Corruption Charges and Prior Sanction

Mains: *GS-II Polity & Governance | Judiciary*

Why in News?

Recently, A two-judge Bench of the Supreme Court has delivered a split verdict on the constitutional validity of Section 17A of the Prevention of Corruption Act, 1988 (PCA, 1988).

What is the PCA, 1988?

- **Santhanam committee** – The Central government had constituted a committee on prevention of corruption under the chairmanship of K. Santhanam in 1962, submitted its report in 1964.
- **Key Recommendations** – Strengthening laws against bribery and criminal misconduct, establishing vigilance bodies in government departments and greater accountability of public servants.
- **PCA, 1988 –** A ***comprehensive act*** was enacted to consolidate the law relating to prevention of corruption in the form of PCA, 1988.
- It provides for punishment with respect to offences committed by public servants while performing public duties.
- **Public servant –** Includes any government or local authority employee, any Judge, any person who holds an office by virtue of which he is required to perform a public duty etc.
- **Public duty –** It means a duty in the discharge of which the government, the public or the community at large has an interest.
- **Type of Offence –** The type of offences punishable under the PCA, 1988 include bribery, undue advantage without consideration, criminal misconduct, disproportionate assets, and abuse of position etc.

What is Section 17A?

- **Section 19 of the PCA, 1988** – Prior sanction needed *before prosecution in court*.
- It requires prior sanction from the appropriate government before prosecution of a public servant in a court of law.
- In other words, No public servant can be prosecuted in court without prior sanction from the appropriate government.
- **Concerns –** However, it was felt that there needs to be a distinction in dealing between intentional corruption and decisions taken in good-faith that could potentially go wrong.
- Officers become reluctant to take bold and timely decisions because of fear of

wrongful prosecution.

- **Section 17A –** Prior approval needed *before investigation itself*.
- In order to address this issue, the Parliament inserted Section 17A through an amendment of the PCA in the year 2018.
- **Requirement –** This section requires prior approval from the appropriate government is needed for initiating an inquiry or investigation into alleged offences.
- **Scope –** It applies when allegations relate to any recommendation made or decision taken by a public servant in discharge of official duties.

What were the earlier rulings?

- **Vineet Narain versus Union of India (1998) –** The SC struck down an executive order, referred to as 'Single Directive', issued to the CBI, to get prior sanction of the designated authority before initiating investigation against certain categories of public servants.
- **Delhi Special Police Establishment (Amendment) Act (DSPE), 2003** – It governs the functioning of the CBI, added Section 6A to this act.
    - **Section 6A** – It required prior approval of the Central government to initiate any investigation against officers at the rank of Joint Secretary or above.
- **Dr. Subramanian Swamy vs Director, CBI, 2014** – The SCt struck down Section 6A as violative of Article 14 of the Constitution that guarantees equality before law.
- The court said no special protection for senior officials; corruption must be investigated equally.

What is the current split verdict?

- **Case Context –** The Public Interest Litigation (PIL) filed by the Centre for Public Interest Litigation (CPIL) against the Union of India.
- **Issue –** The Constitutional validity of Section 17A, PCA 1988 (prior approval before investigation of public servants).
- Two-judge division Bench of the Supreme Court has given the split verdict and referred the matter to the higher bench.
- **Justice K. V. Viswanathan's view** – He ruled that Section 17A is valid, but with safeguards.
- Held that the requirement of obtaining prior approval before initiating investigation was necessary in order to protect honest officers from vexatious and frivolous complaints.
- **Reasoning –** Protection against frivolous complaints is essential to safeguard honest officers, as without it the bureaucracy may adopt a cautious 'play-it-safe' approach.
- **Condition –** Section 17A is valid only if approval for investigation comes from an independent agency, not the government.
- Section 17A should work together with the Lokpal and Lokayuktas Act, 2013.
- The approval for investigation must come from the appropriate government, but only on the basis of a binding opinion given by the Lokpal for Central government employees and the Lokayuktas for State government employees.
- **Justice B. V. Nagarathna's view –** She held that Section 17A was unconstitutional and tantamount to 'Old wine in new bottle' that was struck down in earlier cases by

the court.

- **Reason –** She held that Article 14 requires intelligible differentia and rational nexus to the legislative object, and that Section 17A fails on both counts.
- She held that adequate protection for honest officers in the form of prior sanction from the government before prosecution by a court is already available under Section 19 of the PCA.

What lies ahead?

- **Swift Disposal of Corruption Cases –** There must be swift disposal of cases and handing over punishments for guilty public servants that would act as a deterrent against corruption.
- **Penalty for False/Malicious Complaints** – Imposing penalties on false and malicious complaints would serve as a strong deterrent against habitual and vexatious allegations.

Reference

The Hindu | Should corruption charges need prior sanction?

