

Bill No. 70 of 2008

**THE PREVENTION OF CORRUPTION (AMENDMENT)
BILL, 2008**

A

BILL

to amend the Prevention of Corruption Act, 1988.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. This Act may be called the Prevention of Corruption (Amendment) Act, 2008.

Short title.

49 of 1988.

2. In the Prevention of Corruption Act, 1988 (hereinafter referred to as the principal Act), in section 5, sub-section (6) shall be omitted.

Amendment
of section 5.

3. In section 13 of the principal Act, in sub-section (1)—

Amendment
of section 13.

(i) in clause (d), sub-clause (iii) shall be omitted;

(ii) in the *Explanation*, the words "and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant" shall be omitted.

Amendment of section 16. **4.** In section 16 of the principal Act, at the end, the following proviso shall be inserted, namely:—

"Provided that where a sentence of fine is imposed on an accused person for an offence referred to in clause (e) of sub-section (1) of section 13, such fine shall not exceed the pecuniary resources or value of property referred to in that clause for which the accused person is unable to account satisfactorily."

Insertion of new Chapter IVA. **5.** After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

‘CHAPTER IVA

ATTACHMENT AND FORFEITURE OF PROPERTY

Definitions. **18A.** In this Chapter, unless the context otherwise requires,—

(1) "date of termination of criminal proceedings" means—

(a) where such proceedings are taken to the Supreme Court in appeal, whether on the certificate of a High Court or otherwise, the date on which the Supreme Court passes its final orders in such appeal; or

(b) where such proceedings are taken to the High Court and orders are passed thereon and—

(i) no application for a certificate for leave to appeal to the Supreme Court is made to the High Court, the day immediately following the expiry of ninety days from the date on which the High Court passes its final orders;

(ii) an application for a certificate for leave to appeal to the Supreme Court has been refused by the High Court, the day immediately following the expiry of sixty days from the date of the refusal of the certificate;

(iii) a certificate for leave to appeal to the Supreme Court has been granted by the High Court, but no appeal is lodged in the Supreme Court, the day immediately following the expiry of thirty days from the date of the order granting the certificate; or

(c) where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last judgment or order of a special Judge in the proceedings;

(2) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in such property or assets.

Application for attachment. **18B.** (1) Where any police officer authorised to investigate any offence under section 17 has reason to believe that any person has committed any offence under this Act and such person has procured money or other property by means of such offence. Investigating Officer may, with the prior approval of the Central Government or the State Government, as the case may be, at any stage, whether or not any court has taken cognizance, move an application before the special Judge appointed under section 3 for attachment of the said money or property or if such money or property cannot, for any reason, be attached, other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) An application under sub-section (1) shall be accompanied by one or more affidavits, stating the grounds on which belief that the said person has committed any offence under this Act is founded and the amount of money or value of other property

believed to have been procured by means of the offence.

(3) The application shall also furnish—

(a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person.

(b) the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.

18C. Upon receipt of any application under section 18B, the special Judge shall, unless for reasons to be recorded in writing, is of the opinion that there exists no *prima facie* grounds for believing that the person in respect of whom the application is made has committed any offence under this Act or that he has procured thereby any money or other property, pass without delay an *ad interim* order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of the said person of equivalent value as the special Judge may think fit:

Ad interim
attachment.

Provided that the special Judge may, if he thinks fit, before passing such order, and shall before refusing to pass such order, examine the person or persons making the affidavit accompanying the application.

(2) At the same time as he passes an order under sub-section (1), the special Judge shall issue to the person whose money or other property is being attached, a notice accompanied by copies of the order, the application, affidavits and of the evidence, if any, recorded, calling upon him to show cause why the order should not be made absolute.

(3) The special Judge shall also issue, accompanied by copies of the documents accompanying the notice under sub-section (2), to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section calling upon each such person to appear on the same date as specified in the notice under the said sub-section and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the special Judge at any time before an order is passed under sub-section (1) or sub-section (3), as the case may be, of section 18D.

