SANCTION UNDER SECTION 19 OF THE PREVENTION OF CORRUPTION ACT, 1988: AN OVERALL PERSPECTIVE

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Abstract

Public servants in India perform various roles and functions in service to the government and the public. Their work often involves serving the public interest, ensuring good governance, and contributing to the functioning of the state machinery. By fulfilling the roles and responsibilities assigned to them, the public servants act as a vital link between the government and the general public, contributing to the realization of government objectives and ensuring that policies and programs are effectively carried out for the betterment of the society. In recent years, Corruption emerged as a new major in India with respect to public servant duties. It is defined as the use of public office for private gains. As per the Transparency International (TI), with the score of 40 out of 100, India lies on 85th position in fight against corruption. Misuse of power, corruption, or any actions against the public interest are subject to legal consequences and disciplinary actions. Among such measures was the Prevention of Corruption Act, 1988 which replaced the earlier enactment of 1947. This article explores the requirement of sanction by the competent authority to prosecute a public servant under the Prevention of Corruption Act, 1988 and how over the period of time there have been efforts to strengthen the integrity of public service while preserving the rule of law.

Keywords: *Public servant, Sanction, Corruption, Good governance.*

I. Introduction

UNDER THE Indian law, a public servant is defined under the Indian Penal Code (IPC)[1] as well as other statutes. The description of a public servant is quite broad and comprehends several individuals holding public office or performing public duties under the official capacity granted by the government. The definitions under the statutes are wide-ranging and covers a vast array of individuals employed in government services and those appointed to perform public duties.[2] It is notable

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1 The Indian Penal Code, 1860, s. 21.

2 David H. Rosenbloom, Robert S. Kravchuk, and Richard M. Clerkin, *Public administration: Understanding management, politics, and law in the public sector* (Routledge, 2022).

that various other laws and regulations may have their specific definitions or delineations of public servants in the context of their respective areas. It broadly includes person authorized by law to discharge any government functions. The Public servants are subject to codes of conduct under rules and regulations; and are expected to uphold the veracity and duties associated with their official designations. These codes, rules and laws bound them to act in the public interest and perform their duties without biasness.[3]

Public servants in India perform various roles and functions in service to the government and the public. Their work often involves serving the public interest, ensuring good governance, and contributing to the functioning of the state machinery. It generally includes appropriate Government Departments and Agencies, policy implementations, administration, governance, regulatory, supervisory roles etc. By fulfilling the roles and responsibilities assigned to them, the public servants act as a vital link between the government and the general public, contributing to the realization of government objectives and ensuring that policies and programs are effectively carried out for the betterment of the society.[4] However, the actions and behaviour of public servants have both direct and indirect effect on the lives of individuals specially citizens. Their positive actions contribute to public welfare, social harmony, national development etc. but the negative actions can lead to distrust, inequality and a lack of confidence in governance as well as governing system.

In recent years, Corruption emerged as a new major in India with respect to public servant duties. It is defined as the use of public office for private gains.[5] Though the existence of corruption in an administration system can be widely observed, but it has been increased exponentially in recent years.[6] The major factors behind corruption are income inequality, religious fractionalization and media exposure.[7] The Transparency International's Corruption Perception Index (hereinafter referred as 'CPI') had portrayed India as becoming more corrupt in

3 Frank Anechiarico and James B. Jacobs, *The pursuit of absolute integrity: How corruption control makes government ineffective* (University of Chicago Press, Chicago, 1996).

4 Alex B. Brillantes and Maricel T. Fernandez. "Toward a reform framework for good governance: Focus on anti-corruption" 54(1) *Philippine Journal of Public Administration* 87-127 (2010).

5 Andrew Stark, "Beyond Quid Pro Quo: What's Wrong with Private Gain from Public Office?" 91(1) *The American Political Science Review*, 108-120 (1997).

6 Akhil Gupta, "Changing forms of corruption in India" 51(6) *Modern Asian Studies* 1862-1890 (2017).

7 Nicholas Charron, "The correlates of corruption in India: Analysis and evidence from the states" 18(2) *Asian Journal of Political Science* 177-194 (2010).

following recent years.[8] The TI also asserts that there are ample evidences to demonstrate that the corruption has decelerated the economic progress as well as poverty alleviation.

