and false statements in an election, and *sections 171E, IPC* and *171F, IPC* prescribe punishment for the offences of bribery, undue influence, personation and failure to keep statement of election accounts. Thus, the *Penal Code* in this Chapter seeks to punish the following six offences relating to elections:—

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[s 171H] Illegal payments in connection with an election.—

The scope of the provisions of the chapter is wide. It applies not only to the elections of legislative bodies but also to the memberships of metropolitan councils, municipalities, district boards, panchayats and other public bodies. It provides for the punishment of malpractices in connections with elections and attempts to safeguard the purity of the franchise. The ordinary criminal courts will have jurisdiction to decide cases under the chapter.⁴

With the attainment of independence on 15 August 1947 and the adoption of democracy based on adult suffrage, a need for comprehensive legislation to regulate the conduct of elections to various elective bodies, and institutions was felt. Accordingly, the *Representation of the People Act*, 43 of 1950 and 43 of 1951 providing detailed provisions for the conduct of elections both for the Parliament and the State Legislature was enacted.⁵ A separate legislation for the election of President and Vice-President of India has also been provided.⁶ To decide election disputes expeditiously section 100 of the Representation of Peoples Act of 1951 gives original jurisdiction to the High Courts and the civil courts have been barred from entertaining election petitions. The provisions relating to Representation of Peoples Act, 1951 and Chapter IXA, *IPC* are complementary and should be read together. The Act of 1951 contains certain additional penalties for offences, such as bribery and undue influence, as envisaged under *sections 171E and 171F, IPC*.

[s 171H] Illegal payments in connection with an election.—

Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

[s 171H.1] Illegal payments in election

This section penalises unauthorised expenditure at an election without previous authority and approval of the candidate at an election. The object is to secure correct returns of expenditure and to prevent corruption. Punishment may extend to five hundred rupees. The offence is non-cognizable, bailable but not compoundable, and triable by a Magistrate of first class.

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² Indian Elections Offices and Inquiries Act, 39 of 1920, section 2.

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[s 171-I] Failure to keep election accounts.—

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[s 171-I] Failure to keep election accounts.—

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[s 171-I] Failure to keep election accounts.—

Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.]

[s 171-I.1] Failure to keep election accounts

This section penalises the failure of a candidate to keep accounts of expenses incurred at an election as required by law or any rule having the force of law. Punishment may extend up to five hundred rupees.

Raj Narain Singh³⁶: ADM Jabalpur³⁷ corrupt practices adopted during the election disqualifies a person from the election *vide sections 171B and 171E, IPC and section 123(7) of the Representation of the People Act, 1951*. In *Indira Nehru Gandhi v Raj Narain and Raj Narain v Indira Nehru Gandhi*, AIR 1975 SC 2299 [[LNIND 1975 SC 432](#)] : 1975 Supp SCC 1 : [1976] 2 SCR 347 [[LNIND 1975 SC 432](#)] and *ADM Jabalpur v Shivakant Shukla*, AIR 1976 SC 1207 [[LNIND 1976 SC 196](#)] : (1976) 2 SCC 521 [[LNIND 1976 SC 196](#)] . Mrs Indira Gandhi, the then Prime Minister filed her nomination for election to Lok Sabha from Rai Bareilly and was declared elected. Her nomination was challenged by Raj Narain Singh and the ground of corrupt practices was adopted during the election. Allowing the petition her election was declared by the Allahabad High Court void on the ground of corrupt practices adopted and as provided in *section 8(O) of the Representation of People Act of 1951* and was awarded to pay costs to the respondents – Raj Narain Singh.

Per AN Ray CJ: To silence the demand of opposition for resignation of Mrs Indira Gandhi from Lok Sabha in the wake of declaration of her election to the Lok Sabha being held illegal on the charges of corrupt practices adopted during the election by the Allahabad High Court, Mrs Gandhi having 2/3rd majority in the Parliament got the emergency declared in the country on the ground of “internal disturbance” under *Article 352(1) of the Constitution*. To strengthen her dictatorial and autocratic rule she got suspended the enforcement of fundamental rights enshrined under *Articles 14, 21* and got 38th and 39th Amendments in the *Constitution*; and got the Parliament amended Maintenance and Internal Security Act, 1971 (MISA) conferring extraordinary powers on the Government to detain any person without any reason and trial.

Having assumed sweeping powers, Mrs Gandhi got opposition leaders, political workers, journalists and people raising voice of dissent behind the bar all over the country without any ground or reason. With the result people moved the various High Courts under *Article 226 of the Constitution* for issue of writ of *Habeas corpus* for their illegal arrest. To settle the law on the subject the Supreme Court got all the Writs clubbed and finally gave its verdict through a constitutional bench of five senior most judges of the court in the impugned case.

Dismissing the petitioner's contention the Supreme Court by a majority of four to one (with the lone dissent of HR Khanna J) held that in view of the Presidential Order dated 27 June 1975 under *Article 359* suspending the operations of *Articles 14, 21 and 22 of the Constitution*, no person has any right to move any writ petition under *Article 32* or *Article 226 of the Constitution* before the Supreme Court or a High Court for issue of *habeas corpus* or any other writ or order or direction to challenge the legality of an order of detention on the ground that the order is not under or in compliance with the Act or is illegal or is vitiated by *mala fides*, factual or legal or is based extraneous considerations.

Khanna J in his dissenting opinion rightly said that suspension of right to enforce the fundamental rights guaranteed under *Article 21* which is one of the basic tenets of Rule of Law could not confer any right on the Government to flout the basic norms of law to examine as to whether the detention is *bona fide* or *mala fide*, i.e. Justified by law or not. If the detention is *mala fide*, the detenu is entitled to be set free.

COMMENT

The majority judgment in Shivakant Shukla is overruled in view of the 44th amendment of the *Constitution* as well as the judicial interpretation in the *Maneka Gandhi*, and subsequent cases. *Article 352 of the Constitution* has been amended and in place of "internal emergency", "armed rebellion" has been substituted. Hence, emergency now cannot be declared on the ground of "internal disturbance". Further *Articles 14, 21 and 22* cannot be suspended even during the period of emergency. This is a welcome step.

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- 1 Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.
 - 2 Indian Elections Offices and Inquiries Act, 39 of 1920, section 2.
 - 3 Amendment Bill, 1919, 9 and 10 Geo SC 104. See *Gazette of India*, (1920) Pt V, dated 4-9-1920, pp 177-178 for the Statement of Object and Reasons.
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 - 5 *Constitution of India* in Pt XV, *Articles 324 to 329* provides for an independent machinery, known as an Election Commission, to ensure fair elections in the country.
 - 6 Presidential and Vice-Presidential Elections Act, 1952.

[s 171-I] Failure to keep election accounts.—

- 36** See *Indira Nehru Gandhi v Raj Narain Singh*, AIR 1975 SC 2299 [[LNIND 1975 SC 432](#)] : 1975 Supp SCC 1 : [1976] 2 SCR 347 [[LNIND 1975 SC 432](#)] , chapter 19 of the book for case. Criminal Law Cases and Materials, 9th Edn 2019.
- 37** *ADM Jabalpur v Shivakant Shukla*, AIR 1976 SC 1207 [[LNIND 1976 SC 196](#)] : (1976) 2 SCC 521 [[LNIND 1976 SC 196](#)] . Per majority—AN Ray CJ, MH Beg, PN Bhagwati and YV Chandrachud: minority HR Khanna JJ.

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[s 172] Absconding to avoid service of summons or other proceeding.—

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The Indian Penal Code

CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

As a necessary part of the administrative machinery of a country, the public servants possess certain exceptional rights and privileges in order to safeguard and protect the public from the abuse of power by public servants and *vice versa*. The previous Chapter (IX; sections 166-171) dealt with the offences by or relating to public servants while this Chapter (sections 172-190) relates to their rights against the public for putting obstructions to the discharge of their official transactions.

Chapter X is a small chapter, consisting of 19 sections (sections 172-190). It deals with offences which constitute contempt of the lawful authority invested in public servants. The chapter essays to enforce obedience to and respect for public servants during the exercising of their lawful authority.¹ It denounces all disobedience to the lawful authority of a public servant, codifies the various preexisting regulations on the subject, and disallows collectively all contempt, be it of the powerful authority of the courts of justice or of officers of revenue or of the police.

The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 172] Absconding to avoid service of summons or other proceeding.—

Whoever absconds in order to avoid being served with a summons, notice or order, proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to 1 month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to ²[produce a document or an electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[s 172] Absconding to avoid service of summons or other proceeding.—

Sections 172, 173 and 174 punish refusal to comply with a summons, a notice or an order issued by a public servant in discharge of his official function. Section 172 punishes absconding to avoid service, section 173 preventing service and section 174 non-obedience to a summons, notice or order. The object of *section 172, IPC* is to furnish any person who absconds in order to avoid service of summons or other proceedings.

[s 172.2] Ingredients

To prove the commission of an offence under this section the prosecution must establish:

- (1) That summons, notice or order has been issued by a public servant legally competent to issue it;
- (2) That the accused knew or had reason to believe that it had been issued;
- (3) He must have absconded to evade it.

The first clause of the section relates to avoidance from being served with summons, notice or order, whereas, the second clause applies where the summons, notice or order is (i) for attendance in a court or (ii) for production of a document.

The word “abscond” has been given a wide meaning by the courts so as to cover cases of evasion. Absconding to avoid service of summons or other proceedings is similar to noncompliance to an order from a public servant.³ The term abscond is not to be understood as implying necessarily that a person leaves the place in which he is. In the ordinary sense, it means to hide oneself, and it matters not whether a person goes from a place and remains in it. If a person, having concealed himself before process is issued and continues to do so after it is issued, he is said to be absconding.⁴

However, refusal to accept a notice, abusing the process server, and walking inside the house do not amount to absconding. The absconding must be with a purpose. This implies that the absconder knows or at least has reason to believe, that the process has been issued. The offence is non-cognizable, bailable but not compoundable and can be tried by any Magistrate.

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

² Subs. by Act 21 of 2000, section 91 and Sch I, for “to produce a document in a Court of Justice” (w.e.f. 17-10-2000).

³ *Srinivasa Ayyangar v Queen*, (1881) 4 Mad 393.

⁴ *Bhujanga*, 1924 Oudh WN 159.

[s 173] Preventing service of summons or other proceeding, or preventing publication thereof.—

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The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 173] Preventing service of summons or other proceeding, or preventing publication thereof.—

Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

[s 173] Preventing service of summons or other proceeding, or preventing publication thereof.—

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or ⁵[to produce a document or electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Simple imprisonment for 1 month, or fine of 500 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Para II: Punishment—Simple imprisonment for 6 months, or fine of 1,000 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable

COMMENTS

[s 173.1] Preventing service of summons

This section refers to prevention of service of process or issue of a proclamation by the lawful authority of a public servant. Since the object of the section is to punish only such prevention as interferes with the completion of service even the refusal to receive a summons is not an offence under the section, if its actual delivery was not legally necessary to complete its service.

Refusal to accept a notice issued by a police officer under *section 160 of CrPC, 1973* requiring attendance at an inquiry does not amount to an offence under *section 173, IPC*.⁶ Similarly, refusal to sign a summons,⁷ refusal to receive a summons,⁸ and throwing down a summons after service, do not constitute the offence of intentionally preventing the service of summons, under this section. The words “prevents the serving on himself” are not applicable to that case wherein the summons is tendered and refused, in as much as rendering is in itself a good service. But a person who gets away from the serving officer and shuts himself in his house to intentionally prevent service either by tender or by delivery is guilty within the meaning of this section.⁹

[s 173] Preventing service of summons or other proceeding, or preventing publication thereof.—

- 1 *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).
- 5 Subs. by Act 21 of 2000, section 91 and Sch I, for “to produce a document in a Court of Justice” (w.e.f. 17-10-2000).
- 6 *Budhua v Emperor*, (1927) 26 All LJ 107.
- 7 *Reg. v Kalya Fakir*, (1868) 5 BHC (Cr C) 34.
- 8 *Queen v Purnamalai*, (1882) 5 Mad 199.
- 9 *Queen v Arumuga Nadan*, (1882) 5 Mad 200 : 1 Weir 79.

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[s 174] Non-attendance in obedience to an order from public servant.—

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The Indian Penal Code

CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

As a necessary part of the administrative machinery of a country, the public servants possess certain exceptional rights and privileges in order to safeguard and protect the public from the abuse of power by public servants and *vice versa*. The previous Chapter (IX; sections 166-171) dealt with the offences by or relating to public servants while this Chapter (sections 172-190) relates to their rights against the public for putting obstructions to the discharge of their official transactions.

Chapter X is a small chapter, consisting of 19 sections (sections 172-190). It deals with offences which constitute contempt of the lawful authority invested in public servants. The chapter essays to enforce obedience to and respect for public servants during the exercising of their lawful authority.¹ It denounces all disobedience to the lawful authority of a public servant, codifies the various preexisting regulations on the subject, and disallows collectively all contempt, be it of the powerful authority of the courts of justice or of officers of revenue or of the police.

The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 174] Non-attendance in obedience to an order from public servant.—

Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both,

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[s 174] Non-attendance in obedience to an order from public servant.—

ILLUSTRATIONS

(a) A, being legally bound to appear before the ¹⁰[High Court] at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a ¹¹[District Judge], as a witness, in obedience to a summons issued by that ¹²[District Judge] intentionally omits to appear. A has committed the offence defined in this section.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Simple imprisonment for 1 month, or fine of 500 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Para II: Punishment—Simple imprisonment for 6 months, or fine of 1,000 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

COMMENTS

[s 174.1] Scope

This section makes intentional nonattendance in obedience to a summons, notice or order given by a public servant on a particular date, time and place, an offence. To prove the commission of an offence under this section following three things must be established,—

- (1) That a summons for attendance was issued by a public servant who was legally competent to issue the same;
- (2) That the person summoned was legally bound to attend at a certain place and time specified in the summons; and
- (3) That the person summoned must intentionally have omitted to attend that place.¹³

The offence is non-cognizable, bailable but not compoundable and may be tried by any Magistrate.

[s 174.2] Legally bound to attend in person

A person cannot be held liable unless the person summoned was legally bound to attend but refused or intentionally omitted to attend. For instance, an order under *section 36 of the Legal Practitioners Act* calling upon a person to appear and show cause as to why his name shall not be entered into the list of tout is not an order which the person is legally bound to obey.¹⁴

Where a summons did not mention the place and the time of the day when the attendance of the person summoned was required, it was held that such a person could not be punished under this section. Similarly, a mere verbal direction to appear before a police officer as a witness is not sufficient to hold the person guilty

[s 174] Non-attendance in obedience to an order from public servant.—

under the section.¹⁵ A summons should be clear and specific in its terms as to the name of the court, the place at which, the day and the time when the attendance of the person summoned is required and it must be properly served.¹⁶ When a summons was not served personally on the defendant but affixed to the door of his house, it was held that he had committed no offence¹⁷ in not attending the court.

[s 174.3] Legally competent to issue summons

The public servant must be legally competent to issue the summons, etc.¹⁸ Inquiry conducted by an officer of the Railway Protection Force, being in the nature of a judicial proceeding under *section 9 of the Railway Property (Unlawful Possession) Act, 1966*, any person summoned by such an officer to produce any document, or to give evidence, shall be bound to produce such document, and to state the truth in the course of his examination. Failure to do so or furnishing of false documents, etc. will entail prosecution under *sections 174, 175, 179, 180 and 193, IPC*, as the case may be.¹⁹

[s 174.4] Intentionally omits to attend

The omission to appear in answer to a summons must be intentional. Before the provisions of this section can come into operation, personal service of a summons must be attempted.²⁰ If a person wilfully leaves the court without appearing before the presiding judge when he was called upon to appear, this section is attracted. For instance, an accused who came to the Court at 10.00 a.m. as per time given in the summons but left the court immediately as the Magistrate was late due to some official work, was held liable under this section.

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

¹⁰ Subs. by the A.O. 1950, for “Supreme Court”.

¹¹ Subs. by the A.O. 1950, for “Supreme Court”.

¹² Subs. by the A.O. 1950, for “Zila Judge”.

¹³ Ratanlal and Dhirajlal, *Law of Crimes*, 23rd Edn, p 611.

¹⁴ *PJ Money v Emperor*, ILR (1928) 6 Rang 529 .

¹⁵ *Re Shib Pershad Chuckerbutty*, (1872) 17 WR 38 (Cr).

¹⁶ *Empress v Ram Saran*, 1883 ILR 5 All 7.

¹⁷ *Supra*.

¹⁸ Nelson's *Indian Penal Code* , 7th Edn, (1981), p 535; *Queen Empress v Paranga*, 1893 ILR 16 Mad 463.

[s 174] Non-attendance in obedience to an order from public servant.—

19 *Pal Singh, Santa Singh v State of Rajasthan*, AIR 1955 Raj 18 .

20 *Queen v Hurynath Chowdry*, (1867) 7 WR 58 (Cr).

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[s 174A] Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—

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The Indian Penal Code

CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

As a necessary part of the administrative machinery of a country, the public servants possess certain exceptional rights and privileges in order to safeguard and protect the public from the abuse of power by public servants and *vice versa*. The previous Chapter (IX; sections 166-171) dealt with the offences by or relating to public servants while this Chapter (sections 172-190) relates to their rights against the public for putting obstructions to the discharge of their official transactions.

Chapter X is a small chapter, consisting of 19 sections (sections 172-190). It deals with offences which constitute contempt of the lawful authority invested in public servants. The chapter essays to enforce obedience to and respect for public servants during the exercising of their lawful authority.¹ It denounces all disobedience to the lawful authority of a public servant, codifies the various preexisting regulations on the subject, and disallows collectively all contempt, be it of the powerful authority of the courts of justice or of officers of revenue or of the police.

The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

²¹[s 174A] Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—

Whoever fails to appear at the specified place and the specified time as required by a proclamation published under subsection (1) of *section 82 of the Code of Criminal Procedure, 1973* shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under subsection (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.]

[s 174A] Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for 3 years of fine, or with both—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Para II: Punishment—Imprisonment for 7 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

[s 174A.1] Principle and Scope of *section 174A, IPC*

It was noticed that many a time notorious and hardened criminals successfully manage to evade the process of law. They do not appear in the Court to face trial even after committing heinous crimes. To bring to book such criminals section 174A was added in Chapter X of the *Penal Code* and consequential amendment was made in the *Criminal Procedure Code, 1973* in 2005 by insertion of sub-section (4) in section 82 of Act 2 of 1974 *vide* Criminal Procedure (Amendment) Act, 2005. In view of the gravity of the offence, *section 174A, IPC* has been made cognizable, non-bailable and triable by a Magistrate of the first class. A police officer may therefore arrest a culprit even without a warrant in order to bring such notorious criminals to the court of law. The provisions are a good tool in the hands of prosecuting agencies in the right direction.

[s 174A.2] Non-appearance of the accused in violation of a Proclamation by a Court

Section 174A of the Code provides for stringent punishment in case of a proclaimed offender who evades the process of law and avoids appearance in the Court to face trial in a given case on appointed date and time. Section has been bifurcated into two parts according to the gravity and nature of offences as stated below:

The first part provides punishment to the extent of 3 years, with or without fine in case a person who does not appear in a court on the date and time specified in response to a proclamation published under sub-section (1) of *section 82 of the CrPC, 1973*.²²

The second part provides for more stringent punishment that may extend to seven years of imprisonment and fine in case of those proclaimed offenders whose names have been published in accordance with the provisions of sub-section (4) of *section 82 of the CrPC, 1973*.²³

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

²¹ Ins. by Act 25 of 2005, section 44(b) (w.e.f. 23-6-2006)

²² *CrPC, 1973, section 82. Proclamation for person absconding.*—(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by

[Footnote No. 22 *contd* .]

[s 174A] Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—

it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

- (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
- (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;
- (c) a copy thereof shall be affixed to some conspicuous part of the Court-house;
- (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

23 Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the *Indian Penal Code*, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

[s 175] Omission to produce [document or electronic record] to public servant by person legally bound to produce it.—

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Chapter X is a small chapter, consisting of 19 sections (sections 172-190). It deals with offences which constitute contempt of the lawful authority invested in public servants. The chapter essays to enforce obedience to and respect for public servants during the exercising of their lawful authority.¹ It denounces all disobedience to the lawful authority of a public servant, codifies the various preexisting regulations on the subject, and disallows collectively all contempt, be it of the powerful authority of the courts of justice or of officers of revenue or of the police.

