DEPARTMENT OF SALES TAX
MAHARASHTRA STATE

MANUAL OF THE VIGILANCE BRANCH
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DEPARTMENT OF SALES TAX
MAHARASHTRA STATE

INTRODUCTION TO THE MANUAL OF VIGILANCE
BRANCH

The Directive Principles of the State Policy enshrined in the Constitution of India envisage various welfare activities to be undertaken by the State, such as provision of right to work & public assistance in case of unemployment, right to education, right to free legal aid etc. In order to raise resources for all such activities, any Government has to bank heavily upon collection of taxes, which the Legislature of the State has levied. As far as the State of Maharashtra is concerned, the importance of collection of revenue from the tax laws administered by the Sales Tax Department (STD) hardly needs any emphasis, since it is well known that it constitutes about 65% of the total revenue of the whole State. It is, therefore, of utmost importance that there are no leakages of revenue on any account whatsoever. As far as the attempts by the tax payers to evade the taxes is concerned, it is taken care of by the tax administration machinery through various measures. Still, there are problems where there is complicity between the tax evaders and administrative system.

GENESIS OF CORRUPTION & EFFORTS TO COMBAT IT

Any system of tax administration can never be fully immune from corruption, even though such a situation would be highly desirable and should be an ideal of any State. Corruption is perhaps as old as any system of administration. References to corruption in various departments of the Government can be found in “Kautiliyam Arthashastram”, the ancient treatise on the administration of the State, which also prescribes the punishments for such activities. It would be interesting to know that “Kautiliyam Arthashastram” was written about 2400 years ago, but the reasons and methods of corruption and the solutions for them described in it seem topical even today.
However, in recent times, Corruption emerged as a malaise affecting public services during the Second World War and continued to spread its tentacles despite the best efforts of the administration. One of the reasons for this was the controls exercised by the Government on various activities of trade and industry like manufacturing imports, exports, trading etc. This was done through various licences, quotas, permits, different taxes to raise resources, etc. This was aptly brought out by the Santhanam Committee on Prevention of Corruption, appointed by the Government of India, as under in its report, published in March 1964:

“The rapid expansion of Governmental activities in new fields afforded to the unscrupulous elements in public service and public life unprecedented opportunities for acquiring wealth by dubious methods. To this must be added the unfortunate decline of the real income of various sections of the community and particularly that of the salaried classes, a large part of which is found in Government employment.

……The assumption of new responsibilities by the Government has resulted in the multiplication of administrative process. Administrative power and discretion are vested at different levels of the executive, all the members of which are not endowed with the same level of understanding and strength of character.”

While bribery has all along been an offence since the time the Indian Penal Code came to be enacted in 1860, the circumstances during the Second World War and thereafter compelled the Government of India to give serious consideration to the problem of corruption. This led to the enactment of the Prevention of Corruption Act of 1947, which was later amended in 1988. The statement of Objects and Reasons of the original Bill stated:

“The scope for bribery and corruption of public servants had been enormously increased by war conditions and though the war is now over, opportunities for corrupt practices will remain for a considerable time to come. Contracts are being terminated; large amounts of Government surplus stores are
being disposed of; there will, for some years, be shortages of various kinds requiring the imposition of controls; and extensive schemes of post-war reconstruction, involving the disbursement of very large sums of Government money, have been and are being elaborated. All these activities offer wide scope for corrupt practices and the seriousness of the evil and the possibility of its continuance or extension in the future are such as to justify immediate and drastic action to stamp it out.”

Later, the Criminal Law Amendment Act, XL VI of 1952, was enacted to provide for speedy trial by Special Judges and to tighten up the procedure.

The leakage of tax revenue through evasion by unscrupulous dealers in any taxation system is possible sometimes also due to complicity of some corrupt elements in the administrative system. It is to avoid such a possibility that the function of vigilance has assumed importance. For example, at the national level, a statutory commission known as the “Central Vigilance Commission” has been established, with a Chief Vigilance Commissioner and two members. Similarly, a number of other State Government Departments and statutory bodies or corporations (e.g. Regional Transport Authority, Food & Drug Administration, State Excise Department MHADA, MSEB, MSRTC, etc.) have such Vigilance Branches in place since long. Presence of such a specialized branch in the STD is also need of the hour and hence, as a part of the new initiative to tackle corruption, the Vigilance Branch has been created.

