

**THE PREVENTION OF CORRUPTION
(ANDHRA PRADESH) AMENDMENT ACT, 2009**

*An Act to amend the Prevention of Corruption Act, 1988 in
its application to the State of Andhra Pradesh*

Draft bill presented to the Hon'ble Speaker Sri N. Kiran Kumar Reddy
and the leader of the House, Dr. Y.S. Rajashekhar Reddy,
by Dr. Jayaprakash Narayan, Lok Satta Party.

STATEMENT OF OBJECTS AND REASONS

"Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid." -Kofi Annan

Corruption has for many, become a matter of habit, ranging from grand corruption involving persons in high places to retail corruption touching the everyday life of common people. Anti-corruption interventions so far made are seen to be ineffectual and there is widespread public cynicism about them.

Prior interventions have been considered as mere posturing without any real intention to bring the corrupt to book, and have been inferred to be handy weapons for partisan, political use to harass opponents. Corruption is so deeply entrenched in the system that most people regard corruption as inevitable and any effort to fight it as futile. This cynicism is spreading so fast that it bodes ill for our democratic system itself.

In fact, there is no reason to believe that we, as a people, are more prone to corruption than any other culture or society. Wherever competition and choice are institutionalized, and technology and transparency have been introduced, corruption has been reduced. What we need is political will, systemic improvement and relentless and assured application of law.

The present law against corruption and its application suffer from several lacunae including absence of effective provisions for forfeiture of property of corrupt public servants, dilatory processes because of overload of criminal cases in courts, political

control of investigative agencies, weak prosecution, and legal requirements of prior sanction of prosecution of public servants accused of corruption.

The various Committees and Commissions constituted by the State and Union Governments have reiterated the need to amend the Prevention of Corruption Act, 1988. In furtherance of this intention, the proposed Act integrates the various recommendations, guidelines and suggestions of the 166th Law Commission Report, the 2nd Administrative Reforms Commission's 4th Report amongst others.

A law is required to amend that Prevention of Corruption Act, 1988 in order to make it more effective in fighting the menace of corruption. In addition, a separate legislation is needed to eliminate multiplicity of agencies dealing with wrong doing of public servants, to strengthen the institution of Lok Ayukta and sharpen its jurisdiction, and make elected and appointed public servants more accountable.

This Act is aimed at amending the Prevention of Corruption Act, 1988 in so far as it applies to Andhra Pradesh, and to empower institutions to function independently, to eradicate corruption, seize and attach property or assets during investigation, and prosecute wrong doers without undue delays, in furtherance of justice, equity and good conscience

Draft Bill

The Prevention of Corruption (Andhra Pradesh) Amendment Act, 2009

*An Act to amend the Prevention of Corruption Act, 1988 in its application to the state of
Andhra Pradesh*

**Be it enacted by the Andhra Pradesh legislature in the Sixtieth Year of the
Republic of India as follows:-**

- 1. Short title and commencement:-** (1) This Act may be called the Prevention of Corruption (Andhra Pradesh) Act, 2009

(2) It shall come into force from the date of its publication in the Government Gazette

- 2. Insertion of clause (xiii) to sub section(c) of Section 2-** After clause (xii) of subsection (c) the following clause shall be added which shall read as: - Any person holding any elective or nominated office in Panchayat, Municipalities, Municipal Corporations, State Legislative Assembly and Legislative Council.

- 3. Amendment of Section 3 in the Principal Act-** The existing section 3 of the Prevention of Corruption Act shall be renumbered as sub-section (2) thereof and before the sub-section(2),as so renumbered, the following sub-section(1) shall be inserted namely:-

1) The Central Government or the State Government may, by Notification in the Official Gazette appoint as many special courts as may be necessary for such area or areas or for such a case or group of cases as may be specified in the notification to try the following offences,

Provided that there shall be at least one special court per district that shall be established exclusively to try offences under this act.

namely. –

(a) Any offence punishable under this Act whose pecuniary value is 1 lac and above;

(b) Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a) whose pecuniary value is 1 lac and above.

Explanation: - Pecuniary limit may be fixed by State Government in consultation with Lok Ayukta from time to time.

4. Insertion of Section 3A in the Principal Act- After Section 3 of the Principal Act the following Section shall be added namely:-

3A(1) The State Government shall appoint a Special Prosecutor for each special court on the recommendations of the High Court who will conduct, in such Court, any prosecution, appeal or other proceeding on behalf of the State Government, as the case may be.

(2) The special prosecutor so appointed shall be a judicial officer of the rank of “Chief Judicial Magistrate”, for a finite term of not less than three years at the recommendation of the High Court.