The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 175] Omission to produce ²⁴[document or electronic record] to public servant by person legally bound to produce it.—

Whoever, being legally bound to produce or deliver up any ²⁵[document or electronic record] of any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both,

or, if the ²⁶[document or electronic record] is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

ILLUSTRATION

[s 175] Omission to produce [document or electronic record] to public servant by person legally bound to produce it.—

A, being legally bound to produce a document before a ²⁷[District Court], intentionally omits to produce the same. A has committed the offence defined in this section.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Simple imprisonment for 1 month, or fine of 500 rupees, or both—Non-cognizable—Bailable—Triable by the Court in which the offence is committed, subject to the provisions of Chapter XXVI or, if not committed in a Court, any Magistrate—Non-compoundable.

Para II: Punishment—Simple imprisonment for 6 months, or fine of 1,000 rupees, or both—Non-cognizable—Bailable—Triable by the Court in which the offence is committed, subject to the provisions of Chapter XXVI; or, if not committed in a Court, any Magistrate—Non-compoundable

COMMENTS

[s 175.1] Omission to produce documents

This section punishes failure to produce or deliver a document or electronic record before a public servant, by a person who is legally bound to do so. To constitute offence the prosecution must prove that

- (i) the accused was legally bound to produce the document or electronic record as per summons in a court of law;
- (ii) that the accused omitted to produce it as required;
- (iii) that it was done intentionally; and
- (iv) that the accused was in possession of the document.²⁸

[s 175.2] Legally bound to produce or deliver any document or electronic record

The intentional non-production of a document by a person legally bound to produce the same is punishable. For instance an acting village *Karanam (Lekhpal)* in possession of Government records is legally bound to hand over the records to another *Karanam* who is duly appointed, and if he fails to do so, he would be guilty under this section.²⁹ But a sub-registrar is not legally bound to call upon a person to produce the original document to compare with a copy of the deed in his office which was suspected to have been tempered with.³⁰

[s 175.3] Public Servant

The public servant must be legally competent to call for the document or electronic record. A receiver appointed under the *Land Registration Act, 1908* is not a public servant within the meaning of this section.³¹

[s 175] Omission to produce [document or electronic record] to public servant by person legally bound to produce it.—

- 1** *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).
- 24** Subs. by Act 21 of 2000, section 91 and Sch I, for “document” (w.e.f. 17-10-2000).
- 25** Subs. by Act 21 of 2000, section 91 and Sch I, for “document” (w.e.f. 17-10-2000).
- 26** Subs. by Act 21 of 2000, section 91 and Sch I, for “document” (w.e.f. 17-10-2000).
- 27** Subs. by the A.O. 1950, for “Zila Court”.
- 28** *Re Premchand Daulatram*, (1887) 12 Bom 63.
- 29** *Socha Gowder v State*, 1955 Mad WN 634.
- 30** *Asmatullah v Emperor*, (1906) 3 Cr LJ 114 .
- 31** *Ebrahim Sircar v Emperor*, (1901) 29 Cal 236 .

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[s 176] Omission to give notice or information to public servant by person legally bound to give it.—

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Chapter X is a small chapter, consisting of 19 sections (sections 172-190). It deals with offences which constitute contempt of the lawful authority invested in public servants. The chapter essays to enforce obedience to and respect for public servants during the exercising of their lawful authority.¹ It denounces all disobedience to the lawful authority of a public servant, codifies the various preexisting regulations on the subject, and disallows collectively all contempt, be it of the powerful authority of the courts of justice or of officers of revenue or of the police.

The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 176] Omission to give notice or information to public servant by person legally bound to give it.—

Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence, or is

[s 176] Omission to give notice or information to public servant by person legally bound to give it.—

required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

³²[or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898 (5 of 1898)³³ with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

CLASSIFICATION OF OFFENCE

Para I: Punishment—Simple imprisonment for 1 month, or fine of 500 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Para II: Punishment—Simple imprisonment for 6 months, or fine of 1,000 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Para III: Punishment—Imprisonment for 6 months, or fine of 1,000 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

COMMENTS

[s 176.1] Omission to furnish informations to public servant

This section is applicable to persons upon whom an obligation is imposed by law to give or to furnish certain informations to public servants.³⁴ The gist of the offence under this section is that the accused was legally bound to furnish a certain information to the public servant, and he intentionally omitted to give the information.³⁵ The section is not applicable if the public servant has already obtained information from other sources.

[s 176.2] Legally bound to give any notice or to furnish information

To bring home the charge to the accused, he must be shown to be legally bound to furnish information. In *Shridhar*,³⁶ the petitioner, village headman, was held liable under this section for not reporting to the police about the commission of suicide by a man in the village as required by *section 40 of the Criminal Procedure Code, 1973*. When a person is not legally bound to furnish information this section does not apply.

[s 176.3] Intentionally omits to give such notice

When a person is under a legal duty to report certain facts and fails to report then he must be presumed to intend to conceal them. For instance, a person who failed to give information to the police of the explosion of fireworks which resulted in the death of a child (as required by the statute), was held liable under this section.³⁷

Under section 39(v), *CrPC 1973*, when a person is aware of the commission or an intention to commit an offence under *sections 302, 303 and 304, IPC*, he is bound to give information to the nearest magistrate or police officer of such commission or of its intention and failure to do so is punishable under this section. But it must be shown that the accused was aware of the commission of the offence, or of the intention to commit it by

[s 176] Omission to give notice or information to public servant by person legally bound to give it.—

another. Thus, when the mother of a murderer (suspect) merely said that her son and daughter-in-law went to bed at about 10:00 pm and that early next morning her son ran away and she found her daughter-in-law lying dead on the bed, it was held that her failure to inform the police did not constitute an offence under *section 176, IPC* as she was neither aware that a murder was going to be committed, nor was she aware that a murder had been committed.³⁸

1 *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

32 Added by Act 22 of 1939, section 2.

33 Now see section 356 of the *Code of Criminal Procedure*, 1973 (2 of 1974).

34 *RK Dalmia v Delhi Administration*, AIR 1962 SC 1821 [[LNIND 1962 SC 146](#)] : (1963) 1 SCR 253 [[LNIND 1962 SC 146](#)] : (1962) 2 Cr LJ 805 : (1962) 32 CC 699 . A chartered accountant is not a public servant within the definition of *section 21, IPC*.

35 *Queen Empress v Gopal Singh*, 1892 ILR 20 Cal 316.

36 *Shridhar v State of Himachal Pradesh*, AIR 1954 HP 67 [[LNIND 1954 HP 31](#)] .

37 *Narayan Nambudripad*, 1915 Mad WN 276.

38 *TS John v State of Kerala*, 1984 Cr LJ 753 (Ker).

[s 177] Furnishing false information.—

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Chapter X is a small chapter, consisting of 19 sections (sections 172-190). It deals with offences which constitute contempt of the lawful authority invested in public servants. The chapter essays to enforce obedience to and respect for public servants during the exercising of their lawful authority.¹ It denounces all disobedience to the lawful authority of a public servant, codifies the various preexisting regulations on the subject, and disallows collectively all contempt, be it of the powerful authority of the courts of justice or of officers of revenue or of the police.

The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 177] Furnishing false information.—

Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

ILLUSTRATIONS

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the

[s 177] Furnishing false information.—

Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause, 5, section VII, Regulation III, 1821³⁹, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the later part of this section.

⁴⁰[*Explanation.*—In section 176 and in this section the word “offence” includes any act committed at any place out of ⁴¹[India], which, if committed in ⁴²[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word “offender” includes any person who is alleged to have been guilty of any such act.]

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for 6 months, or fine of 1,000 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Para II: Punishment—Imprisonment for 2 years, or fine, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

COMMENTS

[s 177.1] False information to a public servant

This section makes giving of false information to a public servant an offence just as the preceding section 176 makes omission to give information punishable. Under both sections the liability depends upon legal obligation to give information. Thus, persons who are not under any legal obligation to furnish information cannot be held liable under this section. The section runs into two parts.⁴³

[s 177.2] Ingredients

The first part punishes a person who, being bound to furnish true information to a public servant, furnishes false information, and the second part applies to a case wherein information is required for the purpose of preventing the commission of an offence in order to apprehend an offender. In case the offence falls under the first part, it is punishable with up to 6 months of imprisonment; or fine, or both; and if in the second part it is punishable; up to 2 years, or fine, or both. The offence under this section is non-cognizable, bailable, non-compoundable and may be tried by any Magistrate.

To convict a person under this section the following facts are necessary to be established:—

- (1) The accused was legally bound to furnish information;
- (2) That the said information was given to a public servant;
- (3) That it was false; and

[s 177] Furnishing false information.—

- (4) That he furnished the information as true, though he knew the same was false.

[s 177.3] Legal obligation to furnish information

To hold a person liable under this section, there must be a legal obligation to furnish the information required to a public servant. Merely giving false information to the police by a person who is not legally bound to give that information does not make him liable under this section. For instance, if a person falsely reports to the police that he has been robbed, if it is not meant to cause injury or annoyance to any person, he is not liable under this section.⁴⁴ But, if A, a police officer who is under a legal obligation to enter all reports of offences brought to him, refused to enter a report of a certain offence, but entered instead a false report, is guilty under this section.⁴⁵

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

³⁹ Rep. by Act 17 of 1862.

⁴⁰ Added by Act 3 of 1894, section 5.

⁴¹ The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.

⁴² The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.

⁴³ *Lokhan v Emperor*, AIR 1936 All 788 .

⁴⁴ *Hari Singh Gour*, *Penal Law of India*, 10th Edn, vol 2, p 1527.

⁴⁵ *R v Muhamad Ismail Khan*, 1897 ILR 20 All 151.

[s 178] Refusing oath or affirmation when duly required by public servant to make it.—

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Chapter X is a small chapter, consisting of 19 sections (sections 172-190). It deals with offences which constitute contempt of the lawful authority invested in public servants. The chapter essays to enforce obedience to and respect for public servants during the exercising of their lawful authority.¹ It denounces all disobedience to the lawful authority of a public servant, codifies the various preexisting regulations on the subject, and disallows collectively all contempt, be it of the powerful authority of the courts of justice or of officers of revenue or of the police.

The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 178] Refusing oath or affirmation when duly required by public servant to make it.—

Whoever refuses to bind himself by an oath ⁴⁶[or affirmation] to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

CLASSIFICATION OF OFFENCE

[s 178] Refusing oath or affirmation when duly required by public servant to make it.—

Punishment—Simple imprisonment for 6 months, or fine of 1,000 rupees, or both—Non-cognizable—Bailable—Triable by the court in which the offence is committed, subject to the provisions of Chapter XXVI; or, if not committed in a court, any Magistrate—Non-compoundable.

COMMENTS

[s 178.1] Refusing oath or affirmation when duly required by public servant

This section punishes refusal to take an affirmation when required by a competent public servant to do so. Refusal signifies a positive non-compliance with the demand made. Thus, if a man after deposing as a witness refuses to take an oath and comes to the witness box for cross-examination, he is guilty under this section.⁴⁷ But a witness who refuses to give evidence on the ground of insufficient payment of expenses is not liable under section 178, IPC.⁴⁸

[s 178.2] Ingredients

- (1) The accused was required by a public servant to bind himself by an oath or affirmation to speak the truth;
- (2) The public servant was legally competent to require that the accused shall bind himself by an oath and speak the truth; and
- (3) The accused refused to bind himself as required.

The punishment may extend to 6 months of imprisonment, or fine up to one thousand rupees, or both. The offence under this section is non-cognizable, bailable, non-compoundable and triable by any Magistrate.

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁴⁶ Ins. by Act 10 of 1873, section 15.

⁴⁷ *Jibachh Shah v State of Bihar*, AIR 1965 Pat 331 .

⁴⁸ *Nga Pyo v Emperor*, (1907) 7 Cr LJ 208 .

[s 179] Refusing to answer public servant authorised to question.—

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Chapter X is a small chapter, consisting of 19 sections (sections 172-190). It deals with offences which constitute contempt of the lawful authority invested in public servants. The chapter essays to enforce obedience to and respect for public servants during the exercising of their lawful authority.¹ It denounces all disobedience to the lawful authority of a public servant, codifies the various preexisting regulations on the subject, and disallows collectively all contempt, be it of the powerful authority of the courts of justice or of officers of revenue or of the police.

The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 179] Refusing to answer public servant authorised to question.—

Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[s 179.1] Refusing to answer a public servant authorised to question

Section 179, IPC is one of the provisions to enforce compliance when a public servant legally demands truthful answers but is met with blank refusal or plain mendacity (falsehood). An investigating officer enjoys such powers under the *CrPC, 1973*.

[s 179] Refusing to answer public servant authorised to question.—

[s 179.2] Ingredients

The ingredients of the section are:

- (1) The demanding authority must be a public servant—a police officer is obviously one;
- (2) The accused was bound to state the truth to a public servant on the subject in question;
- (3) The questions were put by a public servant in the exercise of legal powers; and
- (4) The accused refused to answer the questions demanded of him.

The offence under this section consists in the refusal to answer a question which is relevant to the subject concerning which the public servant is authorised to inquire, which touches that subject. If a person gives false answers, then he will be guilty under *section 193, IPC* and not under this section. Under *sections 121 to 132 of the Indian Evidence Act, 1872* a witness is exempted from answering certain questions.

This section also applies to the accused as the words used in *section 161(1), CrPC, 1973* are “any person acquainted with the facts and circumstances of the case”. Thus, the accused too is bound to answer a question put by a police officer in the course of his examination, if the answer to that question does not have a tendency to incriminate him. But, if the answer has a tendency to incriminate him, he can claim protection under *Article 20(3) of the Constitution* and refuse to answer.⁴⁹ Of course, it is a matter which has to be ultimately decided by the Court.⁵⁰

The matter is entirely different so far as the officer of the Railway Protection Force is concerned; firstly, they are not police officers,⁵¹ and secondly, the inquiry conducted by them under *sections 8 and 9 of the Railway Property (Unlawful Possession) Act, 1966* is not a police investigation but should be deemed to be a judicial proceeding.⁵²

Section 179, IPC has a component of *mens rea* and where there is no wilful refusal, but only unwitting omission or innocent warding off, the offence is not made out. When there is a reasonable doubt indicated by the accused's explanation, he is entitled to its benefit and cannot be forced to surrender the very privilege for which he is fighting. The offence is non-cognizable, bailable, non-compoundable and triable by any Magistrate.

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁴⁹ *Mawazanagyi*, (1930) 8 Rang 511.

⁵⁰ *Nandini Satpathy v PL Dani*, 1978 Cr LJ 968 (SC) : AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] .

[s 179] Refusing to answer public servant authorised to question.—

- 51** *State of Madhya Pradesh v Chandan Singh*, 1980 Cr LJ 1024 ; *R Muthu v Assistant Sub-Inspector*, RPF Erode, 1983 Cr LJ 1309 (Mad).
- 52** *BC Saxena v State of Andhra Pradesh*, 1983 Cr LJ 1432 (AP).

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[s 180] Refusing to sign statement.—

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Chapter X is a small chapter, consisting of 19 sections (sections 172-190). It deals with offences which constitute contempt of the lawful authority invested in public servants. The chapter essays to enforce obedience to and respect for public servants during the exercising of their lawful authority.¹ It denounces all disobedience to the lawful authority of a public servant, codifies the various preexisting regulations on the subject, and disallows collectively all contempt, be it of the powerful authority of the courts of justice or of officers of revenue or of the police.

The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 180] Refusing to sign statement.—

Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Simple imprisonment for 3 months, or fine of 500 rupees, or both—Non-cognizable—Bailable—Triable by the court in which the offence is committed, subject to the provisions of Chapter XXVI; or, if not committed in a court, any Magistrate—Non-compoundable.

COMMENTS

[s 180.1] Refusing to sign statement

This section makes refusal to sign a statement, when required to do so by a public servant, an offence. But the statement must be such a one as the accused can be legally required to sign. For instance, refusal to sign a statement and confession of the accused recorded under *section 164, CrPC, 1973* and examination of the accused under *section 281(5), CrPC, 1973* will make a person liable under this section.⁵³

But in the absence of any statutory obligation, an accused person, who refuses to sign a statement made at his trial in answer to questions put by the court, commits no offence under this section.⁵⁴ Similarly, a witness is not legally bound to sign his deposition in a revenue inquiry,⁵⁵ nor is he bound to sign or affix his thumb mark to his deposition in a civil case.⁵⁶ Consequently, he cannot be convicted under this section for his refusal to sign.

[s 180.2] Ingredients

- (1) The accused made a statement;
 - (2) The accused was required to sign such statement by a public servant;
 - (3) Such public servant was legally competent to require him to sign it; and
 - (4) The accused refused to sign that statement.
-

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁵³ *State of Uttar Pradesh v Durga Prasad*, 1974 Cr LJ 1465 (SC) : AIR 1974 SC 2136 [[LNIND 1974 SC 248](#)] : (1975) 3 SCC 210 [[LNIND 1974 SC 248](#)] : (1975) 1 SCR 881 [[LNIND 1974 SC 248](#)] : (1975) 2 SCJ 40 .

⁵⁴ *Imperatrix v Sirsapa*, (1877) 4 Bom 15.

⁵⁵ (1871) 6 Mad HCR Appx 14 : 1871 Iweir 112.

⁵⁶ *Fateh Chand v Kirpal Singh*, 1912 PR 178 .

[s 181] False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.—

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The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 181] False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.—

Whoever, being legally bound by an oath ⁵⁷[or affirmation] to state the truth on any subject to any public servant or other person authorized by law to administer such oath ⁵⁸[or affirmation], makes, to such public servant or other person as aforesaid, touching the subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

[s 181] False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.—

[s 181.1] False statement on oath

Section 181 punishes making a false statement on oath or affirmation to a public servant. To constitute an offence under this section it must be proved that—

- (1) The accused took on oath or affirmation;
- (2) That the accused was legally bound to state the truth to a public servant;
- (3) The accused so bound made a statement touching the subject in question; and
- (4) The statement made by the accused was false and that he knew or had reason to believe that such statement was false.

The offence is non-cognizable, bailable, non-compoundable and triable by a Magistrate of first class. Punishment may extend to 3 years of imprisonment and fine.

[s 181.2] Difference between false statement on oath (Chapter 10) (section 181) and giving false evidence (section 191, Chapter 11)

The offences under sections 181 and 191 are almost the same. The only difference between the two is one of degree and not of kind. For instance, when false information is given under oath, the offender is punishable under section 181 with imprisonment not exceeding 3 years, but when the false statement amounts to false evidence as defined in *section 191, IPC*, the offender is punishable with imprisonment up to 7 years under *section 193, IPC*.⁵⁹

Under section 181, a false statement to any public servant or other person authorised to administer an oath or affirmation, is punishable. It does not apply when the public servant administers the oath in a case wholly beyond his jurisdiction,⁶⁰ or when he is not competent to obtain a statement on solemn affirmation.⁶¹

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁵⁷ Ins. by Act 10 of 1873, section 15.

⁵⁸ Ins. by Act 10 of 1873, section 15.

⁵⁹ *Emperess of India v Niaz Ali*, (1882) 5 All 17 .

⁶⁰ *Andy Chetty*, (1865) 2 Mad HCR 438 .

⁶¹ *Suba v Queen*, 1883 ILR 6 Mad 252.

[s 181] False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.—

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[[s 182] False information, with intent to cause public servant to use his lawful power to the injury of another person.—

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The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

⁶²[[s 182] False information, with intent to cause public servant to use his lawful power to the injury of another person.—

Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

- (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or**
- (b) to use the lawful power of such public servant to the injury or annoyance of any person,**

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[s 182] False information, with intent to cause public servant to use his lawful power to the injury of another person.—

ILLUSTRATIONS

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assistants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villages or some of them. A has committed an offence under this section.]

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months or fine of 1,000 rupees, or both—Noncognizable—Bailable—Triable by any Magistrate—Non-compoundable.

COMMENTS

[s 182.1] False information

This section relates to false information given to a public servant which the informer knows or believes to be false, with the intention to cause a public servant to use his lawful power to the injury of another person. The object of this section is that a public servant should not be given false information by a person who knew the information to be false, and intended to mislead him. Thus, it is an offence to give false information which misleads a public servant into doing what he ought not to do, whether, that can be shown to be intended for the purpose of injuring any particular person or not.