**ANTI CORRUPTION BUREAU VIS-À-VIS INTERNAL VIGILANCE BRANCHES**

Even before the enactment of the Prevention of Corruption Act, the then Government of Bombay directed, in 1946, the constitution of the Anti-Corruption Branch in Greater Bombay as a distinct unit charged with the duty of taking up cases of bribery and corruption. In course of time, this grew into the present Anti-Corruption Bureau of the Maharashtra State. The functions of the ACB are as under:
• To collect intelligence to detect cases of bribery and corruption falling within the purview of Prevention of Corruption Act, 1988 and to investigate these offences.

• To institute enquiries into complaints made by the members of the public or received from Government officials and from Lokayukta and Upa-Lokayuktas relating to bribery, corruption, criminal misconduct, embezzlement of Government money and other venal practices by public servants.

However, given the enormity of the task to be undertaken in view of the size of the bureaucracy in the State, the ACB has itself suggested the formation of Vigilance Branches in all the Departments of the Government. ACB has also stated as under that it is the responsibility of the Vigilance Branches in the departments to root out corruption and the ACB is to supplement their efforts:

"With the limited staff available to them, it is not possible for the officers of the Bureau to act as internal vigilance organization of all the departments. The responsibility of rooting out or curbing corruption is that of the Heads of the respective Departments and the Vigilance Officers appointed for this work in different Departments. The Bureau is expected to supplement these efforts. The Bureau will take up only those cases which cannot be investigated or enquired into by the officers of the Departments, especially when, the enquiry involves recording of statements of a large number of witnesses outside not belonging to the concerned department and collection of documents from Banks and other offices. The Bureau investigates such cases thoroughly and ensures that the corrupt officials are brought to book to set an example to others.

The functioning of the Anti Corruption Bureau of the State Government as well as the Vigilance Branches in various departments of the Government is governed as per the provisions of the Prevention of Corruption Act, 1988. Hence, Annexures to the manual, *inter-alia*, include important provisions of this Act, which will give a fair idea of the various offences under that Act and the punishments prescribed for commission of such offences.
The present Manual describes the organization and structure of the Vigilance Branch, the scope of functions it is assigned to undertake, the jurisdiction and powers of the Branch, the job profiles of the Officers and staff, the documentation in the form of office registers to be maintained, and the reporting system to be followed.

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ORGANISATIONAL STRUCTURE OF THE VIGILANCE BRANCH

(1) The branch shall be headed by a Deputy Commissioner of Sales Tax, who shall report to the Commissioner of Sales Tax, Maharashtra State. There shall be Assistant Commissioners of Sales Tax and Sales Tax Officers, who shall assist the Deputy Commissioner of Sales Tax (Vigilance).

(2) The Deputy Commissioner of Sales Tax (Vigilance), Assistant Commissioners of Sales Tax and Sales Tax Officers of the branch shall be assisted by Sales Tax Inspectors and Clerks.

(3) If deemed necessary, zonal units may be formed to cater to the needs of the specified zones, which shall report to the Deputy Commissioner of Sales Tax (Vigilance).

JURISDICTION

Since it is expected that the functions of the Vigilance Branch shall encompass the entire State, the Deputy Commissioner of Sales Tax (Vigilance) shall have jurisdiction all over the State of Maharashtra.

POWERS UNDER SECTION 64

In order to carry out the functions of vigilance, it may be necessary, albeit in very exceptional cases, to exercise the powers of search and seizure. Hence, powers under section 64 have been delegated to the Deputy Commissioner of Sales Tax (Vigilance). He shall, however, exercise the powers under sub-sections (3) and (4) of section 64 i.e. of search and seizure only in exceptional cases, and only with the express permission of the Commissioner of Sales Tax, Maharashtra State.
JOB PROFILE OF POSTS IN VIGILANCE BRANCH

(1) Deputy Commissioner of Sales Tax (Vigilance).