5. Insertion of Section 12 A in the Principal Act:- After Section 12 of the Principal Act the following section shall be inserted namely:-

(1) All offences under this act which result in or intend to result in a loss to the state exchequer or loss of public assets or severely compromise public safety, then the court shall presume that the public servant and the beneficiary of the decision, committed an offence of ‘collusive bribery’. In all cases of collusive bribery the punishment shall be double that of the punishment prescribed for similar cases of bribery.

(2) In any criminal proceedings under this Section, once a prima facie case is established there shall be a presumption of guilt of the accused and the burden of proof of innocence rests on the accused.

6. **Insertion of Section 13-A, 13-B, 13-C, 13-D in The Prevention of Corruption Act 1988**-After Section 13 of the Principal Act, the following sections shall be inserted namely:-

13A Punishment for perversion of the Constitution and other democratic institutions by Public Servant- Whoever indulges in gross perversion of the Constitution and democratic institutions, including, willful violation of the oath of office shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine.

13B Punishment for abuse of authority by public servant- Whoever abuses his authority unduly favouring or harming someone, without any pecuniary consideration or gratification shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine.

13C Punishment for influencing law enforcement agencies by public servant- Whoever unduly influences law enforcement agencies and prosecution and abets in obstruction or perversion of justice shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine.

13D Punishment for causing loss to public exchequer by public servant- Whoever squanders public money by leading ostentatious official life-styles shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine.

7. Insertion of a New Chapter III A- After Chapter III the following chapter shall be inserted namely III A “Seizure and Forfeiture of ill-gotten money of the Corrupt Public Servants”:-

SEIZURE AND FORFEITURE OF ILL-GOTTEN MONEY OF THE CORRUPT PUBLIC SERVANTS

Section 16 A: For the purpose of seizure and property of a public servant, a public servant is:

- 1) Every public servant-
 - (a) Who has been found guilty of corruption in a disciplinary/departmental enquiry or by a court or
 - (b) Who is holding or in possession of illegally acquired properties
 - (c) Who is found holding or in possession of properties whether in the course of search, raid or survey by an authority or in any matter whatsoever, which are disproportionate to his known means of income
- 2) Every person is the relative of the public servant referred to in clause(1)
- 3) Every associate of public servant referred to in clause (1)
- 4) Any holder of any property which was at any time previously held by the public servant referred to in clause(1), unless such holder proves that he was a transferee in good faith for consideration
- 5) Any person who has deposited any amounts or other movable properties in any bank or any other concern outside the territory of India, or has acquired any properties outside the territory of India without the requisite permission of the appropriate authority in India

Explanation 1: - For the purposes of sub section (2) “relative” in relation to a public servant means –

- (i) spouse of the public servant;
- (ii) brother or sister of public servant;
- (iii) brother or sister of the spouse of the public servant;
- (iv) any lineal descendant of the public servant;
- (v) any lineal ascendant or descendant of the spouse of the public servant;
- (vi) spouse of the person referred to in clause (ii);
- (vii) any lineal descendant of the person referred to in clause (ii) or clause (iii).

Explanation 2: - For the purposes of clause (3), “associate”, in relation to a public servant means—

- (i) any individual who had been or is residing in the residential premises (including outhouses) of such public servant;
- (ii) any individual who had been or is managing the affairs or keeping the accounts of such public servant;
- (iii) any association of persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act, 1956, of which such public servant had been or is a member, partner or director;
- (iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals partnership firm or private company referred to in clause (iii) at any time when such public servant had been or is a member, partner or director of such association, body, partnership firm or private company;
- (v) any persons who had been or managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in clause (iii)
- (vi) the trustee of any trust, where---
 - (a) the trust has been created by such public servant; or
 - (b) the value of the assets contributed by such public servant (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which the contribution is made, to not less than twenty per cent of the value of the assets of the trust on that date;
- (vii) where the competent authority, for reasons to be recorded in writing, considers that an properties of such public servant are held on his behalf by any other person, such other person.

Explanation 3: - For the avoidance of doubt, it is hereby provided that the question whether any person is a person to whom the provisions of this Act apply may be determined with reference to any facts, circumstances or events (including any conviction or detention) which occurred or took place before the commencement of this Act.

Section 16 B:

Notice of Forfeiture

- (1) If, having regard to the value of the properties possessed or held, whether within the territory of India or anywhere else, by any person to whom this Act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of action taken under section 16G, 16H, 16I, or 16J or otherwise the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the State Government under this Act.
- (2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.
- (3) (a) Simultaneously within the issuance of the notice under sub-section (1) or at any time thereafter, the Competent Authority may attach all the properties generally, or any of the properties specified in the notice, held by or in possession of the person to whom the notice under sub-section (1) is issued, such attachment shall be effective till the passing of the final orders by the Competent Authority, unless vacated by the Competent Authority earlier.