The section makes punishable to positive act of giving false information. There is nothing in the section showing that it intends to punish the withholding of information as distinct from the actual giving of information.⁶³ The section does not require that action must always be taken. It is enough for the completion of the offence that the person who moves the public servant knows or has reason to believe that action would be taken on the false information given by him.⁶⁴

[s 182.2] Ingredients

- (1) The accused gave some information to a public servant;
- (2) Such information was false;
- (3) The accused knew or had reason to believe that such information was false.

The offence under this section is non-cognizable, bailable but non-compoundable, and triable by a Magistrate

[[s 182] False information, with intent to cause public servant to use his lawful power to the injury of another person.—

of first class. When a resolution was passed in a public meeting condemning police action in regard to an assault case and copies of the said resolution were sent to various authorities including the superintendent of police and the officer-in-charge, the officer-in-charge took exception to it and filed a complaint in the court under *sections 182 and 211, IPC*. It was held that forwarding of the resolution did not amount to institution of criminal proceeding and no offence either under *section 182, IPC* or *section 211, IPC* was committed. It was further observed that police should not be so sensitive to public criticism.⁶⁵

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁶² Subs. by Act 3 of 1895, section 1, for section 182.

⁶³ *Sher Mohammad v Crown*, (1940) 21 Lah 396.

⁶⁴ *Daulat Ram v State of Punjab*, 1962 Cr LJ 286 (SC) : AIR 1962 SC 1206 [[LNIND 1962 SC 28](#)] : 1962 Supp (2) SCR 812 .

⁶⁵ *Shiv Kumar Prasad Singh v State of Bihar*, 1984 Cr LJ 1417 (Pat).

[s 183] Resistance to the taking of property by the lawful authority of a public servant.—

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Chapter X is a small chapter, consisting of 19 sections (sections 172-190). It deals with offences which constitute contempt of the lawful authority invested in public servants. The chapter essays to enforce obedience to and respect for public servants during the exercising of their lawful authority.¹ It denounces all disobedience to the lawful authority of a public servant, codifies the various preexisting regulations on the subject, and disallows collectively all contempt, be it of the powerful authority of the courts of justice or of officers of revenue or of the police.

The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 183] Resistance to the taking of property by the lawful authority of a public servant.—

Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[s 183] Resistance to the taking of property by the lawful authority of a public servant.—

This section punishes a person who resists the taking of property by the lawful authority of a public servant. When a person resisted an official in attaching property under a warrant, the term of which had already expired,⁶⁶ or which did not specify the date on or before which it was to be executed,⁶⁷ it was held that the person was guilty under this section.

[s 183.2] Ingredients

The ingredients of the offence are:

- (1) The property was taken by a lawful authority;
- (2) The person resisted must be a public servant, or a person having lawful authority;
- (3) The accused resisted the taking of such property; and
- (4) The accused knew or had reason to believe that the person resisted was a public servant authorised to such taking.

The offence is non-cognizable, bailable, non-compoundable and triable by any Magistrate, and punishable to the extent of 6 months of imprisonment, or fine which may extend to one thousand rupees, or both.

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁶⁶ *Anand Lal Bera v Empress*, 1833 ILR 10 Cal 18.

⁶⁷ *MM Banerji v The Emperor*, (1916) 1 PLJ 550 : (1916) 18 Cr LJ 39 .

[s 184] Obstructing sale of property offered for sale by authority of public servant.—

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Chapter X is a small chapter, consisting of 19 sections (sections 172-190). It deals with offences which constitute contempt of the lawful authority invested in public servants. The chapter essays to enforce obedience to and respect for public servants during the exercising of their lawful authority.¹ It denounces all disobedience to the lawful authority of a public servant, codifies the various preexisting regulations on the subject, and disallows collectively all contempt, be it of the powerful authority of the courts of justice or of officers of revenue or of the police.

The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 184] Obstructing sale of property offered for sale by authority of public servant.—

Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

[s 184.1] Obstructing sale of property

This section punishes intentional obstruction of the sale of any property conducted under the lawful authority of

[s 184] Obstructing sale of property offered for sale by authority of public servant.—

a public servant. No physical obstruction is necessary. Use of abusive language by a person at an auction sale conducted by a public servant makes him liable to be convicted under this section.⁶⁸

[s 184.2] Ingredients

To hold a person liable under this section the following must be proved:—

- (1) The property was put under sale;
- (2) The sale was by a public servant;
- (3) Sale was lawfully held;
- (4) The accused obstructed the sale; and
- (5) The accused obstructed sale intentionally.

The offence is non-cognizable, bailable, non-compoundable and triable by any Magistrate. Punishment may extend to one month of imprisonment or fine up to Rs 500.

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁶⁸ *Provincial Govt of CP and Berar v Balram Jagannath*, AIR 1938 Ngp 529 .

[s 185] Illegal purchase or bid for property offered for sale by authority of public servant.—

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[s 185] Illegal purchase or bid for property offered for sale by authority of public servant.—

Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

CLASSIFICATION OF OFFENCE

[s 185] Illegal purchase or bid for property offered for sale by authority of public servant.—

Punishment—Imprisonment for 1 month, or fine of 200 rupees, or both—Noncognizable—Bailable—Triable by any Magistrate—Non-compoundable.

[s 185.1] Illegal purchase or bid of property

This section deals with illegal purchase of property at any sale of property by a public servant duly authorised. It makes it penal to bid at a public sale of property on behalf of a party who is under a legal incapacity to purchase it, or to bid for it not intending to complete the purchase, or as it is expressed to perform the obligations under which the bidder lays himself by such bidding.⁶⁹

[s 185.2] Ingredients

- (1) The property offered for sale was by the lawful authority of a public servant;
- (2) The accused bid for sale, purchased it himself or for some other person;
- (3) The person for whom the accused bid for purchase of property was under a legal incapacity to purchase at such sale; and
- (4) The accused knew of it.

The word “property” is used in its wide sense. It may be corporeal or incorporeal. For instance, the right to sell drugs comes within the definition of property. A person who bids at an auction of the right to sell drugs within a certain area under a false name and when the sale is confirmed in his favour he denies that he has ever made any bid at all, is guilty under this section.⁷⁰

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁶⁹ Ratanlal and Dhirajlal, *The Law of Crimes*, 23rd Edn, vol I, pp 646-647.

⁷⁰ *Emperor v Bishan Prasad*, (1914) 37 All 128 .

[s 186] Obstructing public servant in discharge of public functions.—

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The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 186] Obstructing public servant in discharge of public functions.—

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 months, or fine of 500 rupees, or both Noncognizable—Bailable—Triable by any Magistrate—Non-compoundable.

[s 186] Obstructing public servant in discharge of public functions.—

This is a general section and provides for punishment for the offence of “voluntarily” obstructing a public servant in the discharge of his public functions.⁷¹ Ingredients of the offence under this section are:

- (1) The obstruction to the public servant was done by the accused voluntarily, and
- (2) The obstruction was done in the discharge of the public functions.

[s 186.2] Voluntarily obstructs any public servant

The use of the word voluntarily,⁷² indicates that the legislature contemplated the commission of some overt act of obstruction and did not intend to render penal mere passive conduct.⁷³ The word “obstruction” means actual obstruction, i.e., actual resistance or obstruction put in the way of a public servant. In other words, “obstruction” denotes some overt act in the nature of violence or show of violence.⁷⁴ To constitute obstruction it is not necessary that there should be actual criminal force. It suffices if there is either a show of force, or a threat of force, or preventing the execution of any act by a public servant.⁷⁵

[s 186.3] Discharge of public function

It must be shown that the obstruction or resistance was offered to a public servant in the discharge of his duties or public functions as authorised by law. The mere fact of a public servant believing that he was acting in the discharge of his duties will not be sufficient to make resistance or obstruction an offence.⁷⁶ To initiate prosecution under the section it is necessary to see that the complaint is filed under section 195(1)(a), *CrPC*, 1973 by the concerned public servant, or his superior officer to whom he is administratively subordinate. It is also not possible to bypass the requirement of the law by merely changing the label of the offence, say from section 186 to *section 353, IPC*⁷⁷ (i.e., from obstructing public servant in discharge of public functions to assault to deter public servant from discharge of his duty).

The accused in *Santosh Kumar Jain v State*,⁷⁸ voluntarily obstructed a public servant at a time when he was acting in the course of his official duty, but it was contended that the officer had exceeded his official duty and that the act which was obstructed was not among his authorised functions and did not form part of his official duties. However, on the evidence in the case it was held that the accused had in fact obstructed the officer in carrying out the legal functions attached to his office and was accordingly convicted under this section.

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁷¹ *Santosh Kumar Jain v State*, AIR 1951 SC 201 [[LNIND 1951 SC 16](#)] : 1951 SCR 303 : 1951 SCJ 191 : 1951 Cr LJ 757 ; *Durgacharan Naik v State of Orissa*, AIR 1966 SC 1775 [[LNIND 1966 SC 59](#)] : (1966) 3 SCR 636 [[LNIND 1966 SC 59](#)] : 1966 Cr LJ 1491 .

⁷² See *IPC*, section 39 for definition of “voluntarily” Chapter II, *supra*, pp 115-117.

⁷³ *Queen Empress v Somanna*, 1892 ILR 15 Mad 221.

[s 186] Obstructing public servant in discharge of public functions.—

- 74** *Phudki v State of Uttar Pradesh*, AIR 1955 All 104 [[LNIND 1954 ALL 119](#)] .
- 75** *State v Babulal Gaurishanker Missar*, AIR 1957 Bom 10 [[LNIND 1956 BOM 122](#)] : 1956 Bom LR 1021 .
- 76** *Baroda Kanto Pranani*, (1896) 1 Cal WN 74.
- 77** *Oduvil Devaki Amma v State of Kerala*, 1982 Cr LJ 11 Ker (NOC).
- 78** *Santosh Kumar Jain v State*, AIR 1951 SC 201 [[LNIND 1951 SC 16](#)] : 1951 SCR 303 : 1951 SCJ 191 : 1951 Cr LJ 757 ; *Durgacharan Naik v State of Orissa*, AIR 1966 SC 1775 [[LNIND 1966 SC 59](#)] : (1966) 3 SCR 636 [[LNIND 1966 SC 59](#)] : 1966 Cr LJ 1491 .

[s 187] Omission to assist public servant when bound by law to give assistance.—

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The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 187] Omission to assist public servant when bound by law to give assistance.—

Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be

[s 187] Omission to assist public servant when bound by law to give assistance.—

punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Simple imprisonment for 1 month, or the fine of 200 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Para II: Punishment—Simple imprisonment for 6 months, or fine of 500 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

[s 187.1] Omission to assist public servant when bound by law

This section punishes intentional omission to furnish information to a public servant, when a person is bound by law to render him assistance in the execution of his public duty and when the assistance is demanded for certain specified purposes.⁷⁹ The section speaks of assistance to be rendered to public servants, just as *section 176, IPC*, speaks of furnishing true information. For instance, if a person required to make a search fails to do so without reasonable excuse, he is liable under this section.⁸⁰

[s 187.2] Ingredients

- (1) The accused was bound by law to assist;
 - (2) That the person to be assisted was a public servant;
 - (3) That the public servant was engaged in the execution of his duty;
 - (4) That the accused omitted to give such assistance;
 - (5) That the accused did so intentionally.
-

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁷⁹ *Ramaya Naika*, (1903) ILR 26 Mad 419.

⁸⁰ *Magu Hat*, (1898) p 406.

[s 188] Disobedience to order duly promulgated by public servant.—

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The penal provisions in the chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such power, e.g., by attachment and sale of property, cancellation of licences and permits, etc. It may be noted that practically every section in this chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on a public servant.

[s 188] Disobedience to order duly promulgated by public servant.—

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[s 188] Disobedience to order duly promulgated by public servant.—

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

ILLUSTRATION

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Simple imprisonment for 1 month, or fine of 200 rupees, or both—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Para II: Punishment—Imprisonment for 6 months, or fine of 1,000 rupees, or both Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

[s 188.1] Disobedience of an order

This section makes disobedience of an order promulgated by a public servant lawfully empowered to do so in the public interest punishable. It refers to acts that though *prima facie* lawful, may in the particular circumstances show a tendency to endanger the public tranquillity by obstruction, annoyance, or injury, or which cause, or tend to cause any such risk to other persons. For instance, as stated in the *Illustration* appended to the section a magistrate is lawfully empowered to promulgate an order directing that a religious procession shall not pass down through a certain street, if he feels that it may lead to public disturbance and thereby cause danger of riot. Disobedience to such an order is punishable under this section.⁸¹

[s 188.2] Ingredients

To invoke this section,

- (i) there must be an order promulgated by a public servant;
- (ii) the public servant must have been lawfully empowered to promulgate such an order;
- (iii) the accused was aware of such an order; and
- (iv) that the accused disobeyed such an order.

[s 188.3] Order promulgated by a public servant

An order has been duly made and promulgated, although not strictly in accordance with the terms of the law and has been brought to the actual knowledge of the person sought to be affected by it, is sufficient to bring the case under this section.⁸² In essence the word promulgate denotes two things, viz., (i) making known an order and (ii) the means by which an order is made known must be by something done openly and in public.

It is necessary that the order should be in writing and duly promulgated and directed to the accused. It need not be published in a newspaper or by posters.⁸³ Orders contemplated by this section are orders made by public functionaries in the public interest.⁸⁴ Mere disobedience of an order does not constitute an offence in itself. It must be shown that the disobedience has or tends towards a certain consequence,⁸⁵ namely annoyance,

[s 188] Disobedience to order duly promulgated by public servant.—

obstruction or injury etc. The annoyance has to be proved as a fact. Similarly, mere mental annoyance of the authorities concerned is not enough.⁸⁶ It must have caused or tended to cause, or would have caused danger to human life, health, or safety, or riot, or disturbing public peace.⁸⁷

To convict a person under this section, it must be proved that the accused had knowledge of the order with the disobedience of which he is charged. Mere proof of a general notification promulgating the order does not satisfy the requirements of the section.⁸⁸ In *Municipal Council, Ratlam v Vardichand*, (1980) Cr LJ 1075,⁸⁹ in a far-reaching judgment the Supreme Court held that a municipal council through its officers was liable under section 188, IPC for disobeying and non-compliance with an order passed by a Magistrate under section 133, CrPC, 1973 to close certain pits and repair the drains so as to clear nuisance in the locality due to the existence of open drains, pits and public excretion by humans for want of lavatories, within six months.

Offence under this section has now been made a cognizable offence under the CrPC of 1973. Though a bailable offence, it can be made non bailable by a notification from the State Government under section 10(2) of the Criminal Law Amendment Act, 1932.

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁸¹ *Mallappa Tavargi v Emperor*, AIR 1915 Bom 22 : 1915 (17) BOM LR 676 [[LNIND 1915 BOM 62](#)] .

⁸² *Parbutt Charan Aich v Queen Empress*, 1888 ILR 16 Cal 9.

⁸³ *State v Smt Tugla*, AIR 1955 All 423 [[LNIND 1955 ALL 21](#)] : 1955 Cr LJ 1111 .

⁸⁴ *Bishan Datt v Emperor*, AIR 1948 All 50 .

⁸⁵ *Lachmi Devi v Emperor*, 1930 ILR 58 Cal 971 : AIR 1931 Cal 122 .

⁸⁶ *Pradip v State of Assam*, AIR 1960 Assam 20 : 1960 Cri LJ 215 .

⁸⁷ Deb, R., *Principles of Criminology, Criminal Law and Investigation*, 2nd Edn, Vol II, pp 876-878.

⁸⁸ *Bachuram Kar v State*, (1956) Cr LJ 515 ; *Ramdas Singh v Emperor*, 1927 ILR 54 Cal 152.

⁸⁹ See Gaur, KD, *Criminal Law: Cases and Materials*, 2nd Edn, pp 713-717; *MC Mehta v UOI*, (1987) 4 SCC 463 [[LNIND 1987 SC 663](#)] : (1988) 1 SCR 279 [[LNIND 1987 SC 663](#)] : AIR 1988 SC 1037 [[LNIND 1987 SC 663](#)] : (1988) 1 UJ 75 : (1987) 2 CCC 1025 . Supreme Court held the Mahapalika responsible for the pollution of river Ganga near Kanpur city and directed it to submit its proposal for effective prevention and control of water pollution within 6 months to the Pollution Control Board; *Kinkri Devi v State of Himachal Pradesh*, AIR 1988 HP 4 [[LNIND 1987 HP 2](#)] .

[s 188] Disobedience to order duly promulgated by public servant.—

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[s 189] Threat of injury to public servant.—

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[s 189] Threat of injury to public servant.—

Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Non-cognizable_Bailable—Triable by any Magistrate—Non-compoundable.

[s 189] Threat of injury to public servant.—

[s 189.1] Threat of injury to public servant

Sections 189 and 190, IPC punish criminal threats affecting public servants. Section 189 is involved when threat is directed against the public servant himself, while section 190 is aimed at the person who seeks his prosecution.

[s 189.2] Ingredients

To hold a person liable under this section—

- (i) threat must be a threat of injury to the public servant, or to any person in whom the accused believes the public servant to be interested, and
- (ii) that it must be done to induce a Government servant to do or forbear from doing, something related to the exercise of his function.

When two constables went at night to the house of a suspect kept under surveillance, and called out his name from the public road and his brother, who lived in an adjoining hut, came out and threatened to assault the constables for the annoyance caused, it was held that he was guilty of an offence under this section.⁹⁰

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁹⁰ *Emperor v Yar Mahammad*, 1930 ILR 58 Cal 392.

[s 190] Threat of injury to induce person to refrain from applying for protection to public servant.—

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[s 190] Threat of injury to induce person to refrain from applying for protection to public servant.—

Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

[s 190] Threat of injury to induce person to refrain from applying for protection to public servant.—

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 1 year, or fine, or both—Non-cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

[s 190.1] Threat of injury so as to refrain from taking resources from public servant

This section provides punishment for holding out a threat of injury to any person to prevent him from seeking protection from a public servant empowered to give such protection. The object of this section is to prevent persons from terrorising others with a view to induce them to desist from seeking the protection of authorities for help against any injury.

When a clergyman knowing that a civil suit was pending against a person for the possession of certain church property, excommunicated him and threatened him for holding it, it was held that the clergyman had committed an offence under this section.⁹¹

¹ *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025 : (1978) 3 SCR 608 : (1978) 2 SCC 424 [[LNIND 1978 SC 607](#)] : 1978 CAR 273 : 1978 Cr LJ 968 (SC).

⁹¹ *De Cruz*, 1884 ILR 8 Mad 140.

[s 191] Giving false evidence.—

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The Indian Penal Code

CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

This Chapter (comprising 44 sections: 191 to 229, *IPC*) relates to giving and fabricating false evidence (sections 191 to 200) and offences against public justice (sections 201 to 229). These offences may be discussed under the following sub-heads:—

- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
 - (ii) Abuse of process of court (sections 206 to 211, *IPC*);
 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 191] Giving false evidence.—

Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1 .—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2 .—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

ILLUSTRATIONS

[s 191] Giving false evidence.—

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

[s 191.1] False evidence

Sections 191, 192 and 193, IPC deal with giving or fabricating of false evidence. Section 191 defines what amounts to giving false evidence. The salient features of giving false evidence are:

- (i) intentionally making a false statement,¹ or
- (ii) declaration by a person who is under a legal obligation to speak the truth.

The giving of false evidence amounts to the practising of fraud upon the court. Thus, to make a statement of false evidence within the meaning of this section, it must be established that the person was legally bound by an oath or an express provision of law (a) to state the truth, or (b) to make a declaration upon any subject. The offence of giving false evidence can be committed even when a defendant or a plaintiff binds himself by an oath voluntarily, that is, even when he is not legally bound to do so, and enters the witness box voluntarily, and makes an affidavit to make a truthful statement, but states something which is false.²

The opening words of section 191 are "whoever being legally bound by an oath, or by an express provision of law to state the truth", means "whenever in a court of law a person binds himself on oath to state the truth, he cannot be heard to say that he should not have gone into the witness box, or should not have made an affidavit".

Ranjit Singh: In *Ranjit Singh v State of Pepsu*,³ the accused, a police officer, was called upon to make a statement against an application under Article 226 of the Constitution for a writ of *habeas corpus* in which it was alleged that the accused had illegally detained a man in police custody. In his return (statement), the accused filed a false affidavit denying that the man was ever arrested by the police or was in his custody. Held, the accused was legally bound to place the true facts before the court in his affidavit and since the statements made by him in the affidavit were found to be false, he has committed the offence under section 193, Indian Penal Code for giving false evidence as defined in sections 191, IPC.