(a) Overall in charge of the branch and supervision over functioning of the Assistant Commissioners, Sales Tax Officers, Sales Tax Inspectors and Clerks.

(b) Allotment of work among officers and staff having regard to the workload and to achieve optimum utilisation of resources.

(c) Supervision for timely disposal of complaints received from dealers / trade associations / other organizations / individuals.

(d) Fixing surprise visits to various branches and supervision over them.

(e) Fixing and supervision over surprise visits to places where Enforcement / Business Audit / Advisory Visits are taking place.

(f) Fixing and supervision over follow up visits to places where Enforcement / Business Audit / Advisory Visits have taken place.

(g) Interaction with Anti Corruption Bureau of the State Government.

(h) Supervision over preparation and follow up cases for disciplinary action related to corruption charges and recommendation for the same to Establishment Section.

(i) Maintenance and upkeep of property returns of officers and staff.

(2) Assistant Commissioners of Sales Tax and Sales Tax Officers.

(a) Surprise visits to sensitive branches.

(b) Surprise visits to places where Enforcement / Business Audit / Advisory Visits are taking place.
(c) Follow up visits to places where Enforcement / Business Audit / Advisory Visits have taken place

(d) Processing of complaints received from dealers / trade associations / other organizations / individuals.

(e) Report results of visits of (a), (b), and (c) above to Deputy Commissioner of Sales Tax (Vigilance) and putting up files related to (d) above.

(f) Preparation and follow up of cases for disciplinary action related to corruption charges.

(g) Property returns related matters assigned from time to time.

(3) Sales Tax Inspectors.

(a) Assisting Deputy Commissioner of Sales Tax (Vigilance) / Assistant Commissioner of Sales Tax / Sales Tax Officer in the discharge of all the above functions mentioned above.

(4) Clerks.

(a) Receipt of letters, files, documents, etc. from outside or from other branches of the department.

(b) Sending letters, files, documents, etc. to outside or to other branches of the department.

(c) Maintaining registers which are needed to keep up-to-date records.

(d) Assisting the Deputy Commissioner of Sales Tax (Vigilance) / Assistant Commissioner of Sales Tax / Sales Tax Officer in the discharge of functions of the branch.
FUNCTIONS OF THE VIGILANCE BRANCH

The functions of the branch shall be to take preventive measures so that the possibility of corruption is minimized, and, secondly to take action in cases where there are complaints of corruption. The guidelines issued by the General Administration Department of the Government of Maharashtra relating to the disposal of complaints relating to corruption shall be followed. The functions of the branch shall be broadly as follows:

(I) PREVENTIVE MEASURES

(1) Study of Procedures & Suggestions for Improvement:

Preventive measures shall include appraisal of the existing procedures followed in the various branches of the Department and suggestion for improvement, if any, in them so that there is systemic improvement, leading to the minimization of the points of corruption. The branches where there is day-to-day public interaction include Registration Branch, Central Repository Branch, Business Audit Branch, Large Tax Payer Unit and Refund & Refund Audit Branch. These branches follow certain procedures laid down as per their respective manuals. These procedures are still at a nascent stage as and their constant evaluation will be required to make them more effective and transparent. Such evaluation will have to done with a view to see that the time lag for all such business processes (e.g. grant of registration, grant of refund, disbursement of declarations, timely closure of audit visits, etc.) is reduced to the minimum.

(2) Surprise Visits to sensitive branches:

Preventive measures shall include surprise visits to the branches of the department which have day-to-day contacts with a large number of dealers, such as Registration Branch, Repository Branch, Refund Branch, etc. During such visits, the officer of the Vigilance Branch shall be expected to evaluate the pendency of the applications in the branches and report if there are inordinate delays noticed.
(3) FLYING SQUAD

(1) Follow up visits to the dealers who have been visited by the Advisory Visits Branch, Business Audit Branches, LTU, Survey or Enforcement Branches:

One of the functions of the Vigilance Branch officers will be to pay visits to the dealers who have been already visited by the various branches of the Department for functions like advisory visits, business audit, enforcement visits or refund audits. Since the number of visits by officers of these various branches will be very large, it is expected that out of such visits, the dealers for follow up visits will be chosen randomly out of data obtained from these branches. The dealers will have to be intimated for such visits by the Vigilance Branch. During the course of such visits, apart from the test audit of the dealer to examine correctness of functions carried out earlier, feedback about the visits which have taken place will be obtained from the concerned dealer.