18D. (1) If no cause is shown and no objections are made under section 18C on or before the specified date, the special Judge shall forthwith pass an order making the *ad interim* order of attachment absolute.

Inquiry of
objections to
attachment.

(2) If cause is shown or any objections are made as aforesaid the special Judge shall proceed to inquire the same and in so doing, as regards the examination of the parties and in all other respects he shall, subject to the provisions of this Chapter, follow the procedure and exercise all the powers of a court in hearing a suit under the Code of Civil Procedure, 1908 and any person making an objection under section 18C shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.

(3) After inquiry under sub-section (2), the special Judge shall pass an order either making the *ad interim* order of attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order:

Provided that the special Judge shall not—

(a) release from attachment any interest which he is satisfied that the person believed to have committed an offence under this Act, has in the property,

unless he is also satisfied that there will remain under attachment an amount of the said person's property of value not less than that of the property believed to have been procured by the said person by means of the offence; or

(b) withdraw the order of attachment unless he is satisfied that the said person has not by means of the offence procured any money or other property.

Attachment of property of *mala fide* transferees.

18E. (1) Where the assets available for attachment of a person believed to have committed any offence under this Act are found to be less than the amount or value which he is believed to have procured by means of such offence, and where the special Judge is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said person has, after the date on which the offence is alleged to have been committed, transferred (whether after commencement of this Chapter, or not) any of his property otherwise than in good faith and for consideration, the special Judge may by notice require any transferee of such property (whether or not he received the property directly from the said person) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date, or where after inquiry in the manner provided in sub-section (2) of section 18D, the special Judge is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the special Judge shall order the attachment of so much of the said transferee's property as is, in the opinion of the special Judge equivalent to the proper value of the property, transferred.

Execution of orders of attachment.

18F. An order of attachment of property under this Chapter shall be carried into effect so far as may be practicable in the manner provided in the Code of Civil Procedure, 1908 for the attachment of property in execution of a decree.

5 of 1908.

Security in lieu of attachment.

18G. Any person whose property has been or is about to be attached under this Chapter may, at any time, apply to the special Judge to be permitted to give security in lieu of such attachment and where the security offered and given is in the opinion of the special Judge, satisfactory and sufficient, he may withdraw or, as the case may be, refrain from passing the order of attachment.

Administration of attachment.

18H. (1) The special Judge may, on the application of any person interested in any property attached under this Chapter and after giving the agent of the State Government or, as the case may be, the Central Government, an opportunity of being heard, make such orders as the special Judge considers just and reasonable for—

(a) providing from such attached property, as the applicant claims, an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for the expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in any court for the offence;

(b) safeguarding, so far as may be practicable, the interests of any business affected by the attachment, and in particular, the interests of any partners in such business.

(2) Where it appears to the special Judge to be just and convenient, he may, by order appoint a receiver to manage any property attached under this Chapter in accordance with such instructions as the special Judge may, from time to time, think fit to give and where a receiver is so appointed, the provisions of rules 2, 3, 4 and 5 of Order XL of the First Schedule to the Code of Civil Procedure, 1908 shall be applicable.

5 of 1908.

Duration of attachment.

18-I An order of attachment of property under this Act shall, unless it is withdrawn earlier in accordance with the provisions of this Act, continue in force—

(a) where no court has taken cognizance of the alleged offence at the time when the order is applied for, one year from the date of the order under sub-section (1) of section 18C or sub-section (2) of section 18E, as the case may be, unless cognizance of such offence is, in the meantime so taken, or unless the special Judge on application by the Investigating officer showing reasons for non-completion of the investigation and if the Judge is satisfied that reasonable grounds exist, he may extend further period of attachment not exceeding six months;

(b) where a court has taken cognizance of the alleged offence whether before or after the time when the order was applied for until orders are passed by the special Judge in accordance with the provisions of this Act after the termination of the criminal proceedings.

18J. (1) The State Government or, as the case may be, the Central Government or any person who has shown cause under section 18C or section 18E or has made an objection under section 18C or has made an application under section 18G or section 18H, if aggrieved by any order of the special Judge under any of the foregoing provisions of this Chapter, may appeal to the High Court within thirty days from the date on which the order complained against was passed.