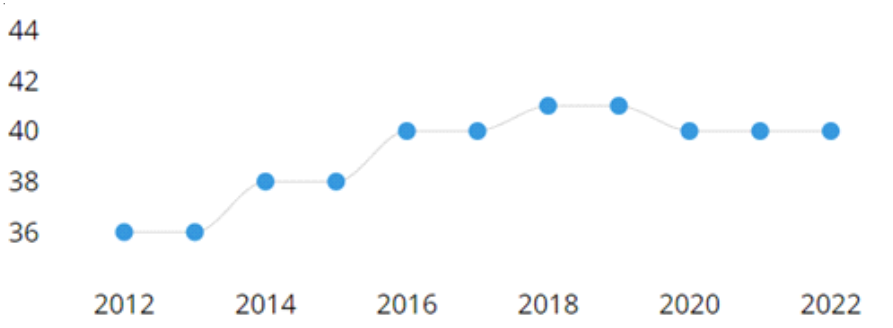

Figure 1: India's CPI Score 2012-22. Source: Transparency.org

As per the Transparency International (TI), with the score of 40 out of 100, India lies on 85th position in fight against corruption. The Indian Government took several significant measures to curb the corruption. There are specific provisions and laws that deal with offenses committed by public servants in the discharge of their duties, such as corruption, bribery, misuse of power, and other misconduct. Misuse of power, corruption, or any actions against the public interest are subject to legal consequences and disciplinary actions. Among such measures was the Prevention of Corruption Act, 1988[9] which replaced the earlier enactment of 1947[10]. This act widened the scope of definition of public servant and identified offences related to corruption, such as bribery, accepting or giving gratification other than legal remuneration, criminal misconduct by public servants, taking illegal gratification to influence public servants etc. However, there were still lacunas in the act which were addressed by the recent 2018 Amendment[11] to strengthen the legal provisions.

8 *Corruption in India – An Empirical Survey*, Transparency International India and ORG-MARG Research Pvt. Ltd., 2002, available at: https://transparencyindia.org/wp-content/uploads/2019/04/india-corruption-study-2002.pdf (last visited on November 06, 2022).

9 Act No. 49 of 1988 (w.e.f. 09 September 1988).

10 The Prevention of Corruption Act, 1947 (Act No. 2 of 1947).

11 The Prevention of Corruption (Amendment) Act, 2018. Ministry of Law and Justice. Available at: https://www.dvac.tn.gov.in/pdf/RTI/PC%20Act%20Amendment%202018.pdf (last visited November 06, 2023)

II. Sanction – Need and 2018 Amendment

One of the important magnitudes under the Act is the prosecution of the public servant alleged to commit the offences punishable under Section 7[12],11[13],13[14] and 15[15] of the Act. Section 19 mandates the 'sanction' to be obtained prior to the prosecution under the act. It states that:

> Section 19. No court shall take cognizance of an offence punishable under 2 [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction 3 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)].

The section mandates that no court shall take cognizance of an offense alleged to have been committed by a public servant without the prior sanction of the appropriate government authority. This provision of prior sanction is essential to ensure that public servants can execute their official duties without fear of being harassed or unnecessarily entangled in legal proceedings. It provides a level of protection to the public servants. The key essentials of the provision are:

1. Requirement of Prior sanction: This mandate states that formal consent or sanction from the appropriate government authority is required before any legal action against a public servant may be started. Before the court may move further with the case, this sanction must be granted by the authority.
2. Protection from Unwarranted Prosecution: The principal aim of Section 19 is to protect public officials against politically motivated or unjustifiable legal measures that could hinder or obstruct them in carrying out their official duties. It shields against petty or malicious prosecution for actions taken while performing official duties.
3. Balance Between Protection and Accountability: This section ensures that there is accountability in addition to protecting public personnel from needless harassment. The process of determining whether there is a valid case against a public servant for conduct that are outside the purview of their official duties is known as sanction for prosecution; it does not serve as an absolute prohibition against legal action.

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12 Section 7. Offence relating to public servant being bribed.

13 Section 11. Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant.

14 Section 13. Criminal misconduct by a public servant.

15 Section 15. Punishment for attempt.

4. Government monitoring: By requiring prior sanction, the government adds an extra level of monitoring. Its prima facie inquiries into the claims made against the public servant and decides the issue prior approaching the court.

A similar approach can be observed in traditional laws including the Constitution, the Code of Civil Procedure, 1908[16] and the Code of Criminal Procedure, 1973[17]. The constitutional doctrine of sovereign immunity grants immunity from legal cases to the state or sovereign entity and its various arms, including government officials and agencies.[18] Section 132[19], 196[20], 197[21] of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C."), provides safeguard for public servants from undue harassment or legal action for actions undertaken in the discharge of their official duties. Similarly, under the Code of Civil Procedure, 1908 (hereinafter "CPC), Section 80[22] and Order 27[23] deals with the suits by or Against Government or Public Officers in their Official Capacity wherein there is compliance of 2-month period prior to instituting a suit.

