

Supreme Court on Section 17A of Prevention of Corruption Act

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Prevention of Corruption Act Latest News

- The Supreme Court of India delivered a split verdict on the constitutional validity of Section 17A of the Prevention of Corruption Act, 1988 (PC Act).
- The provision, introduced through the 2018 Amendment, mandates **prior approval/sanction** before initiating enquiry or investigation against public servants for decisions taken in the discharge of official duties.
- The challenge was filed by Centre for Public Interest Litigation (CPIL), arguing that the provision **shields corruption** and undermines accountability.
- Given the divergence of views, the matter has been **referred** to the Chief Justice of India (**CJI**) for the constitution of a larger Bench.

What is Section 17A of the PC Act

- It requires prior approval from the competent authority before conducting any inquiry or investigation against a public servant for actions taken in official capacity.
- **Objective** (as per government):
 - Protect honest officers
 - Prevent frivolous, vexatious complaints
 - Avoid policy paralysis

Divergent Judicial Opinions

- **Justice B.V. Nagarathna:** (Section 17A is illegal, unequal, arbitrary, and unconstitutional)
 - **Violates Article 14 (Right to Equality):** Protection effectively extends only to higher civil servants involved in decision-making. Classification based on “nature of duties” has no rational nexus with the object of the Act.
 - **Arbitrary and against Rule of Law:** Forecloses even a preliminary enquiry without prior approval. Prevents discovery of truth and shields wrongdoing.
 - **Contrary to the object of the PC Act:** Anti-corruption law aims to detect and punish corruption, not delay or prevent investigation. Provision “protects the corrupt rather than the honest”.
 - **Policy paralysis argument rejected:** Instead of protecting honest officers, Section 17A may embolden mala fide decision-making. Honest officials do not require such statutory protection.
- **Justice K.V. Viswanathan:** (Section 17A is constitutionally valid [with safeguards])
 - **Possibility of misuse cannot be equated to unconstitutionality:** Striking down the provision would be like “throwing the baby out with the bathwater”.
 - **Need to prevent policy paralysis:** Fear of instant FIRs and coercive investigations may lead to “Play-it-safe syndrome”, administrative inertia.
 - **Fine balance required:** Between protecting officials from mala fide prosecution, and ensuring probity in public life.
 - **Danger of immediate investigations:** Without prior screening, even frivolous complaints could trigger FIRs and arrests. Such a regime would be regressive.
- **Independent screening mechanism suggested:**
 - Approval should depend on recommendations of an independent authority such as Lokpal (at Centre), Lokayukta (in States).
 - Lokpal has authority to inquire even against the Prime Minister.
 - Independent inquiry into facts should precede sanction.

Key Constitutional and Governance Issues Involved

- **Article 14 - Equality Before Law:** Whether selective protection to higher officials amounts to hostile discrimination.
- **Rule of Law:** Does requiring prior approval subordinate investigation to executive discretion?
- **Separation of Powers:** Extent of executive control over criminal investigation.
- **Accountability vs administrative autonomy:** Tension between effective governance, and anti-corruption enforcement.

Challenges Highlighted and Way Ahead

- **Shielding corruption:** Delay or denial of approval may stall investigations indefinitely. Prevent indefinite delays in granting or refusing sanction.
- **Executive interference:** Sanctioning authority may be influenced by political or bureaucratic considerations. Statutory role for Lokpal/Lokayukta in sanction decisions. Preliminary scrutiny to assess genuineness of complaint.
- **Unequal protection:** Lower-level officials face immediate scrutiny, higher officials enjoy insulation. Authoritative ruling to resolve constitutional conflict.
- **Erosion of public trust:** Perception that anti-corruption law favours the powerful. Parliament may revisit Section 17A to align it with constitutional principles, anti-corruption objectives.

Conclusion

- The split verdict on Section 17A of the Prevention of Corruption Act reflects a deeper constitutional **dilemma**—how to protect honest decision-making without weakening the fight against corruption.
- While one view sees the provision as a shield for the corrupt, the other considers it a necessary safeguard against governance paralysis, subject to independent oversight.
- The final word now rests with a **larger Bench** of the Supreme Court, whose decision will significantly shape the future of anti-corruption jurisprudence, administrative accountability, and rule of law in India.

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