Appeals.

(2) Upon any appeal under this section, the High Court, may, after giving such parties as it thinks proper an opportunity of being heard, pass such orders as it thinks fit.

(3) Until an appeal under this section is finally disposed of by the High Court, no court shall, otherwise than in accordance with the provisions of section 18G or section 18L, order the withdrawal or suspension of any order of attachment to which the appeal relates.

18K. (1) Where before judgment is pronounced in any criminal trial for any offence under this Act, it is represented to the Court that an order of attachment of property has been passed under this Chapter in connection with such offence, the Court shall, if it is convicting an accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence.

Court to evaluate property procured by the offence.

(2) In any appeal or revisional proceedings against such conviction, the appellate or revisional Court shall unless it sets aside the conviction, either confirm such finding or modify it in such manner as it thinks proper.

(3) In any appeal or revisional proceedings against an order of acquittal passed in a trial, such as, is referred to in sub-section (1), the appellate or revisional Court, if it convicts the accused, shall record a finding, such as is referred to in that sub-section.

(4) Where the accused is convicted of any offence under this Act and where it appears that the offence has caused loss to more than one Government or local authority the finding referred to in this section shall indicate the amount of loss sustained by each such Government or local authority.

(5) Where the accused is convicted in the same trial of one or more offences specified under this Act, the finding referred to in this section shall indicate separately the amounts procured by means of the two classes of offences.

18L. (1) Upon the termination of any criminal proceedings for any offence under this Act in respect of which any order of attachment of property has been under this Chapter or security given to in lieu thereof, the agent of the State Government or, as the case may be, the Central Government shall, without delay inform the special Judge, and shall where criminal proceedings have been taken in any Court, furnish the special Judge with a copy of the judgment or order of the trying Court and with copies of the judgment or orders, if any, of the appellate or revisional Court thereon.

Disposal of attached property upon termination of criminal proceedings.

(2) Where it is reported to the special Judge under sub-section (1) that cognizance of the alleged offence has not been taken or where the final judgment or order of the court is one of acquittal, the special Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned.

(3) Where the final judgment or order of the court is one of conviction, the special Judge shall order that from the property of the convicted person attached under this Chapter or out of the security given in lieu of such attachment, there shall be forfeited to the Central Government or the State Government as the case may be, such amount or value as is found in the final judgment or order of the courts in pursuance of section 18K, to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the special Judge and where the final judgment or order of the court has imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the special Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property of the security given in lieu of attachment.

(4) Where the amounts ordered to be forfeited or recovered under sub-section (3) exceed the value of the property of the convicted person attached, and where the property of any transferee of the convicted person has been attached under section 18E, the special Judge shall order that the balance of the amount order to be forfeited under sub-section (3) together with the costs of attachment of the transferee's property as determined by the special Judge shall be forfeited to the Government from the attached property of the transferee or out of the security given in lieu of such attachment; and the special Judge may order without prejudice to any other mode of recovery that any fine referred to in sub-section (3) or any portion thereof not recovered under that sub-section shall be recovered from the attached property of the transferee or out of security given in lieu of such attachment.

(5) If any property remains under attachment in respect of any offence under this Act or any security given to in lieu of such attachment remains with the special Judge after his orders under sub-sections (3) and (4) have been carried into effect, the order of attachment in respect of such property remaining shall be forthwith withdrawn or as the case may be, the remainder of the security returned, under the orders of the special Judge.

(6) Every sum ordered to be forfeited under this section in connection with any offence under this Act shall, after deduction of the costs of attachment as determined by the special Judge, be credited to the Government or local authority to which the offence has caused loss, or where there is more than one such Government or local authority, the sum shall after such deduction as aforesaid, be distributed among them in proportion to the loss sustained by each.