The 2018 Amendment resurrected section 19 by including sanction as a necessary procedure. The object behind the requirement of grant of sanction to prosecute a public servant under the Prevention of Corruption Act or even under the Cr.P.C. is designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute an honest public servant for acts arising out of due discharge of his duty and also to enable him to efficiently perform the wide range of duties cast upon him by virtue of his office. The requirement of sanction acts as a filter to keep at bay any motivated, ill-informed and frivolous prosecution against the public servant.[24]

A plain reading of section 19(1) leaves no manner of doubt that the same is couched in mandatory terms and forbids Courts from taking cognizance of any offence punishable under Sections 7, 11, 13 and 15 of the PC Act against public

16 Act No. 5 of 1908.

17 Act No. 2 of 1974.

18 *State of Rajasthan* v. *Mst. Vidyawati*, AIR 1962 SC 933, See also *Kasturilal Ralia Ram* v. *The State Of Uttar Pradesh*, 1965 SCR (1) 375.

19 The Code of Criminal Procedure, 1973, s. 132. It talks about "Protection against prosecution for acts done under preceding sections."

20 *Id*., s. 196. It talks about "Prosecution for offences against the State and for criminal conspiracy to commit such offence."

21 *Id*, s. 197. It talks about "Prosecution of Judges and public servants."

22 The Code of Civil Procedure, 1908, s. 80.

23 *Id*., order XXVII. It talks about "Suits by or against the Government or Public Officers in their Official Capacity."

24 *Devender Gupta* v. *Central Bureau of Investigation,* 2022 SCC Online Del 1761.

servants except with the previous sanction of the competent authority enumerated in clauses (a), (b) and (c) to sub-section (1) of section 19. The provision contained in sub-section (1) would operate in absolute terms but for the presence of sub-section (3) to section 19. The language employed in sub-section (1) of section 19 operates as a complete and absolute bar to any court taking cognizance of any offence punishable under the abovementioned sections of the PC Act against a public servant except with the previous sanction of the competent authority.[25]

If no sanction is given for the prosecution of the accused, the Special Judge or the Concerned Judge will have no jurisdiction to take cognizance of the case and any trial in the absence of such sanction must be null and void. The trial would be invalid and *void ab initio*. In the absence of valid sanction, the court becomes incompetent to proceed with the matter.

III. Effect of Sanction After Prosecution

The decision to grant sanction must be made before a prosecution is started. The fact that a citizen is brought into Court and charged with an offence may very seriously affect his reputation and a subsequent refusal of sanction to a prosecution cannot possibly undo the harm which may have been done by the initiation of the first stages of a prosecution. Moreover, the official by whom or on whose advice a sanction is given or refused may well take a different view if he considers the matter prior to any step being taken to that which he may take if he is asked to sanction a prosecution which has in fact already been started.[26]

The second sanction order issued for the prosecution would amount to be retrospective in its operation, which is not permitted. Grant of valid sanction has been held to be essential for taking cognizance by the Court, and the question about validity of any such sanction order can be raised event at the appellate stage. Therefore, the statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction.

In case the sanction is found to be invalid the Court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with law.

If the trial court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

25 *Nanjappa* v. *State of Karnataka*, (2015) 14 SCC 186.

26 *Basdeo Agarwalla* v. *Emperor*, AIR 1945 FC 16.

The Effect of Section 19(3) & 19(4)

Section 19(3) interdicts reversal or alteration of any finding, sentence or order passed by Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order in challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order in appeal or revisional proceedings except where it is found that a failure of justice has occurred by such invalidity. This in also evident from the conjoint reading of sub-sections (3) and (4).

The Supreme Court in the matter of *Prakash Singh Badal* v. *State of Punjab*[27] has drawn a distinction between a case where there was absence of sanction and a case where the order of sanction was vitiated on some ground. It was held that where there is absence of sanction, the issue can be agitated at the threshold of trial but when the sanction exists then question as to vitiation has to be raised during trial. The vitiation can be raised on diverse grounds such as non-availability of material before the sanctioning authority or bias of the sanctioning authority, or the order of sanction having been passed by an authority not authorised or competent to grant such sanction, etc.