Explanation: An order of attachment issued under this clause shall also operate as an injunction against the person restraining him from transferring or dealing with the attached properties in any manner, except under the orders of the Competent Authority.

- (b) An order under clause (a) can also be directed to any person or bank or any other institution, authority or organization, holding properties for and on behalf of the person to whom the notice under sub-section (1) is or has been issued. On being apprised of such order, the person, the bank, the institution, authority or

organization shall hold all the properties of the person to whom the notice under sub-section (1) is issued or the specified properties, as the case may be, subject to the orders of the Competent Authority and shall not part with those properties except under the orders of the Competent Authority.

- (4) (a) Where any claim is preferred to, or any objection is made to the attachment of any property under sub-section (3) on the ground that such property is not liable to such attachment, the competent authority shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the competent authority considers that the claim or objection was designed or unnecessarily delayed.

- (b) The claimant or objector must adduce evidence to show that the property attached is not liable to be forfeited under the provision of this Act.
- (c) Where upon such investigation, the competent authority is satisfied that such property is not liable to be forfeited under the provisions of this Act, he shall release the same from attachment. In case he is not so satisfied, he shall disallow the claim or the objection.
- (d) Where a claim or objection is preferred, the party against whom the order is made, may institute a suit in a Civil Court to establish the right which he claims to the said property but subject to the result of such suit, if any, the order of the competent authority shall be conclusive.

Section 16 C: Forfeiture of property in certain cases

- (1) The competent authority may, after considering the explanation, if any, to the show-cause notice issued under Section 16B and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.

- (2) Where the competent authority is satisfied that some of the properties referred to in the show-cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties, which, to the best of its judgment, are illegally acquired properties and record a finding according under sub-section 1.
- (3) Where the competent authority records a finding under this Section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to provisions of this Act stand forfeited to the State Government free from all encumbrances.
- (4) Where any shares in a company stand forfeited to the State Government under this Act, then, the company, shall, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the State Government as the transferee of such shares.

Section 16 D: Burden of Proof

In any proceedings under this Act, the burden of proving that any property specified in the notice served under Section 16B is not illegally acquired property shall be on the person affected.

Section 16 E : Fine in lieu of Forfeiture

- (1) Where the competent authority makes a declaration that any property stands forfeited to the State Government under Section 16H and it is a case where the source of only a part, being less than one-half, of the income, earnings or assets with which such property was acquired has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part.

Explanation: For the purpose of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be-

- (a) In the case of any part of income or earnings, the amount of such part of income or earnings;
 - (b) In the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets;
- (2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.
- (3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under section 16C and thereupon such property shall stand released.

Section 16 F : Procedure in relation to certain trust properties

In the case of any person referred to in clause (vi) of Explanation 4 of Section 16B, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust is illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within such time as may be specified in the notice which shall not ordinarily be less than thirty days, to explain the source of the money or other assets out of or by means of which such property was acquired or, as the case may be, the source of the money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under Section 8 and all the other provisions of this Act shall apply accordingly.

Section 16 G: Power to Call for Information

(1) If the competent authority has reason to believe that any person is in possession of holding illegally acquired properties, whether within India or abroad, it may serve a notice upon such person to disclose, by way of an affidavit, a true, full and up-to-date list of properties held by him or in his possession and those held by or in possession of his relatives and associates. The competent authority may after making such enquiry as it may think fit,

take such action on the basis of the information so furnished and the other material, if any, gathered by it including the action contemplated by Section 16B.

Explanation: The death of the public servant or the person to whom this Act applies, whether before the issuance of a notice under this section or under section 16B or any other provision of this Act or during the pendency of any proceedings under this Act shall not prevent the initiation or continuation of the proceedings under this Act and all or any proceedings under this Act can be initiated or continued against the relatives or associates of the public servant or against the legal representatives of the person to whom this Act applies, as the case may be.

(2) Any person furnishing false information under sub-section (1) and any person refusing to furnish information called for under sub-section (1) shall on conviction by a criminal court, be liable to be punished by imprisonment of either description for a term which may extend to three years or fine or both.

(3) Notwithstanding anything contained in the Criminal Procedure Code 1973, the offence under sub-section (2) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said code (except sub-section (2) of Section 202) shall be applicable thereto.

Section 16 H: Information to competent authority

(1) Notwithstanding anything contained in any other law, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority or a Bank, a company, a firm or any other institution, establishment, organization or any individual to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or

relevant to, the purposes of this Act. Failure to furnish the information so called for or furnishing false information shall be punishable with imprisonment of either description for a term which may extend to three years and fine.