(2) Real time check through visits:

Officers of the various branches of Department visit dealers for various purposes like advisory visits, business audits, refund audits, enforcement visits, etc. To have a real time check on such visits on a random basis, the officers of the Vigilance Branch are expected to pay visits to the spots where such visits are taking place. The respective branches shall forward a copy of the visits to be undertaken by them to the Vigilance Branch in advance, except the Enforcement Branches. In case of Enforcement Branches, this information is available with the Commissioner of Sales Tax, who may direct the Vigilance Branch to carry out visits at such place and at such time as he deems fit.

(II) MEASURES TO TACKLE COMPLAINTS

Inquiry into and disposal of the complaints received against corrupt practices followed by individual officers:

A number of complaints are received from various sources such as individual dealers, trade associations, associations of professionals, etc. When these complaints are specific and
verifiable, inquiry will be conducted by the Vigilance Branch into such complaints to arrive at a conclusion about the allegations made. If the complaints are found to be true, a report shall be submitted to the Commissioner of Sales Tax, Maharashtra State for further disciplinary action by the Establishment Branch of the Department.

If the complaints are not specific or incapable of verification, they shall be closed with the permission of the Commissioner of Sales Tax, Maharashtra State. When the complaints are received from the Government, a suitable report in all such cases shall be submitted to the Government.

(III) LIAISON WITH THE ANTI CORRUPTION BUREAU:

The Anti Corruption Bureau of the State Government carries out the function of controlling the corruption in the State through various measures. Since the functions of the Bureau and the Vigilance Branch are complementary to each other, and many a times complaints are received at both the places, it will be essential to have close coordination between these two agencies. It will, therefore, be necessary that periodic meetings take place, which will facilitate exchange of information and result in smooth and efficient working of both the agencies.

(IV) PREPARATION OF LIST OF OFFICERS / STAFF WITH DOUBTFUL INTEGRITY

As per circular instructions of the Government in General Administration Department issued on 30.10.2006, every department is required to prepare a list of officers and staff with doubtful integrity and forward it to the Anti Corruption Bureau for enquiry. After finalization of such list, it is to be taken into consideration at the time of promotions, postings, etc. It shall be responsibility of the vigilance branch to carry out this function.
(V) **CUSTODY AND MAINTENANCE OF PROPERTY RETURNS:**

It shall be the responsibility of the Vigilance Branch to have custody and maintain the property returns of the employees. This involves follow up with the employees for obtaining the property returns and its custody. Standing instructions issued by the Government also stipulate that for purchase of immovable/movable property by employees, they should either seek permission or send prior intimation. Such requests of intimation or requests for permission shall be processed by the Vigilance Branch.

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BUSINESS PROCESSES

(1) Complaints relating to corruption

(a) Receipt of complaints relating to corruption from various sources like individual dealers, trade associations, or associations of professionals;

(b) Entry of such complaints in the relevant register prescribed

(c) Submission of the case by the Sales Tax Inspector to the Assistant Commissioner or Sales Tax Officer

(d) Submission of the case by Assistant Commissioner or Sales Tax Officer to the Deputy Commissioner (Vigilance)

(e) Submission of the case by the Deputy Commissioner (Vigilance) to the Commissioner of Sales Tax, Maharashtra State

(f) Further follow up action as per the directions Commissioner of Sales Tax, Maharashtra State.

(g) Final closure of the complaint with the approval of the Commissioner of Sales Tax, Maharashtra State

(h) If the results of the inquiry so warrant, further report to the Commissioner of Sales Tax, Maharashtra State with recommendations

(i) If the complaint is received from Government, a report to the Government about the findings of the inquiry.