[s 191] Giving false evidence.—

[s 191.2] Declaration

Mehrban Singh: It was held in *Mehrban Singh*,⁴ that a declaration means a formal statement made in writing and required by law to be made in writing. To invoke the section the statement must be a false statement and the person making it must know or believe it to be false or must not believe it to be true. A false verification of a written statement filed in a suit is an offence within this section. To support a conviction under this section it is necessary to prove that the facts, which if accepted as true, show that the statement made by the accused is not merely incredible, but cannot possibly be true.⁵

[s 191.3] Perjury

The offence of giving false evidence is known as perjury under the English law. However, perjury differs somewhat from false evidence. According to English law, perjury at common law consists in giving upon oath in, or for the purposes of judicial proceeding before a competent tribunal, evidence which is material to some question depending on the proceeding and is false to the knowledge of the deponent or is not believed by him to be true.⁶ In England⁷, the offence of perjury must be proved by at least two witnesses, whereas in India, under *section 134 of the Evidence Act, 1872*, no particular number of witnesses is required for proof of any fact.

[s 191.4] Difference between “giving false information” and “giving false evidence”

Giving “false information” differs from “giving false evidence” in the following respects:—

- (i) False information may be given to anybody, whereas false evidence is given only in a court of law.
- (ii) False information may or may not be given on oath, but false evidence must be given on oath before a court of law.
- (iii) In giving false evidence the person to whom the information is given is a public servant, and such information is given with intent to cause such public servant to use his lawful power to the injury of another person, whereas, in giving false information, the person to whom the statement is made need not be a public servant, and the statement need not be made with any particular intent.
- (iv) In the case of false evidence, the accused is legally bound to state the truth, or to make a declaration upon any subject, whereas in giving false information, the accused is not legally bound to give the information.

[s 191.5] Legally bound by an oath or by an express provision of law, etc.

Fateh Ali: It was held in *Fateh Ali*,⁸ that to hold a person liable under this section, it is necessary that the accused should be legally bound by an oath before a competent authority. If the court has no authority to administer an oath the proceeding will be *coram non judice* (such acts are wholly void) and a prosecution for false evidence will not stand. Similarly, if the court is acting beyond its jurisdiction, the charge will not be sustained.⁹ The court must be an Indian Court, otherwise no offence is committed for which the accused could be liable in India.¹⁰

By an Oath.—An oath or solemn affirmation is not a *sine qua non* (not necessary requirement) in the offence of giving false evidence.¹¹ The offence may be committed although the person giving evidence has neither been sworn nor affirmed.¹²

By an express provision of law.—Under this clause, sanction of an oath is not necessary. There must be a specific provision of law compelling a person to state the truth.¹³ When the accused is not bound by an express provision of law to state the truth, he cannot be charged with giving false evidence.¹⁴

[s 191.6] Declaration upon any subject

[s 191] Giving false evidence.—

In certain cases, the law requires a declaration from a person of verification in a pleading, and if such a declaration is made falsely it will come under this clause. The words “any subject” denote that the declaration must be in connection with a subject regarding which it is to be made.

It is not necessary that the false evidence should be material to the case in which it is given.¹⁵ The matter sworn must be either false in fact, or if true, the accused must not have known it to be so. The making of a false statement, without knowledge as to whether the subject matter of the statement is false or not is giving of false evidence. A witness falsely deposing in another's name,¹⁶ and a person falsely verifying his plaint,¹⁷ and an official making a false return of the service of summons¹⁸ were held guilty of giving false evidence under this section.

[s 191.7] Suppression of Information/Submitting False Information

Avtar Singh: In *Avtar Singh v UOI*,¹⁹ the cases have been referred to for resolving the conflict of opinion in the various decisions of Division Benches of the Apex court as noticed by the court in *Jainendra Singh v State of Uttar Pradesh, through Principal Secretary, Home*.²⁰ The court has considered the cleavage of opinion in various decisions on the question of suppression of information or submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case; a Division Bench of the Apex Court has expressed the opinion on merits while referring the matter as to the various principles to be borne in mind before granting relief to an aggrieved party. Following is the relevant observation made by a Division Bench of the court:

29. As noted by Apex Court, all the above decisions were rendered by a Division Bench of the court consisting of two Judges and having bestowed serious consideration to the issue, Apex Court consider that while dealing with such an issue, the court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:
 - 29.1. Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the Respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.
 - 29.2. Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if finds it not desirable to appoint a person to a disciplined force can it be said to be unwarranted.
 - 29.3. When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.
 - 29.4. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.
 - 29.5. The purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have a clear bearing on the character and antecedents of the candidate in relation to his continuity in service.
 - 29.6. The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

[s 191] Giving false evidence.—

- 29.7. The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.
- 29.8. An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.
- 29.9. An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.
- 29.10. The authorities entrusted with the responsibility of appointing constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of constable.
30. When the court considers, the above principles laid down in the majority of the decisions, the question that looms large before the court is when considering such claim by the candidates *who deliberately suppressed information at the time of recruitment, can there be different yardsticks applied in the matter of grant of relief.*
31. Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the abovementioned issues to a larger Bench of this court for an authoritative pronouncement so that there will be no conflict of views and which will enable the courts to apply the law uniformly while dealing with such issues.

* * * * *

28. What yardstick is to be applied has to depend upon the nature of post; higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.
29. The “McCarthyism” is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out *in toto* nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.
30. The court has noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, the court summarizes conclusions thus:
- (1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.
 - (2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.
 - (3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

[s 191] Giving false evidence.—

- (4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted:—
- (a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.
 - (b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.
 - (c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.
- (5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.
- (6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.
- (7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.
- (8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.
- (9) In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.
- (10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.
- (11) Before a person is held guilty of *suppressio veri* or *suggestio falsi*, knowledge of the fact must be attributable to him.

The Apex Court has answered the reference accordingly. At the same time court decided the matters to be placed before an appropriate Bench for consideration on merits.

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- 1 *SP Kohli (Dr) v High Court of Punjab and Haryana*, AIR 1978 SC 1753 [[LNIND 1978 SC 235](#)] : (1979) 1 SCC 212 [[LNIND 1978 SC 235](#)] : (1979) 1 SCR 722 [[LNIND 1978 SC 235](#)] : 1978 CAR 393 .
 - 2 *Ranjit Singh v State of Pepsu*, AIR 1959 SC 843 [[LNIND 1959 SC 63](#)] .
 - 3 *Ranjit Singh v State of Pepsu*, AIR 1959 SC 843 [[LNIND 1959 SC 63](#)] .
 - 4 *Queen Empress v Mehrban Singh*, (1884) ILR 6 All 626.
 - 5 5 Hawk PCC 69, section 1.
 - 6 Hari Singh Gour, *Penal Law of India*, 11th Edn (1987), vol II, pp 1721-1744.
 - 7 Section 13 of the Perjury Act, 1911; See *Cross on Evidence*, 7th Edn, pp 226-227.
 - 8 *Fateh Ali v Queen Empress*, (1894) PR No. 15 of 1894.
 - 9 *Empress v Chait Ram*, (1883) ILR 6 All 103.
 - 10 *Rambharathi*, (1923) 25 Bom LR 772 [[LNIND 1923 BOM 115](#)] .
 - 11 *Queen v Sheik Edoo*, (1865) 2 WR (Cr) 9.
 - 12 *Shava*, 1891 ILR 16 Bom 369.
 - 13 *Ranjit Singh v State of Punjab*, AIR 1959 SC 843 [[LNIND 1959 SC 63](#)] : 1959 Cr LJ 1124 : 1959 Supp (2) SCR 727 .
 - 14 *Hari Charan Singh*, (1900) ILR 27 Cal 455.
 - 15 *Queen v Echan Meeah*, (1865) 2 WR (Cr) 47.
 - 16 *Reg. v Prema Bhika*, (1863) 1 BHC 89.
 - 17 *Luxman Das*, 1869 Unrep Cr C 25.
 - 18 *Queen v Shama Churn Roy*, (1867) 8 WR (Cr) 27.

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19 2016 SCC OnLine SC 726, Special Leave Petition (C) Nos. 20525 of 2011, 4757 of 2014 and 24320 of 2014, decided on 21-7-2016, Ranjan Gogoi, Arun Mishra and Prafulla C Pant JJ.

20 (2012) 8 SCC 748 [[LNIND 2012 SC 1305](#)] : AIR 2012 SC (Civ) 2345 : 2012 AIR SCW 4347.

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[s 192] Fabricating false evidence.—

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This Chapter (comprising 44 sections: 191 to 229, *IPC*) relates to giving and fabricating false evidence (sections 191 to 200) and offences against public justice (sections 201 to 229). These offences may be discussed under the following sub-heads:—

- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
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 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 192] Fabricating false evidence.—

Whoever causes any circumstance to exist or ²¹[makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said “to fabricate false evidence”.

ILLUSTRATIONS

(a) A, puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

[s 192] Fabricating false evidence.—

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

[s 192.1] Fabricating false evidence

Section 192 defines the offence of fabricating false evidence. The essence of the offence consists in making a false entry in a book of record or electronic record, or in a document containing a false statement so as to cause a judge, a public servant or an arbitrator to entertain an erroneous opinion upon any material point.²² The section strikes at fraud practised on the courts and the fabrication of documents is one mode in which it could be practised. A person who attests the signature in a document knowing it to be false and intended to prove the discharge of a decree debt is guilty under this section.²³ The gist of the offence is the intention to cause failure of justice by the use of a false statement or thing in evidence.

[s 192.2] Ingredients

The offence defined in this section has three ingredients:

- (1) Causing any circumstance to exist or making any false entry in any book of record or electronic record or making any document containing a false statement;
- (2) Doing one of the above acts with the intention that it may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant, or an arbitrator; and
- (3) Doing such act with the intention that it may cause any person in such proceeding, to form an opinion upon the evidence to entertain an erroneous opinion touching any point material to the result of such proceedings.²⁴

[s 192.3] Distinction between “giving false evidence” and “fabricating false evidence”

In both cases it is the intentional giving of false evidence, or intentional fabrication of false evidence is made punishable. Thus, *mens rea* is the basis of both offences. However, the two differ as regards the kind of intention.

(i) In the case of giving false evidence, only general intention is sufficient, whereas in the case of fabricating false evidence, a particular intention is required. The offence cannot be committed unless the accused fabricates evidence with a particular intention, viz., to use a false, entry or document in evidence in a proceeding and to procure the formation of a wrong view on a material point.

(ii) The offence of giving false evidence is committed by a person who is bound by an oath or by express provision of law to state the truth or to make a declaration on any subject. In the case of fabricating false evidence, this ingredient is not necessary.

(iii) In the case of giving false evidence, the false statement need not be made on a material point. But in the case of fabricating false evidence the evidence fabricated must be on a material point.

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(iv) Lastly, it is essential that there should be a proceeding in giving false evidence. Such is not essential in case of fabricating false evidence.

Perverting the Course of Justice: John: In *R v John Samuel Humble*, (2007) 1 Cr App R (5) 113 : (2006) EWCA Crimes 2775²⁵, it was held that perverting the course of justice by falsely sending letter claiming responsibility for series of murders is punishable.

Eight years' imprisonment upheld for perverting the course of justice, where the appellant sent letters and a tape recording to the prosecution claiming responsibility for a series of murders which he had not committed.

The appellant pleaded guilty to four counts of doing acts tending and intended to pervert the course of justice. Over a period of three years between 1975 and 1978, a series of murders was committed by a person other than the appellant. The appellant wrote letters to the chief investigating officer and to a newspaper, in which he claimed to be responsible for the murders. Subsequently the appellant sent a tape recording, claiming to be the murderer. Other indications suggested that the writer of the letters and the maker of the tape recording was the murderer. As a result, police inquiries were conducted in the area associated with the accent of the maker of the tape recording.

After a further murder, the appellant telephoned the police to say that the letters and tape-recording were hoaxes, but did not supply any further information. Eventually the person responsible for the murders was convicted. The appellant was identified by DNA samples and eventually confessed.

The appellant was unable to give any logical account of his motivation. He was sentenced to a total of eight years' imprisonment.

Held: The case was almost unique. It had had possibly fatal consequences. The offences were carefully planned and had the effect intended for them. There was no guideline for sentences in this area. The issues of personal mitigation and the passage of time lost much of their importance in a case of this seriousness. It could not be said that the sentence was wrong in principle or clearly excessive. The appeal would be dismissed.

²¹ Subs. by Act 21 of 2000, section 91 and Sch I, for certain words (w.e.f. 17-10-2000).

²² *Ashiq Mahomed v Emperor*, (1936) 37 Cr LJ 562 (Lah).

²³ *P Rama Naidu Re*, AIR 1942 Mad 92 .

²⁴ *Babu Lal v State of Uttar Pradesh*, AIR 1964 SC 725 [[LNIND 1963 SC 218](#)] : (1964) 4 SCR 957 [[LNIND 1963 SC 218](#)] : 1964 (1) Cr LJ 555 : 1964 (2) SCJ 424 .

²⁵ (2007) 1 Cr App R (5) 113 : (2006) EWCA Crimes 2775.

[s 193] Punishment for false evidence.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 193] Punishment for false evidence.—

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1 .—A trial before a Court-martial; ²⁶*** is a judicial proceeding.

Explanation 2 .—An investigation directed by law preliminary to a proceeding before a Court of Justice,

is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

ILLUSTRATION

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

ILLUSTRATION

A, in any enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding. A has given false evidence.

[s 193.1] Punishment

Section 193, IPC prescribes punishment for giving false evidence. It is divided into two parts. The first part lays down the punishment for intentional giving of false evidence in a judicial proceeding, or fabricating false evidence for the purpose of its being used in a judicial proceeding. The second part prescribes the punishment for intentionally giving false evidence or fabricating false evidence in any case other than a judicial proceeding. In the former case the punishment may extend to seven years of imprisonment and fine, whereas in the latter case up to three years and fine.²⁷

When a candidate at an election makes a false declaration on solemn affirmation before a Returning Officer, the offence comes under the second part of *section 193, IPC* and not in the first part.²⁸

[s 193.2] IPS Officer sentenced to 18 months' jail for perjury and contempt of court

MS Ahlawat: In an unprecedented verdict, the Supreme Court on 17 January 1996 sentenced a senior Haryana IPS (Indian Police Service) officer, *MS Ahlawat*²⁹ to imprisonment for one year for committing perjury under *section 193, IPC* and six months for contempt of the court under *Article 129 of the Constitution*³⁰ in a case of illegal detention and abduction of two children from Agra. Two subordinate police officers, sub-inspector Ishwar Singh and assistant sub-inspector Randhir Singh involved in the case given lesser jail terms of three and six months respectively. The Court held that Mr Ahlawat had committed the perjury and contempt while he was the Assistant Inspector General of Haryana Railway Police at Ambala. He had deliberately fabricated records placed before the Court without any compunction (feeling of guilty).

Father of one of the abducted children Afzal had filed a *habeas corpus* petition seeking the children's safety as they had been kept in wrongful confinement by an Ambala police team led by Inspector Ishaq Ahmed, in a bid to force one Rahim, accused of fraud and forgery of railway receipts to give himself up to the police. A probe by the Central Bureau of Investigation (CBI) ordered by the Apex Court found Mr Ahlawat guilty of actively participating in the fabrication of false affidavits in October 1993 before the court with false averments that the minors were not in illegal custody. The court said:

It is highly unbecoming on the part of a responsible superintendent of police like Ahlawat to play hide and seek and give instructions to forge his signature for use in judicial proceedings. It is therefore of utmost importance to curb this tendency particularly when they have the temerity (boldness) to fabricate records with false affidavits and place the same before the highest court of the land.³¹

However, in a writ petition (Criminal No. 353 of 1997) filed by Mr Ahlawat against his conviction, the Apex Court set aside the conviction under *section 193, IPC* for want of jurisdiction and conviction without trial. By accepting the plea as to non-compliance with the procedure required under *section 195, CrPC* read with *section 340, CrPC*,³² and also on account of want of original jurisdiction of the Apex Court to try offences under *section 193, IPC*, the Court observed that punishment was liable to be quashed. The court did not issue direction to file complaint in a competent court since accused had already served out the sentence of imprisonment imposed.³³

[s 193.3] Public Servant liable to imprisonment for contempt of court

Vasudevan: In *TR Dhananjaya v J Vasudevan*, (1995) 5 SCC 619 [[LNIND 1995 SC 831](#)] : AIR 1996 SC 302 [[LNIND 1995 SC 831](#)],³⁴ the Apex Court held that repudiation of claim for promotion of the petitioner by creation of an additional post by the Government, on the ground of the claimant's ineligibility, as directed by the Court, held constituted deliberate and wilful disobedience of the order of the Supreme Court. Contemnor officer J Vasudevan was therefore awarded one month's imprisonment for disobedience of the order amounting to contempt of court *vide Article 129 of the Constitution of India*.

Kalyan Singh: Similarly, the Apex Court sentenced the then Chief Minister of Uttar Pradesh Kalyan Singh for one day's imprisonment for contempt of court for failing to protect the demolition of Babri Masjid structure at Ayodhya on 6 December 1992 as per the assurance given by the State to the court.³⁵

[s 193.4] Judicial proceedings

A judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath before a court of justice and the object of such proceeding is to determine the judicial relation between two parties.³⁶

²⁶ The words "or before a Military Court of Request" omitted by Act 13 of 1889, section 2 and Schedule.

²⁷ *Queen v Tulja*, (1887) ILR 12 Bom 36.

²⁸ *Virindar Kumar Satyawadi v State of Punjab*, AIR 1956 SC 153 [[LNIND 1955 SC 105](#)] : (1955) 2 SCR 1013 [[LNIND 1955 SC 105](#)] : 1956 SCJ 138 : 1956 Cr LJ 326 .

²⁹ *Afzal v State of Haryana*, AIR 1996 SC 2326 [[LNIND 1996 SC 130](#)] : JT 1996 (1) SC 328 [[LNIND 1996 SC 130](#)] : (1996) 7 SCC 397 [[LNIND 1996 SC 130](#)] : 1996 Cr LJ 1679 .

³⁰ *Article 129*. The Supreme Court shall be a court of record and shall have all the power of such a court including the power to punish for contempt of itself.

³¹ *CrPC, 1973, section 193* in sub-section (1), clause (b)(i) provides that "No court shall take cognizance – (b)(i) of any offence under sections 193 to 196... except on the complaint in writing of that court, or of some other court to which that court is subordinate."

[s 193] Punishment for false evidence.—

- 32** *CrPC*, in section 340 provides procedure to be followed in cases mentioned in *section 195*, *CrPC* for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.
- 33** *MS Ahlawat v State of Haryana*, AIR 2000 SC 168 [[LNIND 1999 SC 1395](#)] : (2000) 1 SCC 278 [[LNIND 1999 SC 1395](#)] ; See KD Gaur, *Criminal Law Cases and Material* (3rd Edn, 1999), pp 209-210; *Randhir Singh v State of Haryana*, AIR 2000 SC 544 [[LNIND 2000 SC 27](#)] : (2000) 1 SCC 760 [[LNIND 2000 SC 27](#)] .
- 34** (1995) 5 SCC 619 [[LNIND 1995 SC 831](#)] : AIR 1996 SC 302 [[LNIND 1995 SC 831](#)] .
- 35** Times of India, 6 November 1996, p 1 (New Delhi Edn.).
- 36** *Lalji Haridas v State of Maharashtra*, AIR 1964 SC 1154 [[LNIND 1964 SC 34](#)] : (1964) 6 SCR 700 [[LNIND 1964 SC 34](#)] : (1964) 2 SCJ 541 : (1964) 2 Cr LJ 249 .

[s 194] Giving or fabricating false evidence with intent to procure conviction of capital offence.—

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- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
 - (ii) Abuse of process of court (sections 206 to 211, *IPC*);
 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 194] Giving or fabricating false evidence with intent to procure conviction of capital offence.—

Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital ³⁷[by the law for the time being in force in ³⁸[India]] shall be punished with ³⁹[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

if innocent person be thereby convicted and executed.—and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

[s 194.1] Fabricating false evidence with intent to procure conviction of capital offence

Sections 194 and 195, IPC deal with aggravated forms of giving or fabricating false evidence wherein the intention in giving or fabricating false evidence is to procure:

- (a) the conviction of a person of capital offence (section 194 will be applicable), or
- (b) the conviction of an offence punishable with imprisonment for life or imprisonment of seven years or more (section 195 will be applicable).