18M. Save as provided in section 18J and notwithstanding anything contained in any other law,—

(a) no suit or other legal proceeding shall be maintainable in any Court—

(i) in respect of any property ordered to be forfeited under section 18L, or which has been taken in recovery of fine in pursuance of an order under that section; or

(ii) while any other property is attached under this Chapter, in respect of such other property,

by any person upon whom a notice has been served under section 18C or section 18E or who has made an objection under sub-section (4) of section 18C; and

(b) no court shall, in any legal proceeding or otherwise, pass any decree or order, other than a final decree to a suit by a person not being a person referred to in clause (a), which shall have the effect of nullifying or affecting in any way any subsisting order of attachment of property under this Chapter, or the right of the special Judge to hold security in lieu of any such order of attachment.

18N. No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Chapter.’.

Protection of
action taken
in
good faith.

6. In section 19 of the principal Act, in sub-section (1),—

Amendment
of
section 19.

(i) in clause (a), for the words "who is employed", the words "who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted;

(ii) in clause (b), for the words "who is employed", the words "who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted.

7. In the Criminal Law Amendment Ordinance, 1944, in the Schedule,—

Amendment
of
Ordinance 38
of
1944.

(i) paragraph 4A shall be omitted;

(ii) in paragraph 5, for the words, figures and letter "items 2, 3, 4 and 4A", the words and figures "items 2, 3 and 4" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The prevention of Corruption Act, 1988 was enacted to make anti-corruption laws more effective. On the basis of actual experience in implementation and keeping in view the recommendations of the Law Commission of India and the Committee on Civil Services Reforms (Hota Committee), it is proposed to amend the said Act. Hence, the present Bill.

2. The salient features of the Bill are as follows:—

(i) The Law Commission of India in its 166th Report recommended for enactment of a separate law providing for forfeiture of property acquired by the holders of public office through corrupt means. The said recommendations were examined and it was considered that the objective of confiscations of illegally acquired property could be achieved by incorporating the provision of the Criminal Law (Amendment) Ordinance, 1944 in the Prevention of Corruption Act, 1988 itself with suitable modifications. Therefore, it is proposed to insert a new Chapter IVA in the Prevention of Corruption Act which empowers the special judge to exercise the powers of attachment before judgment. The procedure provided will be more effective and speedy.

(ii) The Committee on Civil Services Reforms (Hota Committee) in its Report favoured a review of section 13 (1) (d) (iii) of the said Act by observing that if a decision of an officer benefits a person without public interest, the officer concerned can be prosecuted in a court of law. Since all commercial decisions benefit one party or another, it is often difficult for an officer, even though acting in good faith, to ensure conformity with this provision. Therefore, it is proposed to omit the said sub-clause.

(iii) It is also proposed to amend section 16 of the said Act to provide a quantum of fine for a person accused of an offence under section 13(1)(e), so as to not exceed the pecuniary resources or value of property for which the accused person is unable to account satisfactorily.

(iv) The purpose of section 19 of the said Act is to provide a safeguard to a public servant from vexatious prosecution from any bonafide omission or commission in the discharge of his official duties. Presently, this protection is not available for a person who has ceased to be a public servant. The said section is being amended to provide the said protection to the persons who ceased to be public servants on the lines of section 197 of the Code of Criminal Procedure, 1973.

3. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 17th October, 2008.

PRITHVIRAJ CHAVAN.

ANNEXURE

EXTRACTS FROM THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

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5. (1) * * * * *

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944.

Procedure and powers of special Judge.

Ord. 38 of 1944.

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

Criminal misconduct by a public servant.

(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 or reward such as 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

(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 provisions 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.

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CHAPTER V

SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

19. (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,—

Previous sanction necessary for prosecution.

(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;

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EXTRACTS FROM THE CRIMINAL LAW AMENDMENT ORDINANCE, 1944

ORD. 38 OF 1944

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THE SCHEDULE

(See section 2)

Offences in connection with which property is liable to be attached.

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4A. An offence punishable under the Prevention of Corruption Act, 1988. 49 of 1988.

5. Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in items 2, 3, 4 and 4A.

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LOK SABHA

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further to amend the Prevention of Corruption Act, 1988.

*(Shri Prithviraj Chavan, Minister of State in the Ministry of Personnel,
Public Grievances and Pensions)*