(2) Surprise visits to branches of the department

Since such periodic visits are to be an integral part of the functioning of the branch, prior permission shall not be necessary. However, if any facts or instances are noticed which merit action, report shall be made to the
Commissioner of Sales Tax, Maharashtra State with recommendations.

(3) Follow up visits

One of the functions of the branch is to have a flying squad to have a real time check at places where visits of the departmental officers are taking place or conduct follow up visits after the visits. The procedure for this function shall be as follows:

a. The information regarding places where visits of the Enforcement Branches are taking place or have already taken place is with the office of the Commissioner of Sales Tax, who shall direct the Vigilance Branch to visit such places and at such time, as he deems fit. A report about such visits shall be submitted on completion of the visit.

b. The information regarding the places where the visits of the Advisory Visit Branch, Business Audit Branch or Refund Audit Branch are taking place or have taken place is with the Joint Commissioner (Registration), or respective Joint Commissioners of Sales Tax (Business Audit) or Joint Commissioners of Sales Tax (VAT). Vigilance Branch shall collect data from the respective branches and conduct follow up visits in randomly selected cases. Report about such visits shall be submitted on completion of the visits.

c. During such follow up visits, it is expected that the concerned dealer is interviewed regarding the conduct of the officers and staff who have visited him. It is possible that some disgruntled dealers may make frivolous complaints against the officers and staff and necessary care will have to be exercised to verify the facts and arrive at conclusions only after the concerned employees are given an opportunity to put forward their say in the matter.
If there are specific complaints of collusion between the dealer and the visiting officials, and if prima-facie such facts are established on follow up visit, then recourse to remedial measures can be taken by Vigilance Branch officers like business audit and subsequent assessment, if necessary. It may be necessary, though very rarely, that powers of search and seizure are required to be exercised in respect of a dealer. For such an eventuality, such powers have been delegated to the Deputy Commissioner (Vigilance). However, these powers shall be exercised only with the express permission of the Commissioner of Sales Tax, Maharashtra State.
DEPARTMENT OF SALES TAX

ANNEXURES TO THE MANUAL OF VIGILANCE BRANCE
## Format of monthly reporting

*Abstract of cases for the month* ________________

<table>
<thead>
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### Formats of Control registers

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Visit Register विक्रीकर अधिका-यांची व्यापा-यांच्या आस्थापनेस व इतर ठिकाणी शासकीय कामासाठी भेट देण्याची नॉंडवही.
Visit Register.

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IMPORTANT CIRCULARS ISSUED BY THE GENERAL ADMINISTRATION DEPARTMENT

(1) Anonymous complaints against employees: The gist of the instructions issued on this subject is as under:

(a) It is not necessary that inquiry should be conducted in each and every anonymous or pseudonymous complaint received. However, if such complaints mention specific instances or points which justify verification, then inquiry should be conducted in such instances or points.

(b) Such instances or points should be decided and inquiry should be conducted in all such instances or points.

(c) Such inquiry should be conducted impartially and confidentially.

(2) Agency for preliminary investigation/inquiry:

The decision in this regard depends upon the nature of offence. The cases in which detailed investigation, searches or recording a number of statements is involved, such cases should be forwarded to the ACB for those purposes as it is the appropriate agency to conduct such operations. In other cases, since it is expected that the Head of the Department is fairly aware about the integrity and character of the employees, they need not be sent to ACB. However, where it is necessary to resort to steps like setting a trap, again, the ACB is the appropriate agency.

(3) Anonymous complaints received by the ACB

Some such complaints may be received by the ACB directly. In such cases, if they are found to be worth an inquiry, ACB should send them to the Head of Department under whom the employee is working and call for his remarks taking into account the reputation of the employee and the background of the instances contained in the complaint. In such cases the Head of the
Department himself should send his remarks to the ACB. However, in no case, such complaint should be sent to the employee complained against for his remarks.

(4) Speedy inquiry in the case of suspended Government employees

(a) It is observed that there is inordinate delay in inquiry by police or other authorities, which results in delay in filing of charge-sheets in courts, in cases in which prosecution is launched.