To constitute an offence under section 194 the accused must give a false evidence intending thereby to cause a person to be convicted of a capital offence for which the death sentence is provided. A person who brings before a court a witness whom he has tortured to tell a false story concerning a murder case before it, commits an offence under this section.⁴⁰

In the *first* part of the section, wherein the accused in giving or fabricating a false evidence intended thereby to cause or knew that it was likely to cause the person in question to be convicted of a capital offence, he is liable to punishment that may extend to imprisonment for life or rigorous imprisonment for a term of 10 years and fine.

According to the second part of the section, if an innocent person is convicted and executed in consequence of such false evidence, the accused shall be punished either with death or with imprisonment for life, or imprisonment up to 10 years and fine as prescribed under the first clause.

The offence under this section is non-cognizable, non-bailable, non-compoundable and triable by the Court of Sessions.

³⁷ Subs. by the A.O. 1948, for “by the law of British India or England”.

³⁸ Subs. by Act 3 of 1951, section 3 and Schedule, for “the States” (w.e.f. 1-4-1951).

³⁹ Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

⁴⁰ *Emperor v Sur Nath Bhaduri*, 1927 ILR 50 All 365.

[s 195] Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.—

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 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 195] Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.—

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which ⁴¹[by the law for the time being in force in ⁴²[India]] is not capital, but punishable with ⁴³[imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

ILLUSTRATION

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The

[s 195] Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.—

punishment of dacoity is ⁴⁴[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to ⁴⁵[imprisonment for life] or imprisonment, with or without fine.

[s 195.1] False evidence to procure conviction of a non-capital offence

As stated earlier, this section is an aggravated form of the offence of giving false evidence in a judicial proceeding as prescribed under the first clause of *section 193, IPC* and applies to the giving or fabricating of false evidence by a person intending thereby to cause, or knowing it to be likely that he will thereby cause, a person to be convicted of a non-capital offence punishable only with imprisonment for life or imprisonment of 7 years or upwards.

This section prescribes the same punishment for a person fabricating false evidence as would be meted to a person convicted of the offence he was charged.

⁴¹ Subs. by the A.O. 1948, for “by the law of British India or England”.

⁴² Subs. by Act 3 of 1951, section 3 and Schedule, for “the States” (w.e.f. 1-4-1951).

⁴³ Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

⁴⁴ Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

⁴⁵ Subs. by Act 26 of 1955, section 117 and Schedule, for “such transportation” (w.e.f. 1-1-1956).

[[s 195A] [Threatening any person to give false evidence].—

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 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

⁴⁶[[s 195A] ⁴⁷[Threatening any person to give false evidence].—

Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;

and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.]

[[s 195A] [Threatening any person to give false evidence].—

[s 195A.1] Threatening or inducing any person to give false evidence

Section 195A has been inserted in the *Indian Penal Code* in 2006 in order to punish a person who threatens or induces a person to give false evidence in a criminal case. The section has got two parts.

In the *first* part, whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to 7 years, or fine, or with both.

In *second* part, if an innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment or more than 7 years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such an innocent person is punished and sentenced with an injury to his person reputation or property.

47 Corrected *vide* Corrigendum, dated 3-3-2006.

46 Ins. by Act 2 of 2006, section 2 (w.e.f. 16-4-2006).

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[s 196] Using evidence known to be false.—

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 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 196] Using evidence known to be false.—

Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

[s 196.1] Using false evidence

This section makes it an offence to use corruptly any evidence which the person using it knows it to be false or fabricated. To convict a person under this section the following facts must be established:—

[s 196] Using evidence known to be false.—

- (1) The accused must use or attempt to use false evidence;
- (2) Such evidence is fabricated;
- (3) It is used as true or genuine evidence;
- (4) The accused knew it to be false or fabricated; and
- (5) The accused used it corruptly.

The word “corrupt” is used in a wider sense to include not only dishonestly, but blameworthy or improperly as well.⁴⁸ The punishment may be accorded in the same manner as if the accused gave or fabricated false evidence.

⁴⁸ *S Dutt (Dr) v State of Uttar Pradesh*, AIR 1966 SC 523 [[LNIND 1965 SC 195](#)] : (1966) 1 SCR 493 [[LNIND 1965 SC 195](#)] : 1966 Cr LJ 549 .

[s 197] Issuing or signing false certificate.—

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 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 197] Issuing or signing false certificate.—

Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

[s 197.1] False Certificate

The expression “issuing or signing false certificate” required by law in evidence, means that the certificate should by some provision of law be admissible in evidence as such a certificate without further proof.⁴⁹ Sections 197 and 198, *IPC* relate to issue of false certificates. Section 197 makes issuing or signing of false certificate, and section 198 using as true a certificate known to be false, punishable.

[s 197] Issuing or signing false certificate.—

To hold a person liable under *section 197, IPC*,

- (i) the certificate must be required by law to be given, or signed, or it must relate to any fact of which such certificate is by law admissible in evidence, and
- (ii) it must be given or signed knowing or believing that it is false in a material point.⁵⁰

A certificate is a testimonial given in writing to declare or verify the truth of anything.⁵¹ A copyist who makes an incorrect copy is guilty under this section.⁵² But if a person, who is not required by law to give a certificate, gives a false certificate, he will not be liable under this section. For instance, the issue or use of a false medical certificate does not render a person liable under this section, or under *section 198, IPC*. Likewise, a false certificate issued by a municipal chairman based on a Death Register is not covered under this section.⁵³

[s 197.2] Ingredients

To attract *section 197, IPC* issuing or signing of a certificate—

1. Must be required by law to be given or signed; or
2. It must be relating to a fact of which such certificate is by law admissible in evidence; and
3. Such certificate must have been issued or signed knowing or believing it to be false on a material point.

⁴⁹ *Mahabir Thakur v Emperor*, AIR 1947 Cal 466 (467).

⁵⁰ Charles E Toreia, Wharton's Criminal Evidence, (1985), vol I, pp 272-273.

⁵¹ *Dewa Singh*, 1878 PR 15 of 1879, Ratanlal and Dhirajlal, Law of Crimes, (1987), 23rd Edn, vol I, pp 714-717.

⁵² *Mahabir Thakur v Emperor*, AIR 1917 Cal 466 .

⁵³ *Balkrisna*, AIR 1937 Pat 467 .

[s 198] Using as true a certificate known to be false.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 198] Using as true a certificate known to be false.—

Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

[s 198.1] Using false certificate as true

This section penalises the use as well as attempt to use a false certificate as a true certificate knowing it to be false. To attract the section the following ingredients must be proved:

[s 198] Using as true a certificate known to be false.—

- (1) A false certificate was issued;
- (2) The accused used such certificate as true knowing it to be false on a material point; and
- (3) The accused did so corruptly.

The offence is non-cognizable, bailable and non-compoundable. The accused is punishable in the same manner as if he gave false evidence.

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[s 199] False statement made in declaration which is by law receivable as evidence.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 199] False statement made in declaration which is by law receivable as evidence.—

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

[s 199] False statement made in declaration which is by law receivable as evidence.—

Sections 199 and 200, IPC deal with false statements made in declarations. A person making a false declaration will be liable to the same penalty as if he had given false evidence.

[s 199.2] Ingredients

To hold a person guilty under this section the following must be proved:—

- (1) The accused made or subscribed the declaration in question;
- (2) Such declaration was received by a court of justice as evidence of fact;
- (3) The accused made a statement in the declaration;
- (4) Such statement was false;
- (5) Such statement was on a material point; and
- (6) The accused knew when making such a declaration that it was false.

[s 200] Using as true such declaration knowing it to be false.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 200] Using as true such declaration knowing it to be false.—

Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 to 200.

[s 200.1] Using as true false declaration

The person who corruptly uses or attempts to use as true any declaration which he knows to be false on any material point is liable to be punished under this section.

[s 200] Using as true such declaration knowing it to be false.—

[s 200.2] Ingredients

To constitute an offence under this section the following must be proved:—

- (1) The declaration is false;
- (2) A court of justice was bound by law to receive the same in evidence;
- (3) Such declaration is false on a material point;
- (4) The accused made such false declaration, or attempted to do so;
- (5) The accused did so corruptly; and
- (6) When the accused so used or attempted to use the same, he knew it to be false.

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[s 201] Causing disappearance of evidence of offence, or giving false information to screen offender.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 201] Causing disappearance of evidence of offence, or giving false information to screen offender.—

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.—

[s 201] Causing disappearance of evidence of offence, or giving false information to screen offender.—

and if the offence is punishable with ⁵⁴[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

ILLUSTRATION

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

[s 201.1] Disappearance of Evidence

This section belongs to that group of sections that deal with offences against public justice. The section is designed to punish attempt to frustrate the course of justice.⁵⁵ It is akin to “accessory after the fact” as provided under the English law. It deals with two offences:

first, causing of disappearance of evidence of an offence committed with the intention of screening the offender from legal punishment, and

second, giving false information respecting an offence committed with the intention of screening the offender from legal punishment.⁵⁶

The offence under *section 201, IPC* of causing the disappearance of evidence, is wide in scope and not restricted to the case of a person who screens another offender by destroying the evidence of an offence. It can be applied even to a person who screens the commission of an offence by himself.⁵⁷

[s 201.2] Ingredients

In order to establish a charge under section 201, the following ingredients must be proved:—

- (1) An offence has been committed;
- (2) The accused knew or had reason to believe that an offence has been committed;
- (3) The accused (i) cause any evidence of the commission of offence to disappear, or (ii) gave any information relating to the offence which he knew or believed to be false;
- (4) The accused did so intending to screen the offender from punishment, whether that offender be himself or another person;⁵⁸ and
- (5) The offence in question was punishable with:

[s 201] Causing disappearance of evidence of offence, or giving false information to screen offender.—

- (a) death, or
- (b) imprisonment for life, or
- (c) punishable with less than 10 years of imprisonment.

[s 201.3] Leading cases

Palvinder Kaur: In *Palvinder Kaur v State of Punjab*,⁵⁹ the appellant, wife of the deceased, and one *M* with whom she had a liaison, were charged under *section 201, IPC* for causing disappearance of evidence. It was found that the deceased was administered potassium cyanide by the accused and they disposed of the dead body by putting it in a trunk and throwing it in a well.

Held, it was essential for prosecution to prove affirmatively that the deceased died of poison which was administered to him by some person, and that the accused took part in the concealment and disposal of the dead body knowing or having reason to believe that the death of the deceased was so caused. The medical evidence having failed to establish that the deceased died of any poison, the cause of death remained unproved, and so the charge under *section 201, IPC* could not be sustained. The court observed that to establish a charge under section 201, it must be proved that—

- (a) an offence was committed;
- (b) that the accused knew or had reason to believe that an offence had been committed;
- (c) that the accused intended to screen the offender, whether that offender be himself or another person; and
- (d) that the accused had disposed of or concealed the dead body with such intention.

When there is no evidence to prove that the accused has caused evidence of murder to disappear, the charge under *section 201, IPC* must fail even though the accused may have had knowledge of the removal of the dead body and there are circumstances of strong suspicion that the accused had a hand in the removal. A suspicion cannot establish guilt of an offence when the evidence to prove that offence is not there.⁶⁰

RP Tripathi: In *RP Tripathi*,⁶¹ the accused were convicted under *section 201, IPC* by the trial court for causing the disappearance of the evidence of murder and on appeal the High Court upheld the conviction. The facts are stated below:

- (1) That a mother and her children, *K* and *M*, who were seen in their house in a village on a particular day until the evening, were never seen thereafter by anyone and their dead bodies were never found.
- (2) That on the same evening three gunshots were heard by persons in the village as coming from the house in which *K* and *M* were residing at that time.
- (3) That on the same night, *R*, the husband of the woman, and his two servants, *T* and *U*, were seen by several witnesses in different villages passing in a jeep after their sudden departure from the house, and no explanation was offered for this sudden departure.

[s 201] Causing disappearance of evidence of offence, or giving false information to screen offender.—

- (4) That on searching the house, the police found blood stained earth at several places in the room, upstairs and elsewhere.
- (5) That all the accused had absconded initially and one of them could not be traced by the police for over a fortnight, however, all of them surrendered at distant places after some time.

The Supreme Court by a majority of three to two quashed the conviction and held that the circumstances were not sufficient to establish that the appellant had removed or concealed the dead bodies of *K* and *M*, while the minority upheld the conviction.

When an accused admitted that he buried the dead body, he was held guilty under *section 201, IPC*.⁶² Similarly, where a murderer took a jewel from the body of the deceased with an object of causing disappearance of evidence, but produced it later when detected, was convicted under this section. Held, that accused had a clear intention of screening the offender from the punishment.

Col Mohan Singh: In *Col Mohan Singh v State of Rajasthan*,⁶³ the prosecution case was that one Padma Singh was shot dead at the farm of the appellant by the accused in conspiracy with *H* and *S*. The dead body was first put in a jeep for removal but after travelling some distance jeep broke down. The dead body was then transferred into a car, driven some distance, and finally thrown into a lonely well on the boundary of a village.

Held, in the absence of any allegation that the appellant had in any manner cooperated as an abettor, or accomplice in the murder, or participated or abetted the removal and disposal of the deceased's body, the mere fact that five days after the murder he had his car washed at a petrol pump could not, by any stretch of the imagination, be *prima facie* evidence of the factual ingredients of an offence under this section, and so the appellant was acquitted of the charge. A charge under *section 201, IPC* cannot be maintained, if it is not established that the deceased met his death as a result an offence.² Mere proof of concealment or disposal of a dead body does not suffice for conviction under this section.⁶⁴

Kalawati: The Supreme Court in *Kalawati*,⁶⁵ held that the offence under *section 201, IPC* of causing the disappearance of evidence is not restricted to the case of a person who screens another offender by destroying the evidence of an offence, and can be applied even to a person who screens the commission of an offence done by himself.

The facts of the case are interesting. Kanwar Bikram Singh was murdered during the early morning hours of 1 July 1951, as he lay asleep on the roof of his mansion at Bishanpura. He had several incised injuries on his body. Ranjit Singh, the other appellant, who was a distant cousin of the deceased, committed the murder with the help and connivance of the deceased's wife Kalawati. The two appellants developed an illicit intimacy with each other, and that they got rid of Kanwar Singh, as he was cruel in his behaviour to his wife – Kalawati. Unable to endure the continued humiliation at the hands of her husband, and in the hope that her intrigue with Ranjit Singh would be facilitated, Kalawati is said to have conspired with Ranjit Singh to do away with her husband.

Ranjit Singh was convicted by the Sessions Judge for murder under *section 302, IPC* and Kalawati was found guilty under *section 201 of the Penal Code*, as she suppressed the evidence, screened Ranjit Singh and gave false information in respect of the murder. The Supreme Court approved of the conviction awarded by the Court of Sessions.

[s 201] Causing disappearance of evidence of offence, or giving false information to screen offender.—

- 54** Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).
- 55** *Emperor v Rino Sobedar*, (1962) 13 Cr LJ 721 (Punj).
- 56** *Jogta Kikla v State of Gujarat*, AIR 1962 Guj 225 [[LNIND 1961 GUJ 47](#)] ; *Shamim Rahmani v State of Uttar Pradesh*, AIR 1975 SC 1883 [[LNIND 1975 SC 175](#)] : 1975 Cr LJ 1654 (SC) : (1975) 4 SCC 652 [[LNIND 1975 SC 175](#)] : 1975 Supp SCR 315; *Nathu v State*, 1979 Cr LJ 1066 (SC) : (1979) 3 SCC 574 : AIR 1979 SC 1245 .
- 57** *Public Prosecutor v Muniswami*, AIR 1941 Mad 503 .
- 58** *Kalawati v State of Himachal Pradesh*, AIR 1953 SC 131 [[LNIND 1953 SC 5](#)] : 1953 SCR 546 [[LNIND 1953 SC 5](#)] : 1953 SCJ 144 [[LNIND 1953 SC 5](#)] : 1953 Cr LJ 668 . See KD Gaur, Criminal Law: Cases and Materials, 3rd Edn, (1999), pp 721 to 731.
- 59** AIR 1952 SC 354 [[LNIND 1952 SC 54](#)] : 1953 SCR 94 : 1952 SCJ 545 : 1953 Cr LJ 154 ; *Roshan Lal v State of Punjab*, AIR 1965 SC 1413 [[LNIND 1964 SC 339](#)] .
- 60** AIR 1952 SC 354 [[LNIND 1952 SC 54](#)] : 1953 SCR 94 : 1952 SCJ 545 : 1953 Cr LJ 154 .
- 61** *RP Tripathi v State of Uttar Pradesh*, AIR 1963 SC 74 [[LNIND 1962 SC 233](#)] : 1963 SCR 239 : 1963 Cr LJ 570 (SC).
- 62** *Vrajlal Tarachand v State of Gujarat*, AIR 1967 Guj 225 [[LNIND 1966 GUJ 21](#)] .
- 63** *Col Mohan Singh v State of Rajasthan*, AIR 1979 SC 1560 : 1979 CAR 260 (SC) : (1979) 4 SCC 11 [[LNIND 1979 SC 305](#)] : (1980) 1 SCR 148 [[LNIND 1979 SC 305](#)] : 1980 Cr LJ 1098 .
- 64** *Kashmira Singh v State of Madhya Pradesh*, AIR 1952 SC 259 : 1952 SCR 526 [[LNIND 1952 SC 15](#)] : 1952 SCJ 201 : 1952 Cr LJ 839 .
- 65** *Kalawati v State of Himachal Pradesh*, AIR 1953 SC 131 [[LNIND 1953 SC 5](#)] : 1953 SCR 546 [[LNIND 1953 SC 5](#)] : 1953 SCJ 144 [[LNIND 1953 SC 5](#)] : 1953 Cr LJ 668 .

[s 202] Intentional omission to give information of offence by person bound to inform.—

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CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

This Chapter (comprising 44 sections: 191 to 229, *IPC*) relates to giving and fabricating false evidence (sections 191 to 200) and offences against public justice (sections 201 to 229). These offences may be discussed under the following sub-heads:—

- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
 - (ii) Abuse of process of court (sections 206 to 211, *IPC*);
 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 202] Intentional omission to give information of offence by person bound to inform.—

Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

[s 202.1] Omission to give information

[s 202] Intentional omission to give information of offence by person bound to inform.—

The section punishes intentional omission by a person to give information to a magistrate or police of the commission of, or of the intention of any person to commit any offence, which a person knows or has reason to believe to have been committed. The liability of a person for giving information is limited by his legal obligation to give it. Thus, to hold a person liable under this section it is necessary to establish *corpus delicti* (commission of the crime). In the absence of such an obligation the person cannot be held liable for intentional omission under this section.

[s 202.2] Ingredients

To convict a person under this section the following must be established:—

- (1) The offence was committed;
- (2) The accused knew or had reason to believe that an offence was committed;
- (3) The accused omitted to give information thereof to a Magistrate or police;
- (4) Such omission was intentional; and
- (5) The accused was legally bound to give information which he omitted to give.

Sections 39⁶⁶ and 40⁶⁷ of the *Criminal Procedure Code, 1973* fix statutory liability on the public and on officers employed in connection with the affairs of a village to make a report to the nearest Magistrate or police officer about the commission of, or intention of commission of, the offences specified in the section.

However, when a statutory duty is cast on a person to do something on the happening of a certain event, the person is not liable for failure to perform the duty, if he is unaware of the occurrence of the event. In *Harding v Price*, [\(1948\) 1 All ER 283](#) (KBD), in a case from England the appellant was convicted under section 22 of the Road Traffic Act, 1930 for having failed to report a road accident at a police station, or to a police constable, within 24 hours of its occurrence as required by law.

The appellant was driving a mechanical vehicle with a trailer attached to it, which collided with a stationary car. It was proved that owing to the noise made by the vehicle which the appellant was driving, he could not know that an accident had occurred. The appellant's conviction was quashed by the Divisional Court on the assumption that unless a man knows that the event has happened, how can he carry out the duty imposed? If the duty were to report, one cannot report something of which one has no knowledge.

The offence under this section is non-cognizable, bailable but not compoundable, and triable by any Magistrate and punishable for a term of imprisonment which may extend to two years, or fine, or both.