(2) Notwithstanding anything contained in the Criminal Procedure Code, 1973, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code (except sub-section (2) of section 262) shall be applicable thereto.

(3) Any officer of the Income-Tax Department, the Customs Department or the Central Excise Department or any officer of enforcement appointed under the Foreign Exchange Regulation Act, 1973, may furnish suo moto any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purpose of this Act.

Section 16 I: Filing of Statement of Assets

(1) Every Member of State Assembly shall file a true and full statement of the properties held by him, whether in his own name or in the name of his relative or his associates as on the 31st March of every year. Such statement shall be filed on or before the 30th June of that year. The statements shall be submitted to the Speaker of the State Legislature or the Chairman of the Legislative Council, as the case may be.

(2) Every public servant, not belonging to Class III or IV or an equivalent category, whose conditions of service do not provide for filing an annual statement of properties held by him, whether in his own name or in the name of his relatives or his associates, shall file such a statement, as on 31st March of each year, on or before the 30th June of that year. Such statement shall be filled with the head of his department, undertaking or organization, or such authority as may be specified.

(3) The Competent Authority shall be entitled to summon the statement filed under sub-sections (1) or (2) or under the Civil Services (Conduct) Rules or any other corresponding rules, and take such action thereon as may be called for under the provisions of this Act.

Section 16 J: Certain officers to assist competent authority

For the purposes of any proceedings under this Act, all public officials serving under the Andhra Pradesh Government, or have in their possession information or documents or assets relating to the public servants are required to assist the competent authority.

8. Insertion of section 17A in Chapter IV of the Principal Act- After section 17 of the Principal Act the following section shall be inserted, namely:

- a) In Andhra Pradesh, the Anti Corruption Bureau shall be the sole investigative agency which shall investigate into cases under this Act.
- b) The Anti Corruption Bureau shall function under the overall supervision of the Lok Ayukta
- c) The Anti Corruption Bureau shall be headed by an officer not less in rank than that of Additional Director General of Police
- d) The officer and senior officers of the rank equivalent to Deputy Superintendent of Police appointed to the Anti-Corruption Bureau and above shall be appointed by the Government on the recommendation of a committee comprising of the Chief Minister, the Speaker of the state Assembly, the Chief Justice of the High Court and the Chairman and the members of the Lok Ayukta and the leader of Opposition in the state Assembly.
- e) All other officers and staff shall be appointed by the Director-General of Anti-Corruption Bureau.

f) The Anti-Corruption Bureau shall function with full autonomy in all matters relating to investigation of offences. All operational matters shall be decided by the Director-General and officers to whom such powers are delegated.

g) For overall coordination, there shall be a Committee consisting of Chairman of Lok Ayukta, State Vigilance Commissioner and Director-General of Anti-Corruption Bureau.

9. Amendment to Section 19(1) (b) in the Principal Act: - Clause (b) of sub-section (1) of section 19, the following shall be substituted, namely:

(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 competent authority notified by the government:

Provided that, prior sanction shall not be necessary for prosecuting a public servant or retired public servant, as the case may be, who has been trapped red-handed or in cases of possessing assets disproportionate to the known sources of income”;

Further provided that the Sanctioning authorities shall not be summoned, instead, the documents shall be obtained and produced before the courts by the appropriate authority”;

Further provided that the Presiding Officer of the Assembly or the Legislative Council as may be shall be designated as the sanctioning authority for Members of Legislative Assembly and Members of Legislative Council;

Further provided, wherever sanction for prosecution is required in respect of all other public servants, the sanctioning authority shall be an Empowered Committee comprising the Chairman of the Lok Ayukta, State Vigilance Commissioner, Secretary to the Government dealing with the concerned Department. In case sanction is required against the Secretary to the Government, the Empowered Committee must comprise of Chairman of the Lok Ayukta, State Vigilance Commissioner and Chief Secretary to the Government. In case the sanction if required against the Chief Secretary, then the Empowered Committee shall comprise of the Chief Minister, Lok Ayukta and the State Vigilance Commissioner.

REFERENCES

- Chapter 3 A: Justice Jeevan Reddy, 166th Report on The Corrupt Public Servants (Forfeiture of Property) Bill, Law Commission of India, February 1999.
- Section 12 A: (3.2.1.9), p.g.64, 2nd Administrative Reforms Commission, 4th Report on Ethics and Governance, 2005.
- Sections 13A, B, C, D: (3.2.1.10), p.g. 178, 2nd Administrative Reforms Commission, 4th Report on Ethics and Governance, 2005.
- Section 19: (3.2.3.2), pg. 179, 2nd Administrative Reforms Commission, 4th Report on Ethics and Governance, 2005.