



## OFFENCES RELATING TO PUBLIC SERVANT Smriti Kashyap, [smiritikashyap1182095@gmail.com](mailto:smiritikashyap1182095@gmail.com)

**Abstract :** Section 21 of Chapter – II (General Explanations) of Indian Penal Code, 1860 defines “Public Servant”. Chapter IX of the Code explains the provisions about the offences by or relating to public servants. Chapter IX contains Sec. 161 to 171 whereby Sec. 161 to Sec. 165-A were repealed by Prevention of Corruption Act, 1988 (Act 49 of 1988).

As pointed out by the Supreme Court in **Ramesh v. State of Maharashtra**, a public servant is an authority who must be appointed by Government or a Semi-Government body & should be in the pay or salary of the same.

Secondly, a public servant is to discharge his duties in accordance with the rules & regulations made by the Government. A bill collector employed by a Municipality, & a railway servant are public servants. A member of the Auxiliary Air Force is as much a public servant as an acting member of Indian Air Force.

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### Prevention of Corruption Act, 1988

The following genres of persons fall within the ambit of 'public servant':

- a) Any person who is paid by the government or local authority or remunerated by way of fees or commission for the performance of or is in the service of a corporation established by or under a Central, Provincial or State Act, or an authority or body owned or controlled or aided by the Government company as defined in the Companies Act, 1956.
- b) Any Judge or any person authorized by a court of justice to perform any duty, in connection with the administration of justice or any arbitrator to whom any cause or matter has been referred for decision or report by a court of justice or report by a court of justice or by a competent public authority.
- c) Any person who holds an office result to which he is empowered to prepare, publish maintain or revise an electoral roll or to conduct an election or part of an election, or is authorized or required to perform any public duty.
- d) Any person who is the president, secretary or other office bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central or State Government or any authority or body owned, controlled or aided by Government or Government company as defined in Sec. 617 of the Companies Act, 1956.
- e) Any person who is a chairman, member or employee of any service commission or Board or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on their behalf.
- f) Any person who is the Vice-Chancellor or member of any governing body, professor, reader or lecturer of any University and any person whose services have been availed of by a University.
- g) An office-bearer or an employee of an educational, scientific, social, cultural or other institution receiving or having received any financial assistance from the Central or State government or local or other public authority.

### Offences And Penalties:

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

- Taking gratification other than legal remuneration in respect of an official act, and if the public servant is found guilty shall be punishable with imprisonment which shall be not less than 6 months but which may extend to 5 years and shall also be liable to fine.
- Taking gratification in order to influence public servant, by corrupt or illegal means, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.
- Taking gratification, for exercise of personal influence with public servant shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.
- Abetment by public servant of offences defined in Section 8 or 9, 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.
- Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant, 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.
- Punishment for abetment of offences defined in Section 7 or 11 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.



- 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 7 years and shall also be liable to fine.
- Habitual committing of offence under Section 8, 9 and 12 shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to 7 years and shall also be liable to fine.

#### **Indian Penal Code 1860 Section 166 - 171**

##### **Section 166**

Any one , 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 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.

##### **Section 167**

Any one , being a public servant, & being, as \*[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates 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 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.

##### **Section 168**

Any one , being a public servant, & 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.

##### **Section 169**

Any one , being a public servant, & being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for 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; & the property, if purchased, shall be confiscated.

##### **Section 170**

Any one pretends to hold any particular office as a public servant, knowing he does not hold such office or falsely personates any other person holding such office, & 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.

##### **Section 171**

Any one , not belonging to a certain class of public servants, wear any grab or carries any token resembling any grab or token used by class of public servants, with the intention it may be believed, or with the knowledge it is likely to be believed, he belongs to 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.

#### **Code of Criminal Procedure Act : Section 197**

Section 197 of Cr.PC provides the procedure of prosecution of Judges & public servants. Section 197 (1) of the code provides when any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction- in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

The proviso to this section provides where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression " State Government" occurring therein, the expression " Central Government" were substituted.

Section 197 (2) provides no Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

Section 197 (3) provides the State Government may, by notification, direct the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, & thereupon the provisions of sub- section will apply as if for the expression " Central Government" occurring therein, the expression " State Government" were substituted.

Section 197 (3A) provides notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

Section 197 (3B) notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 & ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid & it shall be competent for the Central Government in such matter to accord sanction & for the court to take cognizance thereon.

Section 197 (4) provides the Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, & the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, & may specify the Court before which the trial is to be held.



Any one , 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 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.

#### Case laws / Judgements

1. In **Narayan Mishra Vs The State Of Bihar & Ors** on 23 February, 2011, it was held that the punishment provided for criminal misconduct by a public servant under Section-13(2) of 1988 Act is imprisonment for a term which shall be not less than one year but which may extend to seven years & shall also be liable to fine.
2. In **Arun Kumar Vs Central Bureau of Investigation** the Court held that every clause of Sub-section (1) of Section 13 is in itself & independently of other clauses, creates & constitutes offence of criminal misconduct by a public servant, which is made punishable by the same provision. The facts of the present case, which are so glaring & bizarre, could hardly give any reason to any court to hold offence under section 13 P.C Act could not be said to be constituted. Other offences under the I.P.C. definitely are constituted.
3. In **Green Signal Bio Pharma Pvt. Ltd Vs Union Government Of India** the Court held that 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.
4. In **Bhaskar S/O Pandurang Walimbe Vs State Of Maharashtra** it was held that Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than [four year] but which may extend to [ten years] and shall also be liable to fine.

#### References :

1. <https://indiankanoon.org/doc/12704/>
2. <https://indiankanoon.org/search/?formInput=obstructing%20a%20public%20servant>
3. <https://indiankanoon.org/doc/54440088/>
4. <http://www.shareyouressays.com/essays/legal-provision-regarding-offences-by-or-relating-to-the-public-servants-in-india/115835>