⁶⁶ CrPC, 1973, section 39 fixes statutory obligation on the public to give information of certain offences to the Magistrate or Police about the commission of, or of the intention of any other person to commit any offence punishable under sections 121-126, 130 (offences against the State); sections 143 to 145, 147-148 (offences against the public tranquillity); sections 161 to 165A (offences relating to illegal gratification repealed and replaced by sections 7 to 12 of

[s 202] Intentional omission to give information of offence by person bound to inform.—

the PCA, 1988); sections 272-278 (offences relating to adulteration of food and drug, etc.); sections 302 and 304 (offences affecting life) etc.; section 364A (offences relating to kidnapping for ransom) etc.; sections 382, 392-399, 409, 431-439, 449-450, 456-460 (offences against property); sections 489A to 489E (offences relating to currency notes and bank notes). See Basu, DD, *Criminal Procedure Code, 1973*, pp 86-91. See *Ram Balak Singh v State of Bihar*, AIR 1964 Pat 62 (65).

67 *CrPC, 1973, section 40* fixes duty on every officer employed in connection with the affairs of a village, a member of the panchayat, headman, etc., and every person residing in a village to inform to the nearest Magistrate or to the officer-in-charge of the nearest police station in respect of:

- (a) the residence of any notorious receiver or vendor of stolen property (sections 411-413);
- (b) the resort to any place within, or the passage through such village of a thug (section 310), robber (section 390), escaped convict or proclaimed offender (section 216);
- (c) the commission of, or intention to commit, in or near such village any non-bailable offence, or any offence punishable under sections 143-145, 147 or 148, *IPC*;
- (d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances or discovery of any corpse or part of a corpse, or disappearance of any person from the village in suspicious circumstances which lead to believe of the commission of any non-bailable offences;
- (e) the commission of, or intention to commit, at any place out of India near such village of any offence described under sections 231 to 238, 302, 304, 382 to 399, 402, 435, 436, 449, 450, 457 to 460, 489A, 489B, 489C and 489D, *IPC*;
- (f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property.

[s 203] Giving false information respecting an offence committed.—

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 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 203] Giving false information respecting an offence committed.—

Whoever knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

⁶⁸[*Explanation* .—In sections 201 and 202 and in this section the word “offence”, includes any act committed at any place out of ⁶⁹[India], which, if committed in ⁷⁰[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.]

[s 203] Giving false information respecting an offence committed.—

This section makes giving of false information in respect of the commission of an offence punishable. It prohibits the giving of misleading information. Even persons who are not legally bound to give information, if they give information which is false and misleading, this section is attracted. The words “giving information” means volunteering information or making a positive statement.⁷¹

[s 203.2] Ingredients

The essential conditions to attract this section are:

- (1) An offence was committed;
- (2) The accused knew or had reason to believe that such offence was committed;
- (3) The accused gave false information regarding the offence;
- (4) The accused had reason to believe that it was false.

Bourne: In *Bourne*,⁷² *D*, aged 24 years told the National Westminster Bank, as a hoax that there was an IRA bomb at their headquarters, where 2,500 people were employed. As a result one hundred and fifty people were occupied in searching the building. Held, *D* was liable for communicating false information and sentenced to two years of imprisonment.

The offence is non-cognizable, bailable but not compoundable, and triable by any Magistrate. The punishment may extend to imprisonment for two years, or fine, or both.

⁶⁸ Added by Act 3 of 1894, section 6.

⁶⁹ The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.

⁷⁰ The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.

⁷¹ *Chetour Chowkeedar*, (1864) 1 WR (Cr) 18. Held, village watchman liable under section 203, IPC, who informed the police that the deceased had died of cholera, when in fact, he had died of the wounds on the neck and throat which indicated of foul play. *State of Kerala v Markose*, AIR 1962 Ker 133 [[LNIND 1961 KER 332](#)].

⁷² *R v Bourne*, (1984) 6 CAR (S) 5 CA.

[s 204] Destruction of [document or electronic record] to prevent its production as evidence.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
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[s 204] Destruction of ⁷³[document or electronic record] to prevent its production as evidence.—

Whoever secretes or destroys any ⁷⁴[document or electronic record] which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such ⁷⁵[document or electronic record] with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[s 204] Destruction of [document or electronic record] to prevent its production as evidence.—

[s 204.1] Destruction of documents

This section punishes a person in case he secretes or destroys or obliterates any document or electronic record which he may be required to produce as evidence in a Court of Justice, or in a proceeding lawfully held before a public servant as such.⁷⁶ The punishment may extend to two years of imprisonment, or fine, or both.

[s 204.2] Ingredients

The essential ingredients of an offence under this section are:

- (1) That the accused secreted or destroyed, or obliterated a document;
- (2) That he was legally compellable to produce such document as evidence in a court of law;⁷⁷ and
- (3) That the screening, distraction or obliteration was with the object of preventing the document from being used as evidence.⁷⁸

The offence is non-cognizable, bailable, non-compoundable and triable by a Magistrate.

⁷³ Subs. by Act 21 of 2000, section 91 and Sch I, for “document” (w.e.f. 17-10-2000).

⁷⁴ Subs. by Act 21 of 2000, section 91 and Sch I, for “document” (w.e.f. 17-10-2000).

⁷⁵ Subs. by Act 21 of 2000, section 91 and Sch I, for “document” (w.e.f. 17-10-2000).

⁷⁶ *Emperor v Gangaram Tukaram*, (1912) 13 Cr LJ 912 .

⁷⁷ *State v Devsi Dosa*, AIR 1960 Bom 443 [[LNIND 1959 BOM 117](#)] .

⁷⁸ Nelson's *Indian Penal Code* , 7th Edn, (Law Book Co., 1981), vol 1, pp 653-655.

[s 205] False personation for purpose of act or proceeding in suit or prosecution.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
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[s 205] False personation for purpose of act or proceeding in suit or prosecution.—

Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

[s 205.1] False personation

[s 205] False personation for purpose of act or proceeding in suit or prosecution.—

This section deals with false personation in relation to a suit or a criminal prosecution and doing certain acts in an assumed character. To personate means to pretend to be a particular person.⁷⁹ Thus, if A, a witness, falsely deposes an oath in another's name in a court of law, A is guilty of an offence under this section.

But if a person does not assume the name or character of another which he did not possess, this section is not attracted.⁸⁰ For example, where X, representing himself as a servant of Y, accepted a notice to be served on Y, signing his own name on the receipt and saying that he received the notice addressed to his master, it was held that X was not liable under *section 205, IPC*. By signing one's own name the person does not assume the name or character of another and the only thing that was false, in the given case, was the status which the accused gave to himself.

Likewise, when the accused submitted a petition in the name of his uncle who was ill, but when asked his name he gave his rightful name, it was held that there was no false personation,⁸¹ because the accused had no guilty intention to falsely personate his uncle.

Xavier Alvarez: False personation and False Statement in General not Punishable: In *US v Xavier Alvarez*, 132 S.Ct. 2537 (2012) : 183 L.Ed. 2d 574 (2012),⁸² US Supreme Court held that false personation and false statement in general is not punishable. Where false claims are made to effect a fraud or secure moneys or other valuable considerations, such as offers of employment, Government may restrict speech without affronting the First Amendment.⁸³ When content-based speech regulation is in question, exacting scrutiny is required. Stolen Valor Act⁸⁴ infringing upon special protection accorded by the First Amendment of *Constitution* is void. (Per opinion of Kennedy J, with three Justices concurring and two Justices concurring in the judgment.)

Lying was habit of Xavier Alvarez, the respondent. He lied when he said that he played hockey for the Detroit Red Wings and that he once married a starlet from Mexico. But when he lied in announcing he held the Congressional Medal of Honor, respondent ventured onto new ground; for that lie violates a federal criminal statute, the Stolen Valor Act of 2005. (18 USC §704)

In 2007, respondent attended his first public meeting as a board member of the Three Valley Water District Board. The Board is a governmental entity with headquarters in Claremont, California. He introduced himself as follows:

"I'm a retired marine of 25 years. I retired in the year 2001. Back in 1987, I was awarded the Congressional Medal of Honor. I got wounded many times by the same guy." None of this was true. For all the record shows, respondent's statements were but a pathetic attempt to gain respect that eluded him. The statements do not seem to have been made to secure employment or financial benefits or admission to privileges reserved for those who had earned the Medal.

Respondent was indicted under the Stolen Valor Act for lying about the Congressional Medal of Honor at the meeting. The United States District Court for the Central District of California rejected his claim that the statute is invalid under the First Amendment. Respondent pleaded guilty to one count, reserving the right to appeal on his First Amendment claim.

The United States Court of Appeals for the Ninth Circuit, in a decision by a divided panel, found the Act invalid under the First Amendment and reversed the conviction.

While endorsing the Court of Appeals verdict, the US Supreme Court by a majority of 6 to 3 held that fundamental constitutional principles require that laws enacted to honor the brave must be consistent with the precepts of the *Constitution* for which they fought though respondent's statements contemptible, his right to

[s 205] False personation for purpose of act or proceeding in suit or prosecution.—

make those statements is protected by the *Constitution's* guarantee of freedom of speech and expression. The Stolen Valor Act infringes upon speech protected by the First Amendment and so is *ultra vires*.⁸⁵

Elaborating the rationale for the judgment, the Court said:

Permitting the Government to decree false statements that violate the Stolen Valor Act, 18 USCS section 704(b), to be a criminal offense, whether shouted from the rooftops or made in a barely audible whisper, would endorse Government authority to compile a list of subjects about which false statements are punishable. That Governmental power has no clear limiting principle. The United States Supreme Court's constitutional tradition stands against the idea that America needs Oceania's Ministry of Truth. Were this law to be sustained, there could be an endless list of subjects the National Government or the States could single out. Where false claims are made to effect a fraud or secure moneys or other valuable considerations, say offers of employment, it is well-established that the Government may restrict speech without affronting the *First Amendment*. But the Act is not so limited in its reach. Were the Court to hold that the interest in truthful discourse alone is sufficient to sustain a ban on speech, absent any evidence that the speech was used to gain a material advantage, it would give Government a broad censorial power unprecedented in the Court's cases or in constitutional tradition. The mere potential for the exercise of that power casts a chill, the *First Amendment* cannot permit if free speech, thought, and discourse are to remain a foundation of freedom.

⁷⁹ *Per* Crompton J, in *Hague*, (1864) 4 B & sections 715, 720; 122 ER 628.

⁸⁰ *Qutubuddin v Emperor*, AIR 1937 Pat 211 .

⁸¹ *Queen v Narain Acharj*, (1867) 8 WR (Cr) 80.

⁸² Kennedy J announced the judgment of the Court and delivered an opinion, in which The Chief Justice, Ginsburg J, and Sotomayor J joined.

⁸³ Amendment 1 of US *Constitution*: Congress shall make no law.... prohibiting or abridging the freedom of speech....

⁸⁴ Stolen Valor Act, 18 USCS section 704(b) that punishes making of false statement in general violates First Amendment of *Constitution*.

⁸⁵ Fifth Amendment, which guarantees that "[n]o person... shall be compelled in any criminal case to be a witness against himself."

[s 206] Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.—

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This Chapter (comprising 44 sections: 191 to 229, *IPC*) relates to giving and fabricating false evidence (sections 191 to 200) and offences against public justice (sections 201 to 229). These offences may be discussed under the following sub-heads:—

- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
 - (ii) Abuse of process of court (sections 206 to 211, *IPC*);
 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 206] Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.—

Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[s 206] Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.—

[s 206.1] Fraudulent removal of property

This section punishes fraudulent withdrawal or concealment, transfer or removal of property so as to defeat the just claims of those who have or may have a right over it.⁸⁶ Fraudulent removal or concealment to thwart the just claims of others is punishable for a term which may extend to imprisonment for a period of two years, or fine, or both. The offence is non-cognizable, bailable, non-compoundable and triable by any Magistrate.

⁸⁶ *Manjunath v Venkatesh*, 1882 ILR 6 Bom 54.

[s 207] Fraudulent claim to property to prevent its seizure as forfeited or in execution.—

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 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 207] Fraudulent claim to property to prevent its seizure as forfeited or in execution.—

Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practices any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[s 207] Fraudulent claim to property to prevent its seizure as forfeited or in execution.—

[s 207.1] Fraudulent claim to property

This section is supplementary to section 206. It seeks to punish fraudulent transfers of properties, fraudulent claims as well as one who practises any deception touching any right to any property or any interest therein. The punishment may extend to imprisonment of two years, or fine, or both.

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[s 208] Fraudulently suffering decree for sum not due.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 208] Fraudulently suffering decree for sum not due.—

Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

ILLUSTRATION

A institutes a suit against Z. Z knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order

[s 208] Fraudulently suffering decree for sum not due.—

that *B*, either on his own account or for the benefit of *Z*, may share in the proceeds of any sale of *Z*'s property which may be made under *A*'s decree. *Z* has committed an offence under this section.

[s 208.1] Fraudulent suffering decrees

Section 208 is meant to prevent abuse of the machinery of a court in fraudulently obtaining collusive decrees to be passed or executed to secure properties in execution thereof with a view to prevent the said property from being available for being proceeded against in satisfaction of just debts.

The offence is non-cognizable, bailable, non-compoundable and triable by a Magistrate of first class. The punishment may extend to imprisonment for two years, or fine, or both.

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[s 209] Dishonestly making false claim in Court.—

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 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 209] Dishonestly making false claim in Court.—

Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

[s 209.1] False claim

This section punishes a person for knowingly making false and fraudulent claims in a court of law⁸⁷ with intent to injure or annoy any person.⁸⁸ The offence is punishable with imprisonment that may extend to two years and fine.

[s 209] Dishonestly making false claim in Court.—

[s 209.2] Ingredients

The prosecution must prove that⁸⁹:—

- (1) The accused made a false claim;
- (2) The accused made such claim in a court of justice;
- (3) The accused knew that the claim was false; and
- (4) Such claim was made fraudulently or dishonestly with the intention of defrauding or annoying or injuring any person.

⁸⁷ *Ganeshi v Emperor*, (1884) 25 PR Cr; *Hikmatullah Khan v Sakina Begum*, AIR 1931 All 305 .

⁸⁸ *Begum Mahtoon*, (1869) 12 WR 37 ; *Baisakhi v Emperor*, 1888 PR 38 .

⁸⁹ *Hiralal Surdu v Emperor*, AIR 1932 Pat 243 (244) : (1932) 33 Cr LJ 860 .

[s 210] Fraudulently obtaining decree for sum not due.—

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 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 210] Fraudulently obtaining decree for sum not due.—

Whoever fraudulently obtains a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[s 210.1] Fraudulently obtaining decree not due

[s 210] Fraudulently obtaining decree for sum not due.—

Section 210 is a counterpart of section 208; while section 208 punishes the fraudulent defendant, section 210 punishes the fraudulent plaintiff.⁹⁰ Section 210 punishes three offences,⁹¹ viz.—

- (1) Fraudulently obtaining a decree or order for a sum not due, or for a larger sum than is due, or for any property or interest in property to which the accused is not entitled;⁹²
- (2) Fraudulently causing a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied; and
- (3) Fraudulently suffering or permitting any such act to be done in his name.

In *Queen v Begum Mahtoon*, (1869) 12 WR (Cr) 37, the accused, the decree holder, was held guilty under this section for applying again for execution of the decree against the judgment debtor after it had been fully satisfied and executed.

The offence is non-cognizable, bailable, non-compoundable, triable by a Magistrate of first class and punishable up to two years of imprisonment, or fine, or both.

⁹⁰ See Nelson's *Indian Penal Code*, 7th Edn, vol I, pp 665-666.

⁹¹ *Moti Lal*, AIR 1936 All 164 .

⁹² *Hiralal Surdu v Emperor*, AIR 1932 Pat 243 (244) : (1932) 33 Cr LJ 860 .

[s 211] False charge of offence made with intent to injure.—

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 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 211] False charge of offence made with intent to injure.—

Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, ⁹³[imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[s 211.1] False charge of offence

Section 211 deals with the offence of making a false charge of an offence with the intent to cause injury. It provides that it shall be an offence, if a person with the intent to cause injury to any person, either

- (i) institutes any criminal proceeding against him, or
- (ii) falsely charges him with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge.⁹⁴

This section, like *section 182, IPC* punishes a false charge of offence made with the intent to injure. However, there is a basic difference between the two sections. For instance:

- (i) section 182 deals with giving to any public servant any information which he knows or believes to be false;
- (ii) whereas section 211 deals with:
 - (a) instituting or causing to be instituted any criminal proceeding in a court of law against any person, or
 - (b) falsely charging any person with having committed an offence with no lawful justification for the same.

To invoke section 182 malice, or want of reasonable and probable cause is not required, whereas this is an essential ingredient under *section 211, IPC*.⁹⁵

[s 211.2] Ingredients

- (1) The accused instituted or caused to be instituted a criminal proceeding making a false charge;
- (2) There was no just or lawful ground for such proceeding or charge;
- (3) The accused knew at the time of making the charge that there was no just or lawful ground; and
- (4) The accused made the charge intending to cause injury to the person against whom the charge was levied.

Similarly, the offences contemplated by *sections 193 and 195, IPC* on the one hand, and *section 211, IPC* on the other, were not intended by the legislature to overlap so as to make proceeding under one or the other section optional.⁹⁶

Hari Das: In *Hari Das*,⁹⁷ the Supreme Court held that the scope of *section 211, IPC* is wide enough to include not only the offence committed by instituting any criminal proceeding, but also by falsely charging any person with the commission of an offence. For instance, though a proceeding for committal for contempt is not a criminal proceeding, it does amount to a false charge if based on allegations later proved to be false. Thus, when a person makes an application to the High Court under the *Contempt of Courts Act, 1971*, praying for action against an alleged contempt, if the allegations contained in the application are false, he can be prosecuted under *section 211, IPC*.

The expression “false charge” does not mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial. False charge must refer to a criminal accusation putting or seeking to put in motion the machinery of criminal investigation and not seeking to prove a false charge by making deposition in support of the charge framed in that trial. The words “falsely charges” have to be read along with the expression of criminal proceeding.¹

93 Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

94 *Hari Das v State of West Bengal*, AIR 1964 SC 1173 : (1964) 7 SCR 237 [[LNIND 1964 SC 84](#)] : 1964 (2) Cr LJ 737 .

95 *State v Bala Prasad*, AIR 1952 Raj 142 [[LNIND 1952 RAJ 68](#)] .

96 *Santosh Singh v Izhar Hussan*, AIR 1973 SC 2190 [[LNIND 1973 SC 160](#)] : (1974) 1 SCR 78 : (1973) 2 SCC 406 [[LNIND 1973 SC 160](#)] : 1973 CAR 316 .

97 *State v Bala Prasad*, AIR 1952 Raj 142 [[LNIND 1952 RAJ 68](#)] .

[s 212] Harboursing offender.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 212] Harboursing offender.—

Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment;

if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with ⁹⁸[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years,

[s 212] Harboursing offender.—

shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

⁹⁹["Offence" in this section includes any act committed at any place out of ¹⁰⁰[India], which, if committed in ¹⁰¹[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in ¹⁰²[India].]

Exception .—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

ILLUSTRATION

A, knowing that *B* has committed dacoity, knowingly conceals *B* in order to screen him from legal punishment. Here, as *B* is liable to ¹⁰³[imprisonment for life], A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

[s 212.1] Harboursing an offender

This section is similar to accessory after the fact, as provided under the English law. It fixes criminal liability on those who harbour¹⁰⁴ an offender, on the principle that it is the duty of every citizen to assist and not to thwart public justice or the vengeance of the law.¹⁰⁵

The section applies to giving shelter or concealing a person whom the accused knows, or has reason to believe, to be an offender, with the intention of screening him from punishment. The punishment varies depending upon the nature and gravity of the offence committed and the person harboured.¹⁰⁶

[s 212.2] Ingredients

To constitute an offence under this section four things are essential, viz.,

- (i) an offence,
- (ii) an offender,
- (iii) his concealment, and
- (iv) criminal intention.

Harboursing, as defined under section 52A of the Code, means not only hiding a person, but giving him all possible assistance, such as food, drink, clothing and other amenities, etc. The section makes an exception, however, in the case of a husband or wife, who cannot be held liable for harboursing each other. But no other relation is excused for wilful receipt of, or assistance to felons. For instance, a father cannot assist his child, a child his parent, a brother his brother, a servant his master or a master his servant.

[s 212] Harboursing offender.—

- 98** Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).
- 99** Ins. by Act 3 of 1894, section 7.
- 100** The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.
- 101** The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.
- 102** The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.
- 103** Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).
- 104** See *IPC*, section 52A for meaning of harbour, Chapter II, *supra* p 66.
- 105** See Gour Hari Singh, Penal Law of India, (11th Edn, vol II, pp 1909-1915).
- 106** *Tahsildar Singh v State of Uttar Pradesh*, AIR 1958 All 214 [[LNIND 1957 ALL 201](#)] .

