

(1)

**THE PREVENTION OF CORRUPTION ACT, 2006 (1949 A.D.)
(Act No. XIII of 2006)**

(Promulgated by Shree Yuvraj under section 5 of the Jammu & Kashmir Constitution Act, 1996 and published in the Government Gazette dated 25th Maghar, 2006).

An Act for more effective prevention of bribery and corruption.

Whereas it is expedient to make more effective provisions of the prevention of bribery and corruption in the State.

Now, therefore, in exercise of the powers reserved under section 5 of the Jammu & 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 (1949 AD).

(2) It extends to the whole of the Jammu & Kashmir State and it applies (also) to 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.

2. *Interpretation.*—For the purpose of this Act the expression 'public servant' means a public servant as defined in Section 21 of the State Ranbir Panal 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.

3. *Certain offences to be cognizable.*—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 (X X X) 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 :

Provided further that if an officer of the (Vigilance Organization) of and above the rank of a Sub-Inspector of Police is specially authorized in writing by an officer of (Vigilance Organization) 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 (Deputy Superintendent of Police) authorizes such arrest under section 56 of the Code of Criminal Procedure. Samvat 1989)

4. *Presumption where public servant accepts gratification other than illegal remuneration.*—(1) Where in any trial of an offence punishable under section 161 or section 165 of the Ranbir Penal Code 1989 (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 valuable thing from any person. It shall be presumed unless the contrary is proved that the accepted or obtained, or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as its mentioned in the said section 161, or as the case may be without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 165-A of the Ranbir Penal Code, 1989 (XII of 1989) 'for 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.

5. *Criminal misconduct.*—(1) 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 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 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 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 cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purpose of clause (e) the expression “property includes any interest in property, movable or immovable, and the proceeds of sale thereof and any money or investment which for the time being, represents the proceeds of sale.

(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.—

(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 terms 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) sub-section (3), the court in fixing the amount of fine shall take in 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 not be deemed to be in derogation of, any other law for the time being in force, and any provisions herein shall exempt any public servant from any liability, civil or criminal, apart from this section, be instituted against him.

6. *Previous sanction necessary for removal.*—No court shall take cognizance or an offence punishable under section 151 or section 164 or section 165 or section 167-A, of the Indian Penal Code, Section 1989 or under sub-section (2) of sub-section (1) of section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction:—

- (a) in the case a person who is employed in connection with the affairs of the State and is not removed from his office solely 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 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 or the Governor on the advice of the Chief Minister;
- (d) in the case of person who is or has been a Chief Minister or the Governor;
- (e) in the case of a person who is or has been a member of the House of the State Legislature, of the House of the Legislative Assembly or the Chairman of the Legislative Council, (as it may be.)

6-A. *Particulars in a charge in relation to an offence under section 5(1) (C).*—Notwithstanding anything in the Code of Criminal Procedure, Samvat 1989, when an accusation is made against a person under clause © of sub-section (1) of section 5 of this Act, the charge

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.

7. *Accused person to be competent witness.*—Any person charged with an offence punishable under section 161 or section 165 (or section 165-A) (or section 167-A) of the Ranbir Penal Code, 1989, or under [x x x] 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, any if asked shall not be required to answer, any question tending to show that it 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.

7-A. *The Code of Criminal Procedure, Samvat 1989 to apply subject to certain modification.*—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 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”.

8. *Statement by bribe-give not subject him to prosecution.*—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, 1909, or under sub-section (2) [or sub-section (4)] or 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.]

8-A. *Superior officers of Police to exercise powers of officer-in-charge of a Police Station.*—Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989 for the purposes of this Act, any officer of the [Vigilance Organization] 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 office-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.

9. *Inspection of bank accounts.*—(3) The Government may, by general or special order, authorize [any Police Officer] of an above the rank of [Deputy Superintendent of Police] [or any officer of the Vigilance Organization] 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 sub-section (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.

9-A. *Report of the Vigilance Organization.*—It shall be the duty of the Vigilance Organization to submit annually 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.]

10. *Establishment of Vigilance Organization.*—(1) The Government may, by notification in the Government Gazette, establish an organization for investigation of offence under this Act under the name of Vigilance Organization.

(2) The Organization 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 & 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.

11. *Superintendence and the administration of the Vigilance Organization.*—(1) The superintendence and control of the Vigilance Organization shall vest in the Government.

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

(3) The Vigilance Commissioner or any officer subordinate to him shall, in respect of the said Organization, exercise such of the powers exercisable by the Inspector General of Police or the Inspector of the police