(b) Charge-sheet should be filed within six months from the date of suspension of the employee, or in case of departmental enquiry should be served on him. This period can be extended for further six months in cases which are very difficult to inquire into.

PROVISIONS RELATING TO PROPERTY RETURNS

(1) Every employee of the Government is required to file a statement of his immovable and movable property every five years. This statement is to be filed before 31\textsuperscript{st} March and covers period up to 31\textsuperscript{st} December of preceding year.

(2) Every employee has to file such a statement within three months of his joining the Government service, and thereafter he has to file such a statement every five years.

(3) Such returns are to be submitted in a sealed envelope and are to be treated as secret. However, these can be opened in case of inquiry related to corruption or if information is called by the Anti Corruption Bureau.

(4) Details of property purchased in the name of wife or any other family member or any other person has to be supplied if the source of fund for the same is from the employee.

(5) Purchase of immovable property has to be informed to the competent authority. However, if the transaction is with a person who has official dealings with the employee, or if it
is with a dealer who is not reputed, then prior permission of the Government is necessary.

(6) When a Class I or Class II officer has to purchase movable property valued at Rs.10,000/- or more, intimation about the same has to be made to Government. This limit is Rs.5,000/- in case of Class III and Class IV employees. However, if the transaction is with a person who has official dealings with the employee, or if it is with a dealer who is not reputed, then prior permission of the Government is necessary.
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PREVENTION OF CORRUPTION ACT, 1988

SECTION 2. DEFINITIONS.

(a) "Public duty" means a duty in the discharge of which the State, the public or the community at large has an interest-

Explanation. -In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned controlled or aided by the Government company as defined in Section 617 of the Companies Act, 1956 (I of 1956),

(b) "Public Servant" means any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

Explanation -Whenever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

SECTION 3. POWER TO APPOINT SPECIAL JUDGES.

(1) The Central Government or the State Government may, by notification in the official Gazette, appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely: -

(a) Any offence punishable under this Act; and

(b) Any conspiracy to commit, any attempt to commit, or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Session
Judge or an Assistant Session Judge under the Code of Criminal Procedure 1973 (2 of 1974).

**SECTION 7. PUBLIC SERVANT TAKING GRATIFICATION OTHER THAN LEGAL REMUNERATION IN RESPECT OF AN OFFICIAL ACT.**

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise shall, be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

**Explanation.** -

(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification. -The word "gratification" is not restricted to pecuniary gratification or to gratifications estimable in money.

(c) "Legal remuneration". -The words "legal remuneration" are not restricted to remunerations which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the Organisation, which he serves, to accept.
(d) "A motive or reward for doing". -A person who receives a gratification as motive or reward for doing what he does not intend or is not in a position to do, or has not one, comes within this expression;

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

SECTION 8. TAKING GRATIFICATION, BY CORRUPT OR ILLEGAL MEANS, TO INFLUENCE PUBLIC SERVANT.

Whoever accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

SECTION 9. TAKING GRATIFICATION FOR EXERCISE OF PERSONAL INFLUENCE WITH PUBLIC SERVANT.

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a
motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render to attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

**SECTION 10. PUNISHMENT FOR ABETMENT BY PUBLIC SERVANT OF OFFENCES DEFINED IN SECTION 8 OR 9.**

Whoever, being a public servant, in respect of whom either of the offences defined in Section 8 or Section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

**SECTION 11. PUBLIC SERVANT OBTAINING VALUABLE THING, WITHOUT CONSIDERATION FROM PERSON CONCERNED IN PROCEEDING OR BUSINESS TRANSACTED BY SUCH PUBLIC SERVANT.**

Whoever, being a public servant, 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 such public servant, 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, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

SECTION 12. PUNISHMENT FOR ABETMENT OF OFFENCES DEFINED IN SECTION 7 OR 11.

Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

SECTION 13. CRIMINAL MISCONDUCT BY A PUBLIC SERVANT.

(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 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 interests 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 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.

