

## **Prevention Of Corruption Act, 2006**

**13 of 2006**

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## **Prevention Of Corruption Act, 2006**

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An Act for more effective prevention of bribery and corruption. Whereas it is expedient to make more effective provisions for the prevention of bribery and corruption in the state. Now, therefore, in exercise of the powers reserved under section 5 of the Jammu and Kashmir Constitution Act, 1996, read with the Proclamation issued

by His Highness and published in the extraordinary issue of the Government Gazette dated 7th Har, 2006, Yuvraj Shree Karan Singh Ji Bahadur is pleased to enact as follows:-

## **1. Short Title, Extent And Commencement :-**

(1) This Act may be called the Prevention of Corruption Act, 2006.

(2) It extends to the whole of the Jammu and Kashmir State and it applies 1[also] to the State Subjects and servants of the State wherever they may be.

(3) It shall come into force from the date it is published in the Government Gazette.

1 Inserted by Act XXII of 1958 w.e.f. 18-02-1958.

## **2. Interpretation :-**

1[2[(1) In this Act, unless the context otherwise requires,-

(a) "Designated Authority" shall mean such officer of the Government not below the rank of Secretary to Government, as may be specified by the Government by notification in the Government Gazette;

(b) "property" shall mean property and assets of every description, whether corporeal or incorporeal, moveable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets and includes bank account and proceeds of such property and assets;

(c) "Vigilance Organisation" shall mean the Vigilance Organisation established under sub-section (1) of section 10.]

3[(2)] For the purpose of the of this Act the expression "public servant" means a public servant as defined in Section 21 of the State Ranbir Penal Code and shall include,-

(a) a person who is or has been a member of either House of State Legislature or a member (including Minister of State) of the Council of Ministers;

(b) every person who is or has been under the employment of Government whether on permanent, temporary or work-charge basis;

(c) every officer, servant or member (by whatever name called) of a Corporation or of a corporate or other body which is established by or under an Act of the State Legislature or of Parliament in force in the state.

1 Substituted by Act IX of 1983 Section 2.

2 Inserted by Act No. I of 2006, dated 3rd January 2006.

3 Renumbered by Act No. I of 2006, dated 3rd January 2006.

**2A.** Section 2A :-

1 Omitted by Act IX of 1983.

**3. Certain Offences To Be Cognizable :-**

1[An offence punishable under section 5 of this Act or under section 161 or section 165 or section 165-A or section 167-A of the State Ranbir Penal Code, Samvat 1989 shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure, Samvat 1989 notwithstanding anything to the contrary contained therein:]

Provided that no Police Officer below the rank of the 2[xxx] Deputy Superintendent of Police shall investigate any such offence without the order of a Magistrate of the first class or make any arrest thereof without a warrant:

3[Provided further that if an officer of the 4[Vigilance Organisation] of and above the rank of a Sub- Inspector of Police is specially authorised in writing by an officer of the 3[Vigilance Organisation] not below the rank of an Assistant Superintendent of Police to investigate such offence, such officer may investigate the offence so specified in the order of authorisation. But such officer shall not be competent to arrest any person during such investigation, unless a Police Officer not below the rank of a 3[Deputy Superintendent of Police] authorises such arrest under section 56 of the Code of Criminal Procedure, Samvat 1989.]

1 Substituted by Act IX of 1983, Section 2.

2 Omitted by Act IX of 1983.

3 Second Proviso to section 3 inserted by Act XXI of 1958. (It was deleted by Act III of 2007).

4 Substituted by Act IX of 1983, Section 2.

**4. Presumption Where Public Servant Accepts Gratification Other Than Legal Remuneration :-**

1[(1) Where in any trial of an offence punishable under section 161 or section 165 of the Ranbir Penal Code, 1989 2[or an offence referred to in clause (a) or clause (b) of sub-section (1) of section 5 of this Act punishable under sub-section (2) thereof] 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 to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

3[xxx]

(2) Where in any trial of an offence punishable under section 165-A of the Ranbir Penal Code, 1989 (XII of 1989) 4[or under clause (ii) of sub-section (3) of section 5 of this Act] 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 161 of the Ranbir Penal Code, 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.

1 Section 4 renumbered as sub-section (1) and sub-section (2) and (3) inserted by Act II of 1958.

2 Inserted by Act IX of 1983, Section 8.

3 Proviso omitted by Act II of 1958.

4 Inserted by Act IX of 1983.

## **5. Criminal Misconduct :-**

(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 or reward such as is mentioned in section 161 of the State Ranbir Penal Code, Samvat 1989; 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 proceedings 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 persons 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, by corrupt or illegal means or by otherwise abusing his position as public servant obtains for himself or for any other person any valuable thing or pecuniary advantage; 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 can not satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

1[\* \* \*]

2[(1-A) Notwithstanding anything contained in sub-section (1), a member of medical or para-medical staff of the Sher-i-Kashmir Institute of Medical Sciences, Srinagar shall be deemed to have committed the offence of criminal misconduct if he resorts to private practice in any form or manner. The Government shall be competent to notify any other Institutes or College for purposes of this section.