[s 213] Taking gift, etc., to screen an offender from punishment.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 213] Taking gift, etc., to screen an offender from punishment.—

Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with ¹⁰⁷[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

[s 213] Taking gift, etc., to screen an offender from punishment.—

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

[s 213.1] Taking gift to screen an offender

Sections 213 and 214, IPC punish the illegal compounding of an offence by some agreement not to bring the criminal to justice. The sections intend to punish those who make a profit out of a public wrong. Section 213, IPC makes taking of a gift, etc., to screen offenders, whereas section 214, IPC offering of a gift or restoration of property in consideration of screening an offender, punishable.

This section punishes the unlawful compounding of a crime by a person for gratification or restoration of property for himself or for any other person, in consideration of

- (a) concealing an offence,
- (b) screening the offender, or
- (c) preventing prosecution of an offender.

Hemchandra Mukherjee: The Calcutta High Court in *Hemchandra Mukherjee*,¹⁰⁸ held that to attract the section there must be an actual concealment of an offence or screening of a person from a legal punishment or abstention from proceeding criminally against a person.¹⁰⁹

Biharilal: However, the Bombay High Court held in *Biharilal v Emperor*, AIR 1949 Bom 405, that even promise to conceal an offence, or screen any person from legal punishment, or to desist from taking any proceeding, is sufficient to hold a person guilty under this section.

[s 213.2] Ingredients

- (1) An offence was committed;
- (2) The accused accepted or attempted to obtain or agreed to accept any gratification for himself or for any other person;
- (3) The accused did so in consideration of his concealing an offence for screening the offender from legal punishment or omitting to prosecute him; and
- (4) That the offence so compounded is punishable either by:
 - (a) death, or
 - (b) imprisonment for life or for imprisonment not exceeding 10 years.

[s 213] Taking gift, etc., to screen an offender from punishment.—

This section will apply when the acceptor of the gratification is not a public servant.¹¹⁰ In the case of public servants *sections 7 or 8* of the *Prevention of Corruption Act, 1988* will be attracted. The offence is cognizable, bailable, non-compoundable and triable by a Magistrate of first class.

107 Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

108 *Tahsildar Singh v State of Uttar Pradesh*, AIR 1958 All 214 [[LNIND 1957 ALL 201](#)] .

109 *Hemchandra Mukharjee v Emperor*, AIR 1925 Cal 85 .

110 *SB Hussain v Emperor*, AIR 1947 Cal 29 (SB); *Hoosain v Hafiz*, (1946) 47 Cr LJ 623 (Cal).

[s 214] Offering gift or restoration of property in consideration of screening offender.—

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 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 214] Offering gift or restoration of property in consideration of screening offender.—

Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or ¹¹¹[restores or causes the restoration of] any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment;

if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with ¹¹²[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with

[s 214] Offering gift or restoration of property in consideration of screening offender.—

imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

¹¹³[*Exception* .—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.]

¹¹⁴[***]

[s 214.1] Gift in consideration of screening the offender

Section 214, IPC relates to the offence of illegal gratification in consideration of concealing or screening the offender from legal punishment. Sections 213 and 214 contemplate a graver offence than that of harbouring, as stated in section 212.

[s 214.2] Ingredients

To bring a charge under this section the following points must be proved:—

- (1) The offence was committed;
- (2) The accused offered or agreed to give gratification or restitution of property; and
- (3) The accused did so in consideration of concealing or screening the offender.

Mohammad Aslam: In *Mohammad Aslam*,¹¹⁵ the (appellant) accused, who was convicted under *section 214, IPC* by the lower court and confirmed by the High Court, had misappropriated government money by preparing false muster rolls. Certain incriminating documents, alleged to be in the handwriting of the accused, came into the possession of the officer-in-charge, and in order to prevent him taking further action, the accused allegedly gave him a bribe.

In regard to the preparation of the false muster rolls, no evidence whatsoever was offered by the prosecution. The alleged muster rolls themselves were not produced, nor was anyone examined to say that his name was shown in the muster rolls, as though he had been paid wages, when in fact, he had received none. Since there was no evidence to establish that the accused had misappropriated any government money, or that he had prepared false muster rolls, he was acquitted of the charges under *section 165A, IPC* as in the circumstances, the accused could not be convicted under *section 214, IPC*.

¹¹¹ Subs. by Act 42 of 1953, section 4 and Schedule III, for “to restore or cause the restoration of” (w.e.f. 23-12-1953).

¹¹² Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

[s 214] Offering gift or restoration of property in consideration of screening offender.—

113 Subs. by Act 8 of 1882, section 6, for *Exception*.

114 *Illustrations* rep. by Act 10 of 1882, section 2 and Sch I.

115 *Mohd Aslam v State of Madhya Pradesh*, (1981) Cr LJ 1285 (SC) : AIR 1981 SC 1735 : 1979 SCC 767 : 1979 CLR 1 (SC).

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[s 215] Taking gift to help to recover stolen property, etc.—

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This Chapter (comprising 44 sections: 191 to 229, *IPC*) relates to giving and fabricating false evidence (sections 191 to 200) and offences against public justice (sections 201 to 229). These offences may be discussed under the following sub-heads:—

- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
 - (ii) Abuse of process of court (sections 206 to 211, *IPC*);
 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 215] Taking gift to help to recover stolen property, etc.—

Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[s 215.1] Gift to recover stolen property

Biswanath Dubey: The Patna High Court in *Biswanath Dubey*,¹¹⁶ held that this section punishes those who, being in league with the thief, receive gratification from the owner to recover the property which he has lost by

[s 215] Taking gift to help to recover stolen property, etc.—

theft or criminal misappropriation without making an effort to cause the thief to be apprehended and convicted of the offence. The section is not intended to punish a person who receives *bona fide* consideration for helping the owner who lost his property by theft in recovering the same. For instance, if a certain amount of money is incurred in order to recover the property, the person is entitled to get back from the owner of the property.

Yusuf Mian: It was held in *Yusuf Mian*¹¹⁷ that the primary object of this section is to punish a person who knowing that property has been obtained by crime, and knowing the criminal makes a capital out of the crime, while screening the offender from justice. It is an offence to receive money for helping any person to recover property stolen or misappropriated and that there is an exception only in favour of the man who can show that he used all means in his power to cause the apprehension of the offender.

[s 215.2] Ingredients

To bring a case under this section the following must be proved:—

- (1) A person was deprived of his property by an act which is an offence under the *Penal Code*;
- (2) The accused took or agreed to take the gratification under the pretence of helping the person to recover such property; and
- (3) The accused failed to use all means in his power to cause the offender to be apprehended and convicted of the offence.

The offence is cognizable, bailable but not compoundable. The offence is triable by a Magistrate of first class, and punishable for a term which may extend to two years, or fine, or both.

¹¹⁶ *Biswanath Dubey*, AIR 1940 Pat 548 .

¹¹⁷ *Yusuf Mian*, AIR 1938 All 681 .

[s 216] Harboursing offender who has escaped from custody or whose apprehension has been ordered.—

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 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 216] Harboursing offender who has escaped from custody or whose apprehension has been ordered.—

Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody;

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following that is to say,—

if a capital offence.—if the offence for which the person was in custody or is ordered to be

[s 216] Harboursing offender who has escaped from custody or whose apprehension has been ordered.—

apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—if the offence is punishable with ¹¹⁸[imprisonment for life], or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

¹¹⁹["Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of ¹²⁰[India], which, if he had been guilty of it in ¹²¹[India], would have been punishable as an offence, and for which he is, under any law relating to extradition, ¹²²[***] or otherwise, liable to be apprehended or detained in custody in ¹²³[India]; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in ¹²⁴[India].]

Exception .—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

[s 216.1] Harboursing escaped offender

Goundan: This section is an aggravated form of the offence defined under *section 212, IPC*. Section 212 applies to harboursing an offender after the commission of an offence who absconds before his conviction; while section 216; punishes harboursing an offender who has escaped from lawful custody after being convicted of, or charged with an offence, or when his apprehension has been ordered. ¹²⁵

[s 216.2] Ingredients

To constitute an offence under this section the following points must be proved:—

- (1) That the person in question was convicted of, or charged with an offence, or that a public servant in the exercise of his lawful power ordered his apprehension;
- (2) That he was in lawful custody and escaped from such custody;
- (3) That the accused had harboured or concealed such offender with knowledge of preventing him from being apprehended;
- (4) That the offence was punishable with death or imprisonment for life or imprisonment for a shorter term.

The offence under this section is cognizable, bailable, non-compoundable and triable by a Magistrate of first class.

[s 216] Harboursing offender who has escaped from custody or whose apprehension has been ordered.—

118 Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

119 Ins. by Act 10 of 1886, section 23.

120 The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.

121 The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.

122 The words “or under the Fugitive *Offenders Act*, 1881,” omitted by Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951).

123 The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.

124 The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.

125 *Eawaramurthi Goundan v Emperor*, AIR 1944 PC 54 .

[[s 216A] Penalty for harbouring robbers or dacoits.—

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- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
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 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harbouring an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

¹²⁶[[s 216A] Penalty for harbouring robbers or dacoits.—

Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation .—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without ¹²⁷[India].

Exception. —This provision does not extend to the case in which the harbour is by the husband or wife of the offender.]

[s 216A.1] Penalty for harbouring

This section was inserted in the Code in 1894¹²⁶ with a view to inflict severe punishment upon those who give shelter and protection to a robber or a dacoit. The section is based on the principle, that no one should harbour any robber or dacoit under any circumstances.¹²⁹ The section further makes the harbouring of a person who intended to commit dacoity or screening him punishable.¹³⁰

The offence is cognizable, bailable, non-compoundable and triable by a Magistrate of first class. The punishment may extend to imprisonment for seven years and fine.

¹²⁶ Ins. by Act 3 of 1894, section 8.

¹²⁷ The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Schedule (w.e.f. 1-4-1951), to read as above.

¹²⁸ Ins. by the Indian *Criminal Law (Amendment) Act*, 1894 (3 of 1894).

¹²⁹ *A Subramanya Aiyer*, AIR 1947 Mad 303 [[LNIND 1946 MAD 211](#)] .

¹³⁰ *Rangaswami Goundan*, AIR 1928 Mad 1147 [[LNIND 1928 MAD 155](#)] .

[[s 216B] Definition of “harbour” in sections 212, 216 and 216A.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

131[[s 216B] Definition of “harbour” in sections 212, 216 and 216A.—

[Rep. by the Indian Penal Code (Amendment) Act, 1942 (8 of 1942), sec. 3 .]]

131 Ins. by Act 3 of 1894, section 8.

[s 217] Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 217] Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.—

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[s 217] Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.—

[s 217.1] Public servant disobeying directions of law

Sections 217 to 225A of the Code deal with offences against public justice committed by public servants. A public servant is liable to punishment in three situations, viz.,

First, when he knowingly disobeys a direction of law or frames a false record with intent to save a man from punishment or property from forfeiture (sections 217 and 218), or

Second, when he maliciously or corruptly makes any report, order, verdict, or decision, or commits a person for trial or keeps him in confinement knowing that he is acting contrary to law (sections 219 and 220), or

Third, when he intentionally omits to make arrest, or negligently suffers the escape of offenders he is bound to apprehend or keep in confinement (sections 221-223 and 225A).

Section 217 and the three following sections 218-220 punish disobedience of duties by public servants, in respect of official duty, which affect public justice.¹³² This section punishes intentional and deliberate disobedience of any direction of law by a public servant, intending thereby to save, or knowing it to be likely that he would thereby save, any person from legal punishment to which he is liable, or that he would save some property from forfeiture, or a charge to which he is liable by law. The dereliction of duty must be committed in the discharge of function of the public servant concerned.¹³³

A public servant charged under this section is liable to punishment which may extend to two years, or fine, or both.

[s 217.2] Ingredients

- (1) The accused was a public servant;
- (2) Directions had been issued regarding his conduct as a public servant;
- (3) The public servant disobeyed such directions, knowing that such directions had been issued; and
- (4) The public servant did so intending or knowing that thereby he was likely to save any person from legal punishment, or enable him to be subject to a lesser punishment.¹³⁴

The offence under this section is non-cognizable, bailable but not compoundable and may be tried by any magistrate.

¹³² *Hem Chandra Mukharjee v King Emperor*, AIR 1925 Cal 85 .

¹³³ *Kesar Dev v State of Rajasthan*, 1976 Raj CrC 122 .

[s 217] Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.—

134 *Amiruddeen*, 1878 ILR 3 Cal 412 (413).

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[s 218] Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—

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 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 218] Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—

Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

[s 218] Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—

[s 218.1] Public servant framing incorrect record

The section punishes a public servant for wilful falsification of public records,¹³⁵ with the intention of injuring any person, or saving any person from legal punishment, or saving any property from forfeiture or other charge to which he is liable by law.

[s 218.2] Ingredients

The essentials of the section are:

- (1) The offender must be a public servant entrusted with the preparation of a record or writing;
- (2) The public servant must have framed that record or writing incorrectly;
- (3) The public servant must have done so with intent to cause or with knowledge that he will thereby be likely to:
 - (a) cause loss or injury to the public or any person; or
 - (b) save any person from legal punishment; or
 - (c) save any property from forfeiture or other charge to which he is legally liable.

To constitute a charge under *section 218, IPC* it is not enough to prove that the entry or other writing made is incorrect. It is essential to prove that the entry was made with intention to cause or likely to cause loss or injury to some person.¹³⁶

Maulad Ahmad.—In *Maulad Ahmad v State of Uttar Pradesh*,¹³⁷ it was held that when a public servant makes false entries in the record in his charge with intent to save another person from legal punishment, he is liable under *section 218, IPC*, even though the person he tried to save is acquitted of the charge for which he was tried.

The appellant, a police officer in-charge of a police station, was prosecuted under *section 218, IPC* for having prepared an incorrect record with intent to save one C from legal punishment. C and several others were prosecuted under *section 304A, IPC* for having accidentally caused the death of a person during a shooting in the forest. All the persons were acquitted by the trial court. The charge against the appellant was that he made false entries in the general diary of the police station showing that on the day in question the gun which C possessed had been deposited in the police station. Held, the fact that C was ultimately acquitted could not displace the finding that the appellant had manipulated the record with intent thereby to save, or knowing it to be likely that he would thereby save C from punishment, and the fact of the acquittal would not reduce the gravity of the offence under *section 218, IPC*.

[s 218] Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—

135 *Mazhar Hussain*, 1883 ILR 5 All 553.

136 *Maulad Ahmad v State of Uttar Pradesh*, (1963) 2 SCR 38 : (1964) 2 Cr LJ 71 : (1964) 1 SCJ 164 .

137 *Maulad Ahmad v State of Uttar Pradesh*, (1963) 2 SCR 38 : (1964) 2 Cr LJ 71 : (1964) 1 SCJ 164 .

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**[s 219] Public servant in judicial proceeding corruptly making report, etc.,
contrary to law.—**

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 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 219] Public servant in judicial proceeding corruptly making report, etc., contrary to law.—

Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

[s 219.1] Public servant corruptly making report

[s 219] Public servant in judicial proceeding corruptly making report, etc., contrary to law.—

Sections 219 and 220, IPC deal with the corrupt or malicious exercise of power by public servants engaged in the discharge of judicial function. The essence of the offence under section 219 is (1) that there must be a judicial proceeding, that is a proceeding actually commenced and pending, wherein a party claims relief against another and invites the decision of the court in regard thereto, and (2) there must be the making of a real report or a real pronouncement of an order, verdict or decision.¹³⁸

If the proceeding is not a judicial proceeding, this section is not attracted.¹³⁹ The words corruptly or maliciously mean a wrongful act done intentionally, deliberately and perversely.

[s 219.2] Ingredients

- (1) The accused was a public servant;
- (2) The public servant made or pronounced in any stage of a judicial proceeding a report, order, verdict or decision;
- (3) Such report was to his knowledge contrary to law.

The offence is non-cognizable, bailable, non-compoundable and triable by a Magistrate of first class.

¹³⁸ *Narapareddi Seshareddi Re*, (1938) 39 Cr LJ 875 .

¹³⁹ *Dilipkumar Velji v KH Patel*, 1979 Cr LJ (NOC) 64 (Karn).

[s 220] Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.—

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 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 220] Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.—

Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

[s 220] Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.—

The section punishes executive abuses in confining an innocent person knowing that in so doing he is acting contrary to law. The section is enacted to prevent abuse of power by a person holding an office, which authorises him to commit persons for trial or to confinement. For instance, *section 41 of the Criminal Procedure Code, 1973* authorises a police officer to arrest a person without a warrant in certain cases. But the person arrested must be brought before the magistrate within 24 hours.¹⁴⁰ Failure to do so without a reasonable cause will make the person liable under this section for imprisonment which may extend to seven years, or fine, or both.

[s 220.2] Ingredients

To constitute offence under this section the following must be proved:—

- (1) That the accused held an office, such as a Magistrate or a police officer, which gave him legal authority to confine a person;
- (2) That in the exercise of the authority, the accused kept that person in confinement;
- (3) That the accused did so corruptly and maliciously; and
- (4) That in so doing, the accused knew that he was acting contrary to law.

Where in the exercise of an authority a person is confined wrongfully, which to his knowledge is contrary to law, this section is attracted.¹⁴¹ The keeping of a person in confinement on suspicion by an authority, knowing that in doing so he is acting contrary to law, attracts this section.¹⁴² It should be alleged and proved that the person in office corruptly or maliciously confined a person wrongfully.

The offence under this section is non-cognizable, bailable, non-compoundable and triable by a Magistrate of first class.

¹⁴⁰ See Article 22, clause (2) of the Constitution.

¹⁴¹ *Afzalur Rahman v Emperor*, AIR 1943 FC 18 (24).

¹⁴² *TK Appu Nair v Earnest*, AIR 1967 Mad 262 [[LNIND 1966 MAD 11](#)] .

[s 221] Intentional omission to apprehend on the part of public servant bound to apprehend.—

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This Chapter (comprising 44 sections: 191 to 229, *IPC*) relates to giving and fabricating false evidence (sections 191 to 200) and offences against public justice (sections 201 to 229). These offences may be discussed under the following sub-heads:—

- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
 - (ii) Abuse of process of court (sections 206 to 211, *IPC*);
 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 221] Intentional omission to apprehend on the part of public servant bound to apprehend.—

Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

[s 221] Intentional omission to apprehend on the part of public servant bound to apprehend.—

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with ¹⁴³[imprisonment for life] or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

[s 221.1] Intentional omission to apprehend a criminal

This section deals with intentional omission to apprehend and keep in confinement any person charged with or liable to be apprehended for an offence, or intentionally allowing such person to escape, or intentionally aiding such persons to escape or attempting to escape from such confinement. The offence under this section is cognizable or non-cognizable depending upon the offence in relating to which such omission has been made.

[s 221.2] Ingredients

To establish an offence under this section prosecution must prove that—

- (1) The person in question was charged with or liable to be apprehended for an offence under the *Penal Code* or special or local law;
- (2) The accused was a public servant;
- (3) That as such public servant he was legally bound to apprehend and keep in confinement such person;
- (4) That the public servant omitted to apprehend such person or allowed such person to escape or attempt to escape from such confinement; and
- (5) That the accused did so intentionally.

The accused, instead of taking the person found in possession of paddy suspected to be stolen to the police station, allowed him to escape; it was held that the accused was guilty of an offence under this section.¹⁴⁴ Similarly, releasing a *moharrir* (clerk), who was remanded by the court to jail custody a public servant was in clear violation of the legal obligation to apprehend or keep in confinement a person charged with an offence, and hence *section 221, IPC* was attracted.¹⁴⁵ Graded punishments are provided depending on the nature of the offence.

¹⁴³ Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956)

¹⁴⁴ *Ram Lal v Emperor*, AIR 1936 All 651 .

¹⁴⁵ *Durga Singh v Md Isa*, (1963) 1 Cr LJ 827 (Pat).

[s 221] Intentional omission to apprehend on the part of public servant bound to apprehend.—

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[s 222] Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.—

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- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
 - (ii) Abuse of process of court (sections 206 to 211, *IPC*);
 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 222] Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.—

Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence ¹⁴⁶[or lawfully committed to custody], intentionally omits to apprehend such person, or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with ¹⁴⁷[imprisonment for life] or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

[s 222] Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to ¹⁴⁸[imprisonment for life] ¹⁴⁹[***] ¹⁵⁰[***] ¹⁵¹[***] ¹⁵²[***] or imprisonment for a term of ten years or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not exceeding to ten years ¹⁵³[or if the person was lawfully committed to custody].