**SECTION 14. HABITUAL COMMITTING OF OFFENCE UNDER SECTIONS 8, 9 AND 12. -WHOEVER HABITUALLY COMMITS.**

(a) An Offence punishable under Section 8 or Section 9; or

(b) An offence punishable under Section 12, shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

**SECTION 15. PUNISHMENT FOR ATTEMPT.**

Whoever attempts to commit an offence referred to in Clause (c) or Clause (d) or sub-section (1) of Section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

**SECTION 16. MATTERS TO BE TAKEN INTO CONSIDERATION FOR FIXING FINE.**

Where a sentence of fine is imposed under sub-section (2) of Section 13 of Section 14, the Court in fixing the amount of the 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) of Section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

**SECTION 17. PERSONS AUTHORISED TO INVESTIGATE.**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank, -
(a) In the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) In the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 9 of the Code of Criminal Procedure, 1973, of an Assistant Commissioner of Police;

(c) Elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant;

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be or make arrest therefore without a warrant:

Provided further that an offence referred to in Clause (e) of sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

**SECTION 18. POWER TO INSPECT BANKERS’ BOOKS.**

If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under Section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any banker’s, books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any banker’s,
books in so far as they relate to the accounts of the persons suspected to have committed that offence or of other person suspected to be holding money on behalf of such person, and take or cause or to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his power under this section.

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation. - In this section, the expressions "bank" and "banker's books" shall have the meanings respectively assigned to them in the Bankers' Books Evidence Act, 1891,

**SECTION 19. PREVIOUS SANCTION NECESSARY FOR PROSECUTION.**

(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, -

(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;

(c) In the case of any other person, of the authority competent to remove him from his office.
(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that 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.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

(a) No finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;

(b) No court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) No court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have
been raised at any earlier stage in the proceedings.

Explanation. -For the purposes of this section, -

(a) Error includes competency of the authority to grant sanction;

(b) A sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

SECTION 20. PRESUMPTION WHERE PUBLIC SERVANT ACCEPTS GRATIFICATION OTHER THAN LEGAL REMUNERATION.

(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or Clause (a) or Clause (b) of sub-section (1) of Section 13 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 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 is mentioned in Section 7 or, as the case may, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under Clause (b) of Section 14, 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 the valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, 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.

SECTION 21. ACCUSED PERSON TO BE A COMPETENT WITNESS.

Any person charged with an offence punishable under this Act, shall be a competent witness for the defense 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 at 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
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 any question 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 or conduct of the defence is such as to involve amputations 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.

SECTION 22. THE Code of Criminal Procedure, 1973 TO APPLY SUBJECT TO CERTAIN MODIFICATIONS.

The provisions of the Code of Criminal Procedure 1973 shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,

(a) In sub-section (1) of Section 243, for the words "The accused shall then he called upon," the words "The accused shall then be required to give in writing at once or within such time as the court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then he called upon" had been substituted;

(b) In sub-section (2) of Section 309, after the third proviso, the following proviso had been inserted, namely: -

"Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under Section 397 has been made by a party to the proceeding."
(c) After sub-section (2) of Section 317, the following sub-section had been inserted, namely: -

"(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination."

(d) In sub-section (1) of Section 397, before the Explanation, the following proviso had been inserted, namely: -

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

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

(b) If it is satisfied that an examination of the record of the proceedings may be made from the certified copies."

SECTION 23. PARTICULARS IN A CHARGE IN RELATION TO AN OFFENCE UNDER SECTION 13. (1) (C).

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, when an accused in charged with an offence under Clause (c) of sub-section (1) of Section 13, 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 one offence within the meaning of Section 219 of the said Code.

SECTION 24. STATEMENT BY BRIBE-GIVER NOT TO SUBJECT HIM TO PROSECUTION.

Notwithstanding anything contained in any law for the time being in force, a statement made by person in any proceeding against a public servant for an offence under Sections 7 to 11 or under Sections 13 or Section 15, that he offender 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 12.

SECTION 25. APPEAL AND REVISION.

Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973, on a High court as if the Court of the special Judge were a Court of Session trying cases within the local limits of the High Court.