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

Provided that the Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year but not less than six months.

2[(2-A) Whoever abets or aids in the commission of criminal misconduct under sub-section (1-A) or allows his premises or Nursing Home to be used for private practices in contravention of the said sub-section shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend up to rupees ten thousand:

Provided that the Sher-i-Kashmir Institute of Medical Sciences, Srinagar shall publish the names and particulars of its medical and para-medical staff annually in at least two local dailies.]

(3) Whoever commits-

(i) an offence punishable under section 162 or section 163 of the State Ranbir Penal Code, Samvat 1989; or

(ii) an offence punishable under section 165-A or section 167-A of the State Ranbir Penal Code, Samvat 1989;

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

Provided that the Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year but not less than six months.

(4) Whoever attempts to commit an offence referred to in clause (c) of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(5) Where a sentence of fine is imposed under sub-section (2) or sub-section (3), the Court in fixing the amount of 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), the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

(6) The provisions of this section shall be in addition to and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him.

1 Explanation omitted by Act No. I of 2006, dated 3rd January 2006.

2 Inserted by Act XXXVI of 2002, Section 3.

## **6. Previous Sanction Necessary For Prosecution :-**

1[No court shall take cognizance of an offence punishable under section 161 or section 164 or section 165 or section 167-A of the State Ranbir Penal code, Samvat 1989 or under sub-section (2) or sub-section (3) of section 5 of this Act, 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 State and is not removable from his office save by or with the sanction of the Government;

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

Explanation. - Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Government or any other authority, such sanction shall be given by the 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;

(c) in the case of person who is or has been a member of the Council of Ministers other than the Chief Minister, of the Governor on the advice of the Chief Minister;

(d) in the case of person who is or has been a Chief Minister, of the Governor;

(e) in the case of a person who is or has been a member of either House of the State Legislature, of the Speaker of the Legislative Assembly or the Chairman of the Legislative Council as the case may be.

1 Substituted by Act IX of 1983, Section 2.

**6A.** Particulars In A Charge In Relation To An Offence Under Section 5(1) (C) :-

1[Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, when an accused is charged with an offence under clause (c) of sub-section (1) of section 5, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates and the charge so framed shall be deemed to be a charge of an offence within the meaning of section 234 of the Code:

Provided that the time included between the first and last of such dates shall not exceed one year.

1 Inserted by Act IX of 1983, Section 3.

**7.** Accused Person To Be Competent Witness :-

Any person charged with an offence punishable under section 161 or section 165 1[or section 165-A] 2[or section 167-A of the Ranbir Penal Code, 1989, or under 3[xxx] section 5 of this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that-

- (a) he shall not be called as a witness except on his own request;
- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;
- (c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless-
  - (i) the proof that he has committed or been convicted of such offence is admissible in evidence to show that he is guilty of the offence with which he is charged, or
  - (ii) he has personally or by his pleader asked questions of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature of conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or
  - (iii) he has given evidence against any other person charged with the same offence.

1 Inserted by Act II of 1958.

2 Inserted by Act IX of 1983, Section 9.

3 Omitted *ibid*.

**7A.** The Code Of Criminal Procedure, Samvat 1989 To Apply Subject To Certain Modification :-

1[The provisions of the Code of Criminal Procedure, Samvat 1989, shall in their application to any proceeding in relation to an offence punishable under section 161, section 165, section 165-A or section 167-A of the State Ranbir Penal Code, Samvat 1989 or under section 5 of this Act, have effect as if,-

(a) sub-section (8) of section 251-A had been substituted by the following, namely:-

"(8) The accused shall then be required to give in writing within such time as the Magistrate may allow a list of persons, if any, whom he proposes to examine as his witnesses and of the documents, if any, on which he proposes to rely and shall then be called upon his defence and produces evidence and if the accused puts in any written statement, the Magistrate shall file it with record:

Provided that in case the accused does not disclose the name of the witnesses for fear of tempering with, he may not disclose the

names in which case he will be bound to produce the witnesses on his own responsibility on the next date of hearing without the assistance of the Court and will not claim any further adjournment on this count."

(b) in sub-section (1-a) of section 344, after the second proviso, the following proviso had been inserted, namely:-

"Provided also that the proceeding shall not be adjourned or postponed merely on the ground that application under section 435 has been made by a party to the proceeding".