[s 222.1] Intentional omission to apprehend

Section 222 is an aggravated form of an offence made punishable under *section 221, IPC*. The aggravation consists in the fact that the person to be apprehended had already been convicted or committed for an offence.

[s 222.2] Essential ingredients

- (1) That the accused was a public servant;
- (2) That the accused was legally bound to apprehend or keep in confinement the person in question;
- (3) That such person was under a sentence of court for an offence committed by him;
- (4) That the accused omitted to apprehend such person or allowed such person to escape or attempt to escape;
- (5) That the accused did so intentionally.

The offence under this section is cognizable or non-cognizable, depending on the offence.

¹⁴⁶ Ins. by Act 27 of 1870, section 8.

¹⁴⁷ Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

¹⁴⁸ Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

¹⁴⁹ The words “or penal servitude for life” omitted by Act 17 of 1949, section 2 (w.e.f. 6-4-1949).

¹⁵⁰ The words “or to” omitted by Act 36 of 1957, section 3 and Sch II (w.e.f. 17-9-1957).

¹⁵¹ The word “transportation” omitted by Act 26 of 1955, section 117 and Schedule (w.e.f. 1-1-1956).

¹⁵² The words “or penal servitude” omitted by Act 17 of 1949, section 2 (w.e.f. 6-4-1949).

¹⁵³ Ins. by Act 27 of 1870, section 8.

[s 223] Escape from confinement or custody negligently suffered by public servant.—

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- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
 - (ii) Abuse of process of court (sections 206 to 211, *IPC*);
 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 223] Escape from confinement or custody negligently suffered by public servant.—

Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence ¹⁵⁴[or lawfully committed to custody], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

[s 223.1] Escape from confinement of a convict negligently

[s 223] Escape from confinement or custody negligently suffered by public servant.—

This section deals with escape from confinement or custody of a convict. If a public servant negligently suffers any person charged with or convicted of an offence, or lawfully committed to custody and kept in confinement, to escape from such custody or confinement, he is liable under this section to punishment.

This section applies to cases wherein the person allowed to escape is in custody for an offence, and not to cases wherein such person has merely been arrested.¹⁵⁵ A police officer who is in charge of an accused by the order of a magistrate for investigation and report is not justified in allowing the accused to be free at large, although he may allege that after investigation he found no case against the accused, but he must keep him under his custody until he is discharged by the Magistrate.¹⁵⁶

[s 223.2] Essential ingredients

- (1) The accused must be a public servant;
- (2) As such public servant the public servant was bound to keep in confinement the person in question;
- (3) That such person was charged with or convicted of an offence or lawfully committed to custody;
- (4) That the accused suffered such person to escape; and
- (5) The escape was due to the negligence of the public servant.

¹⁵⁴ Ins. by Act 27 of 1870, section 8.

¹⁵⁵ *Tafaulah*, 1886 ILR 12 Cal 190.

¹⁵⁶ *Empress v Ashraf Ali*, 1884 ILR (6) All 129 .

[s 224] Resistance or obstruction by a person to his lawful apprehension.—

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- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
 - (ii) Abuse of process of court (sections 206 to 211, *IPC*);
 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 224] Resistance or obstruction by a person to his lawful apprehension.—

Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation .—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

[s 224.1] Resistance by a public servant of lawful arrest

[s 224] Resistance or obstruction by a person to his lawful apprehension.—

This section punishes a person escaping from custody or illegally opposing his arrest. It consists of two parts dealing with two distinct offences. The *first* is the intentional offering of resistance, or illegal obstruction to his apprehension for the offence with which he is charged. The *second* relates to the offence of intentional escape or attempt to escape from lawful custody.

It is an offence for a person to escape from custody after he has been lawfully arrested on a charge for an offence although he may not have been convicted.¹⁵⁷ Resistance or illegal obstruction is intentional when he who resists or illegally obstructs does it with the intention that there should be no apprehension, notwithstanding that such apprehension to his knowledge is lawful.¹⁵⁸ No offence is committed if an unlawful arrest is caused.¹⁵⁹ This applies to an escape from custody and he cannot be convicted under this section.¹⁶⁰ The intentional escape from lawful custody should be proved.¹⁶¹

The offence is cognizable, bailable, non-compoundable and triable by any Magistrate. The punishment may extend to two years of imprisonment, or fine, or both.

¹⁵⁷ *Kalia Amra*, AIR 1927 Bom 96 : (1926) 29 Bom LR 168 .

¹⁵⁸ *Sulaiman v State of Karnataka*, AIR 1964 Ker 185 .

¹⁵⁹ *Ouseph Poulo v The Catholic Union Bank Ltd*, (1964) 1 Cr LJ 592 : (1964) 7 SCR 745 : AIR 1965 SC 166 [[LNIND 1964 SC 403](#)] .

¹⁶⁰ *Retta Koravan Re*, 1957 Cr LJ 1284 .

¹⁶¹ *State v Indrapradhan*, AIR 1960 Ori 23 [[LNIND 1959 ORI 3](#)] .

[s 225] Resistance or obstruction to lawful apprehension of another person.—

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- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
 - (ii) Abuse of process of court (sections 206 to 211, *IPC*);
 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 225] Resistance or obstruction to lawful apprehension of another person.—

Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with ¹⁶²[imprisonment for life] or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

[s 225] Resistance or obstruction to lawful apprehension of another person.—

or, if the person to be apprehended, or the person attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to ¹⁶³[imprisonment for life] ¹⁶⁴***] ¹⁶⁵***] ¹⁶⁶***] or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with ¹⁶⁷[imprisonment for life] or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

[s 225.1] Resistance to lawful apprehension of another person

This section punishes those who put resistance or obstruction to lawful apprehension of others. To attract this section, it is essential that—

- (1) The accused must have resisted or illegally obstructed the lawful apprehension of another person, or must have rescued or attempted to rescue another person lawfully detained in custody; and
- (2) Such resistance, obstruction, or rescue, or attempt to rescue must be intentional.

Rescue or attempt to rescue need not be intentional.¹⁶⁸ An offence under this section is committed, if a person tries to rescue an arrested person.¹⁶⁹ It is not necessary that the rescuer should be aware of the facts leading to the detention of the arrested person.¹⁷⁰

This section is distinguishable from *section 130, IPC* which relates only to a state prisoner or prisoner of war escaping from lawful custody. The word “rescue” here is the act of forcibly freeing of a person from custody.¹⁷¹

The offence is cognizable, bailable, non-compoundable and triable by any Magistrate.

¹⁶² Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

¹⁶³ Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

¹⁶⁴ The words “or to” omitted by Act 36 of 1957, section 3 and Sch II (w.e.f. 17-9-1957).

¹⁶⁵ The word “transportation” omitted by Act 26 of 1955, section 117 and Schedule (w.e.f. 1-1-1956).

¹⁶⁶ The words “penal servitude” omitted by Act 17 of 1949, section 2 (w.e.f. 6-4-1949).

¹⁶⁷ Subs. by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956).

[s 225] Resistance or obstruction to lawful apprehension of another person.—

168 *Bhima Gowda*, 1962 Mys LJ 381 .

169 *Salim Mohamed v State of Gujarat*, 1972 Cr LJ 1454 .

170 *Golak Chandra v State*, 1971 Cr LJ 910 .

171 *Thangal v State of Kerala*, (1961) 2 Cr LJ 774 .

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[[s 225A] Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise, provided for.—

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- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, *IPC*);
 - (ii) Abuse of process of court (sections 206 to 211, *IPC*);
 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

172**[[s 225A] Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise, provided for.—**

Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

- (a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and
- (b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.]

[[s 225A] Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise, provided for.—

[s 225A.1] Omission to apprehend escape by public servant

This section was inserted by the *Criminal Law (Amendment) Act*, 1886. It is meant to supplement sections 221, 222, and 223, *IPC*; it seeks to punish public servants bound to apprehend or detain in custody in cases not provided for in these sections or in any other law for the time being in force, or omits to apprehend that person or suffers such person to escape from confinement. An intentional omission or a negligent omission is treated as aggravating circumstances and a higher punishment is sought to be provided therefore.

When a person arrested was confined in a room, omission to secure the door of the room properly, thereby allowing that person to escape, amounted to negligence and the offender was convicted under this section.¹⁷² The offence is non-cognizable, non-compoundable and triable by a magistrate of first class.

[s 225A.2] Ingredients

- (1) The accused was a public servant.
 - (2) The public servant was legally bound to apprehend or to keep in confinement the person in question.
 - (3) He omitted to apprehend that person or suffered him to escape from confinement.
 - (4) He did so either intentionally or negligently.
-

¹⁷² Sections 225A and 225B subs. by Act 10 of 1886, section 24(1), for section 225A. Earlier section 225A was inserted by Act 27 of 1870, section 9.

¹⁷³ *Rama Nandan Singh*, AIR 1930 Pat 103 .

[[s 225B] Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.—

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 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

174**[[s 225B] Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.—**

Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]

[[s 225B] Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.—

[s 225B.1] Resistance to lawful apprehension

This section, like the previous one, was added by the *Criminal Law (Amendment) Act*, 1886 to cover those who put obstruction or resistance to lawful apprehension,¹⁷⁵ and escaping from police custody while being taken before a magistrate under *section 109 of the Criminal Procedure Code, 1973*,¹⁷⁶ for obtaining security for good behaviour. Thus, the offence under this section consists of resistance or obstruction to lawful apprehension, or escape or rescue from lawful custody, or attempt to secure such escape or rescue.

An offence under section 225B is committed only when the resistance to arrest is intentional, and that occurs only when the person resisting knows that he is being, or is about to be arrested.¹⁷⁷ Mere running away into a house to avoid a civil court's arrest will not amount to resistance or obstruction within the meaning of this section. Resistance to execution of an unlawful order or unlawful arrest is no offence.¹⁷⁸ Resistance to apprehension on a warrant issued by a collector for non-payment of Government dues is covered under this section.¹⁷⁹ Resistance or obstruction implies an active opposition.¹⁸⁰ A person charged for escape may be convicted for attempt to escape under *section 225B, IPC*.¹⁸¹

[s 225B.2] Ingredients

- (1) The accused intentionally offered some resistance or illegal obstruction;
- (2) It was done:
 - (a) to prevent the lawful apprehension of himself or of any other person; or
 - (b) to escape or attempt to escape from any custody in which he was lawfully detained; or
 - (c) to rescue or attempt to rescue any other person from custody in which that person is lawfully detained.

The offence is cognizable, non-bailable, triable by any Magistrate and punishable up to six months, or fine or both.

¹⁷⁴ Sections 225A and 225B subs. by Act 10 of 1886, section 24(1), for section 225A. Earlier section 225A was inserted by Act 27 of 1870, section 9.

¹⁷⁵ AIR 1928 Lah 324 .

¹⁷⁶ CrPC, 1973, section 109 provides for executing a bond with or without sureties for good behaviour for a period of one year from a suspected person by a Magistrate.

[[s 225B] Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.—

177 *Empress v Shasti Churn Napit*, ILR (1882) 8 Cal 331 : 10 Cal LR 290; *Kandhaia*, ILR (1885) 7 All 67 ; *King Emperor v Khanu Kori*, AIR 1925 Sindh 193 .

178 *Public Prosecutor v Anandhan Annamali*, AIR 1954 Mad 321 [[LNIND 1952 MAD 176](#)] .

179 *Debi Singh*, 1901 ILR 28 Cal 39.

180 *Aijaj Hussain*, 1916 ILR 38 All 506.

181 *Mammed Beary Re*, AIR 1955 Mad 157 [[LNIND 1954 MAD 161](#)] .

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[s 226] Unlawful return from transportation.—

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 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 226] Unlawful return from transportation.—

[Rep. by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955), sec. 117 and Sch. (w.e.f. 1-1-1956).]

[s 227] Violation of condition of remission of punishment.—

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This Chapter (comprising 44 sections: 191 to 229, *IPC*) relates to giving and fabricating false evidence (sections 191 to 200) and offences against public justice (sections 201 to 229). These offences may be discussed under the following sub-heads:—

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 - (iii) False personation (sections 205 and 211, *IPC*);
 - (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, *IPC*);
 - (v) Harboursing an offender (sections 212, 216 and 216A, *IPC*); and
 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 227] Violation of condition of remission of punishment.—

Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

[s 227.1] Remission

Remission is reduction of the quantum of punishment without changing its character. It exempts the convict from undergoing that part of the sentence which it remitted.¹⁸² The guilt of the offender is not affected in the case of remission except that he is exempted from serving a part of the sentence. It is a question to be decided

[s 227] Violation of condition of remission.—

by the court whether a condition imposed on which remission was granted has been breached by the prisoner.¹⁸³ It is not for the executive to say that he broke the conditions.¹⁸⁴

[s 227.2] Violation of condition of remission

This section makes a person criminally liable, if after having accepted conditional remission¹⁸⁵ of punishment, he knowingly violates any condition on which such remission was granted. In the case of violation of the conditions this section is attracted and the remission is cancelled and the original sentence is restored.

[s 227.3] Ingredients

- (1) The accused was sentenced to imprisonment;
- (2) Such punishment had been remitted;
- (3) The remission was conditional;
- (4) Such remission was accepted by the accused and in consequence of such acceptance the accused was released;
- (5) The accused violated such condition; and
- (6) The violation was knowingly made.

The offence is cognizable, non-bailable, non-compoundable and triable by the court of the original jurisdiction.

¹⁸² *Sarat v Khagendra*, AIR 1961 SC 334 [[LNIND 1960 SC 248](#)] : (1961) 2 SCR 133 [[LNIND 1960 SC 248](#)] .

¹⁸³ *Jagdish Prasad v Rex*, AIR 1949 All 626 [[LNIND 1949 ALL 60](#)] .

¹⁸⁴ *Emperor v Nga Po Min*, AIR 1933 Rang 28 .

¹⁸⁵ Under section 432 of the *Criminal Procedure Code, 1973* the State has been empowered to suspend or remit the sentence conditionally or unconditionally.

[s 228] Intentional insult or interruption to public servant sitting in judicial proceeding.—

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 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
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[s 228] Intentional insult or interruption to public servant sitting in judicial proceeding.—

Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[s 228.1] Insult to public servant in judicial proceeding

[s 228] Intentional insult or interruption to public servant sitting in judicial proceeding.—

The preceding sections of Chapter 10 of the Code deal with contempt of the lawful authority of public servants in general, whereas *section 228, IPC* prescribes a punishment for contempt of court which may be tried either under the *Contempt of Courts Act, 1971* or under this section. The crime of contempt lies in showing disrespect to a person administering justice. This section seeks to protect such a person against intentional insult and to avoid interruption of proceedings.

[s 228.2] Ingredients

To constitute the offence the following conditions must exist:—

- (1) That the person offended was a public servant;
- (2) That the public servant was sitting in any stage of judicial proceeding;
- (3) That while public servant was so sitting the accused insulted or interrupted; and
- (4) That the accused did so intentionally.¹⁸⁶

This section is confined to only those cases of contempt of court wherein the public servant is sitting in a judicial proceeding. In *Waryam Singh v Sadh Ram*,¹⁸⁷ it was held that when the facts of a case disclose an offence under *section 228, IPC*, the case may be triable as contempt, even if the acts complained of cannot be confined or covered by *section 228, IPC*.

¹⁸⁶ *State of Madhya Pradesh v Ravishankar*, AIR 1959 SC 102 (104) : 1959 SCR 1367 : 1959 Cr LJ 251 .

¹⁸⁷ 1972 SCC Cr 477 : (1972) 1 SCC 796 : AIR 1972 SC 905 : 1972 Cr LJ 635 : 1972 CAR 195 . See KD Gaur, Law of International Telecommunications in India (Nomos Verlagsgesellschaft, Baden-Baden, West-Germany, 1988) vol V, pp 151-156 for detailed discussion on contempt of court.

[[s 228A] Disclosure of identity of the victim of certain offences etc.—

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 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

¹⁸⁸[[s 228A] Disclosure of identity of the victim of certain offences etc.—

- (1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an ¹⁸⁹[offence under section 376, ¹⁹⁰[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB] or section 376E] is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.
- (2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—
 - (a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

[[s 228A] Disclosure of identity of the victim of certain offences etc.—

- (b) by, or with the authorisation in writing of, the victim; or
- (c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

- (3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation .—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.]

[s 228A.1] Disclosure of identity of victim

Section 228A, IPC was inserted by the *Criminal Law (Amendment) Act 13 of 2013*. It punishes the disclosure of the identity of victims of offence of rape, as defined under sections 376, 376A, 376B, 376C, 376D and 376E, IPC, for a prison term which may extend to two years and fine. The section aims at protecting the victims of such crimes from public exposure which might result in exploitation and or humiliation of such hapless persons.

Om Prakash: The Supreme Court in a recent case *Om Prakash v State of Uttar Pradesh*, (2006), AIR 2006 SC 2214 [[LNIND 2006 SC 382](#)] (2215) (para 3),¹⁹¹ held that:

keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which section 228A has been enacted, it would be appropriate that in the judgments be it of this court, High Court or lower court, the name of the victim (prosecutrix) should not be indicated.

Puttaraja: The above position was also highlighted by the Supreme Court in its earlier judgment in *State of Karnataka v Puttaraja*.¹⁹²

The offence is cognizable and may be tried by any Magistrate.

¹⁸⁸ Ins. by Act 43 of 1983, section 2 (w.e.f. 25-12-1983).

[[s 228A] Disclosure of identity of the victim of certain offences etc.—

189 Subs. by Act 13 of 2013, section 4, for “offence under section 376, section 376A, section 376B, section 376C or section 376D” (w.r.e.f. 3-2-2013).

190 Subs. by Act 22 of 2018, sec. 3, for “section 376A, section 376B, section 376C, section 376D” (w.r.e.f. 21-4-2018).

191 AIR 2006 SC 2214 [[LNIND 2006 SC 382](#)] (2215) (para 3).

192 (2004) 1 SCC 475 [[LNIND 2003 SC 1033](#)] : AIR 2004 SC 433 [[LNIND 2003 SC 1033](#)] : 2004 (3) All LT 6 (SC) : 2004 Cr LJ 579 : JT 2003 (9) SC 603 [[LNIND 2003 SC 1033](#)] : (2003) 10 Scale 325 [[LNIND 2003 SC 1033](#)] .

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[s 229] Personation of a juror or assessor.—

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 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

[s 229] Personation of a juror or assessor.—

Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[s 229.1] Personation of a juror or assessor

This section deals with false personation as juror or assessor and covers two such categories of persons—

[s 229] Personation of a juror or assessor.—

- (1) Persons who intentionally cause or knowingly suffer themselves by personation or otherwise; and
- (2) Persons who with no act on their part, have been returned, empanelled (on the jury list), or sworn as jurors and assessors.

In fact, this section has lost its utility in view of the abolition of trials with the aid of assessors and juries, *vide* Act 26 of 1955. This section should be deleted from the Code.

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[[s 229A] Failure by person released on bail or bond to appear in Court.—

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 - (vi) Offences by public servants (sections 217 to 229, *IPC*).
-

193 [[s 229A] Failure by person released on bail or bond to appear in Court.—

Whoever, having been charged with an offence and released on bail or on bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation .—The punishment under this section is—

- (a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and
 - (b) without prejudice to the power of the Court to order forfeiture of the bond.]
-

[[s 229A] Failure by person released on bail or bond to appear in Court.—

[s 229A.1] Principle and Scope of *section 229A, IPC*

Section 229A, IPC has been inserted in the Code in Chapter XI in 2005 False Evidence and Offences Against Public Justice to ensure the presence of the person released on bail or by furnishing a bond to appear in the Court on the appointed date and time in accordance with the terms and conditions of the bail or bond without adequate and sufficient reason to the satisfaction of the Court, he shall be liable to imprisonment of either description for a period of one year, or with or without fine. The burden of proof in such a case will be on the accused to explain reasons for his absence on the appointed date and time.

[s 229A.2] Explanation

The explanation clause makes it clear that the punishment under the section will be in addition to the punishment for which the accused is charged and punished. The offence is cognizable, non-bailable, non-compoundable and trial by a Magistrate.

193 Ins. by Act 25 of 2005, section 44(c) (w.e.f. 23-6-2006).

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