Time Period of Granting Sanction and Effect of its Non-observation

Earlier there was no legislation prescribing the period within which a decision for sanction is to be taken, the Supreme Court in Vineet Narain's case[28] sought to fill the gap by setting a normative prescription of three months for grant of sanction. In Subramanian Swamy Case[29] the Supreme Court suggested that Parliament may consider prescribing clear time-limits for the grant of sanction and to provide for a deemed sanction by the end of the period if no decision is taken. The Parliament in the year 2018 by way of amendment to the P.C. Act inserted new proviso which mandates that the competent authority shall endeavour to convey the decision on the proposal for sanction within a period of three months with an extended period of one month.

The Supreme Court in the case of Vijay Rajmohan[30] held that three plus one month period is mandatory. However, the consequence of non-compliance with this mandatory requirement shall not be quashing of the criminal proceeding for

27 (2007) 1 SCC 1.
28 (1998) 1 SCC 226.
29 (2012) 3 SCC 64.
30 (2023) 1 SCC 329.

that very reason. The competent authority shall be accountable for delay and be subject to judicial review and administrative action by the Central Vigilance Commission.

The grant of sanction act as requisite at initial level of prosecution only. Mere grant of sanction doesn't confirm the conviction of the public servant as there can be no thumb rule that in a prosecution before the court of Special Judge, the previous sanction under Section 19 of the Act, would invariably be the only prerequisite. Furthermore, there is a material difference between the statutory requirements of section 19 of the Act and section 197 of the Cr.P.C. Under the PC Act, sanction is mandatory *qua* the public servant.[31] Procedure laid down under the section 19 doesn't amount to abuse of process or interest of justice and it cannot be quashed through the inherent powers of the high court under section 482 of the CrPC.[32] In relation to criminal conspiracy against a private individual under section 120-B[33] of the Indian Penal Code, 1860, the Supreme Court observed that:[34]

> The matter of sanction qua public servant would have no effect upon allegations of conspiracy and alleged cheating by private accused and the only effect would be Section 120B IPC would now not be used to prosecute private individuals for the offences under the Prevention of Corruption Act. Merely because the sanction is not granted does not mean the findings qua conspiracy/cheating cannot stand trial.

The act of sending sufficient and necessary materials to the sanctioning authority is liable to believed as a valid procedure to obtain the sanction. Sanction obtained thereby shall be valid and can be recorded as part of evidence.[35] Once sanction granted under section 19(1) of the Prevention of corruption Act for prosecution of the public servant, it is not necessary for the claimant to obtain any separate sanction from the government under the similar enactments such as under section 79(1) of the Kerala Value Added Tax Act, 2003 (KVAT Act).[36] These essentials ensure that the protection provided by section 19 is availed by public servants for

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31 *A. Sreenivasa Reddy* v. *Rakesh Sharma*, (2023) 8 SCC 711, para 59. See also *S.K. Miglani* v. *State (NCT of Delhi)*, (2019) 6 SCC 111.

32 *Anil Kumar* v. *State*, (2021) 4 HCC (Del) 445: 2021 SCC OnLine Del 5498.

33 Indian Penal Code, 1860, s. 120B. Punishment of criminal conspiracy.

34 *Ambuj Hotels & Real Estate (P) Ltd.* v. *Central Bureau of Investigation*, (2023) 3 HCC (Del) 242 : 2023 SCC OnLine Del 3869.

35 *C.N. Seshachalapathi Raju* v. *State of Andhra Pradesh*, (2023) 1 HCC (AP) 68 : 2023 SCC OnLine AP 754.

36 *G. Santhosh Kumar* v. *State of Kerala*, (2021) 2 HCC (Ker) 130: 2021 SCC OnLine Ker 2744.

actions performed in the course of their official duties, while also maintaining a system of accountability and oversight within the government for any potential misconduct.

IV. Conclusion

In a society that strives for justice and fairness, the changing legal landscape constantly adjusts to strike this balance. This is reflected in the ongoing effort to strengthen the integrity of public service while preserving the rule of law. The important notion is that public servants play an essential role in upholding the ideals of good governance, service delivery, and the efficient functioning of public offices. The law such as The Prevention of Corruption Act has established safeguards and legal provisions to shield the public servants from undue legal harassment, thus enabling them to execute their duties without fear of malicious legal actions. The evolving legal landscape remains a testament to a steadfast commitment to create a governance system that nurtures transparency, fairness, and the efficient delivery of public services while upholding the principles of justice and equity for all.