(c) in sub-section (1) of section 435 before the Explanation, the following proviso had been inserted, namely: -

"Provided that where the powers under this sub-section are exercised by a Court on an application made by a party to such proceeding, the Court shall not ordinarily call for the record of the proceeding, -

(a) without giving the other party an opportunity of showing cause why the record shall not be called for; or

(b) if it is satisfied that an examination of the record of the proceeding may be made from the certified copies thereof;

and in any case the proceedings, before the inferior court shall not be stayed except for reasons to be recorded in writing.]

1 Inserted by Act IX of 1983, Section 9.

## **8. Statement By Bribe-Giver Not To Subject Him To Prosecution :-**

1[Notwithstanding anything contained in any law for the time being in force a statement made by a person in any proceeding against a public servant for an offence under section 161 or section 165 of the Ranbir Penal Code, 1989, or under sub-section (2) 2[or sub-section (4)] of section 5 of this Act, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under section 165-A of the said code.]

1 Section 8 inserted by Act II of 1958.

2 Inserted by Act IX of 1983.

## **8A. Superior Officers Of Police To Exercise Powers Of Officer-In-Charge Of A Police Station :-**

1[Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989 for the purposes of this Act, any officer of the 2[Vigilance Organisation] of and above the rank of Sub-

Inspector of Police shall, subject to the provisions of this Act, exercise any of the powers of the officer-in-charge of a Police Station anywhere in the State and when exercising such powers shall be deemed to be an officer-in-charge of the Police Station within the limits of which he is exercising such powers.]

1 Section 8-A inserted by Act XXI of 1958.

2 Substituted by Act IX of 1983.

**8B.** Powers Of The Investigating Officers :-

1[(1) If an officer (not below the rank of Superintendent of Police) of the Vigilance Organisation, investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted has been acquired by resorting to such acts of omission and commission which constitute an offence of criminal misconduct as defined under section 5, he shall, with the prior approval in writing of the Commissioner of the organisation, make an order seizing such property and, where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order or of the Designated Authority before whom the properties seized or attached are produced and a copy of such order shall be served on the person concerned:

Provided that the Investigating Officer may, at any stage of investigation after registration of F.I.R. in respect of any case under the Act where he has reason to believe that such property is likely to be transferred or otherwise dealt with to defeat the prosecution of the case direct, with the prior approval of the Vigilance Commissioner, that such property shall not be transferred or dealt with for such period, not exceeding ninety days, as may be specified in the order except with the prior approval of the Designated Authority.

(2) The Investigating Officer shall inform the Designated Authority, within forty-eight hours, of the seizure or attachment of such property together with a report of the circumstances occasioning the seizure or attachment of such property, as the case may be.

(3) It shall be open to the Designated Authority before whom the seized or attached properties are produced either to confirm or revoke the order of seizure or attachment so issued within seven days:

Provided that an opportunity of being heard is afforded to the

Investigating Officer and the person whose property is being attached or seized before making any order under this sub-section: Provided further that till disposal of the case Designated Authority shall ensure the safety and protection of such property.

(4) In the case of immovable property attached by the Investigating Officer, it shall be deemed to have been produced before the Designated Authority, when the Investigating Officer notifies his report and places it at the disposal of the Designated Authority.

(5) Any persons aggrieved by an order under the proviso to sub-section (1) may apply to the Designated Authority for grant of permission to transfer or otherwise deal with such property.

(6) The Designated Authority may either grant, or refuse to grant, the permission to the applicant.

(7) The Designated Authority, acting under the provisions of this Act, shall have all the powers of a civil court required for making a full and fair enquiry into the matter before it.

1 Sections 8-B to 8-F inserted by Act No.I of 2006, dated 3rd January 2006.

**8C.** Appeal Against The Order Of Designated Authority :-

(1) Any person aggrieved by an order made by the Designated Authority under sub-section (3) or sub-section (5) of section 8-B may prefer an appeal to the Special Judge (Anti Corruption) (hereinafter referred to as Special Court) and the Special Court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property or pass such order as it may deem just and proper within a period of sixty days.

(2) Where any property is seized or attached under section 8-B and the Special Court is satisfied about such seizure or attachment, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached is prosecuted in the Special Court for an offence under this Act.

(3) It shall be competent for the Special Court to make an order in respect of property seized or attached,-

(a) directing it to be sold if it is a perishable property and the provisions of section 525 of the Code of Criminal Procedure, Samvat 1989 shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Government, in the case of any other property, to perform the function of the Administrator of such

property subject to such conditions as may be specified by the Special Court.

**8D.** Issue Of Show Cause Notice Before Forfeiture Of The Property :-

No order under sub-section (2) of section 8-C shall be made by the Special Court-

(a) unless the person holding or in possession of such property is given a notice in writing informing him of the grounds on which it is proposed to forfeit such property and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter;

(b) if the person holding or in possession of such property establishes that he is a bona fide transferee of such property for value without knowing that such property has been so acquired.

**8E.** Appeal :-

(1) Any person aggrieved by order of forfeiture under section 8-C may within one month from the date of receipt of such order, appeal to the High Court.

(2) Where any order under section 8-C is modified or annulled by the High Court or where in a prosecution instituted for the contravention of the provisions of this Act, the person against whom an order of forfeiture has been made is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price as per prevailing market rate therefor as if the property had been sold to the Government with reasonable interest calculated from the date of seizure of the property and such price shall be determined in the manner prescribed.

**8F.** Order Of Forfeiture Not To Interfere With Other Punishments :-

The order of forfeiture made under this Act by the Special Court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under this Act.

**9.** Inspection Of Bank Accounts :-

(1) The Government may, by general or special order, authorise 1[any Police Officer] of and above the rank of 2[Deputy Superintendent of Police] or any officer of the 3[Vigilance Organisation] to inspect any account with a bank or a company in the State of a person against whom an offence under this Act is being investigated and such bank or company shall provide all facilities for inspection thereof and supply a copy of the account, if so required by such officer:

Provided that such officer shall not disclose any particulars contained in any such account except in the performance of his official duty or giving evidence before a Court.

(2) If any such officer discloses any particulars contained in any such account otherwise than in accordance with the proviso to subsection (.1), he shall be punished with imprisonment which may extend to six months and shall also be liable to fine, provided that no prosecution shall be instituted under this sub-section except with the previous sanction of the Government.

1 Substituted by Act III of 2007 for any officer of the Anti-Corruption Organisation."

2 Inserted by Act XXII of 1960.

3 Substituted by Act IX of 1983.

#### **9A.** Report Of The Vigilance Organisation :-

1[It shall be the duty of the Vigilance Organisation to submit half yearly to the Government a report as to the work done by it and the Government on receipt of such report, shall cause a copy thereof to be laid before the Legislature].

1 Section 9-A inserted by Act IX of 1983, Section 2.

#### **10.** Establishment Of Vigilance Organisation :-

1[(1) The Government may, by notification in the Government Gazette, establish an organisation for investigation of offence under this Act under the name of "Vigilance Organisation".

(2) The Organisation shall consist of a Vigilance Commissioner and such other officers and staff subordinate to him as the Government may from time to time think fit to appoint.

(3) The qualifications and eligibility for appointment as Vigilance Commissioner and other officers and staff shall be such as may be prescribed by the Government by rules made under this Act:

Provided that nothing in this sub-section shall apply to a person holding the post of Vigilance Commissioner and other officers and staff appointed before the commencement of the Jammu and Kashmir Prevention of Corruption Laws (Amendment) Ordinance, 1983 and such officers (including Vigilance Commissioner) and staff shall continue until replaced by the Government by persons eligible for appointment under this sub-section.

(4) The Vigilance Commissioner and the officers and staff subordinate to him shall hold office for such term and on such conditions as the Government may from time to time determine.

1 Sections 10,11,12 and 13 inserted by Act IX of 1983.

### **11. Superintendence And The Administration Of The Vigilance Organisation :-**

(1) The superintendence and control of the Vigilance Organisation shall vest in the Government.

(2) The administration of the Vigilance Organisation shall vest in the Vigilance Commissioner.

(3) The Vigilance Commissioner or any officer subordinate to him shall, in respect of the said Organisation, exercise such of the powers, exercisable by the Inspector General of Police in respect of the police force as may be specified by the Government from time to time in this behalf.

### **12. Conferment Of Additional Functions On Vigilance Commissioner :-**

(1) The Government may by notification, confer on the Vigilance Commissioner such additional functions in relation to eradication of corruption as may be specified in the notification.

(2) Where any additional functions are conferred on the Vigilance Commissioner, he shall exercise the same powers and discharge the same functions in respect of the said functions as he would in the case of any investigation under the Act and the provisions of this Act shall apply accordingly.

### **13. Construction Of References To Anti-Corruption Organisation In Other Laws, Orders Etc. :-**

Any reference in any other law, order, rule or notification in force in the State immediately before the commencement of the Jammu and Kashmir Prevention of Corruption Laws (Amendment)

Ordinance, 1983 (II of 1983) to the Anti- Corruption Organisation shall unless the context otherwise requires, be construed as reference to the Vigilance Organisation.