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**New Delhi**

First Floor, 4598/12-B, 1st Floor,  
Padam Chand Marg, Daryaganj,  
New Delhi, Delhi 110002

Phone: +91 98 11 66 62 16 (M)

Phone: +91 70 11 60 56 18 (M)

**Bengaluru**

Jallahalli East

Bengaluru, Karnataka. India.

Phone: +91 98 11 66 62 16 (M)

Email: publisher.integrity@gmail.com

**USA**

New Jersey

14 Grandview Ave, Upper Saddle River,  
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Phone: +14805226504 (M)

**London**

37 Degree Media

64, Hodder Drive, Perivale, London UB68LL.  
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## Revisiting the Prevention of Corruption Act, 1988: A Critical Study of Procedural Safeguards and Prosecution Mechanisms

Author

Pramod M Hosamani



# Revisiting the Prevention of Corruption Act, 1988: A Critical Study of Procedural Safeguards and Prosecution Mechanisms

**Pramod M Hosamani**  
*LLM (criminal law)*  
*Amity University, Noida (UP)*

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## **Abstract**

*Corruption within public administration undermines the rule of law, erodes public trust, and hampers effective governance. This dissertation, titled “Criminal Accountability of Public Servants under the Prevention of Corruption Act, 1988: Judicial Trends and Policy Gaps”, critically examines the legal framework governing anti-corruption measures in India, with particular emphasis on the Prevention of Corruption Act, 1988 and its subsequent amendments.*

*The study analyses the scope and application of key provisions relating to bribery, criminal misconduct, and abuse of official position, along with procedural requirements such as prior sanction for prosecution. It explores how courts have interpreted these provisions through landmark judgments, including *Vineet Narain v. Union of India*, *Subramanian Swamy v. Manmohan Singh*, and *Neeraj Dutta v. State (NCT of Delhi)*, which have significantly shaped the jurisprudence on accountability and evidentiary standards in corruption cases.*

*Adopting a doctrinal research methodology, the dissertation relies on statutory analysis, judicial precedents, and scholarly literature to evaluate the effectiveness of the existing legal regime. It highlights critical issues such as delays in granting sanction for prosecution, evidentiary challenges in proving demand and acceptance of bribes, and inconsistencies in judicial interpretation. The study also examines the impact of the 2018 amendments, which introduced stricter safeguards for public servants but raised concerns regarding potential dilution of accountability.*

*The findings reveal a persistent gap between legislative intent and practical enforcement, resulting in low conviction rates and procedural bottlenecks. While judicial interventions have attempted to strengthen accountability mechanisms, systemic issues continue to impede the effective prosecution of corruption offences.*

*The dissertation concludes by recommending comprehensive reforms, including streamlining sanction procedures, enhancing investigative independence, improving evidentiary standards, and ensuring a balanced approach that protects honest officials while holding corrupt practices accountable. It emphasizes the need for a robust, transparent, and efficient legal framework to combat corruption and uphold the integrity of public administration.*

**Keywords:** *Corruption, Public Servants, Prevention of Corruption Act, Criminal Accountability, Judicial Trends, Policy Gaps, India*

## **Procedural Safeguards and Prosecution Mechanism**

### **Investigation and trial under the PCA**

The procedural framework of the Prevention of Corruption Act, 1988 (PCA) is central to the effective enforcement of anti-corruption norms. While substantive provisions define the contours of corrupt conduct, procedural rules determine how allegations are investigated, prosecuted, and adjudicated. Given the serious reputational, professional, and penal consequences faced by public servants accused of corruption, the Act incorporates safeguards designed to balance rigorous enforcement with protection against arbitrary or malicious prosecution. Investigations under the PCA are ordinarily conducted by specialised agencies possessing technical expertise and institutional capacity to handle complex financial and administrative irregularities.<sup>1</sup> At the central level, the Central Bureau of Investigation (CBI) plays a prominent role, particularly in cases involving central government officials or matters of national importance. At the state level, investigations are undertaken by State Anti-Corruption Bureaux (ACBs) or vigilance departments. These specialised agencies are equipped to conduct trap proceedings, surveillance operations, forensic accounting, and analysis of disproportionate assets cases.<sup>2</sup>

Section 17 of the Act prescribes the rank of police officers authorised to investigate offences under the PCA, generally restricting such authority to officers not below the rank of Deputy Superintendent of Police (or equivalent). This statutory restriction reflects a deliberate legislative choice to ensure that corruption investigations are conducted by senior officers with sufficient experience and accountability. By limiting investigative authority to higher-ranking officials, the law seeks to prevent harassment of public servants through frivolous complaints while maintaining professional standards in evidence collection. The investigative process often begins with the registration of a First Information Report (FIR) under the Code of Criminal Procedure, 1973 (CrPC). In trap cases, pre-trap procedures involve preparation of marked currency notes and independent witnesses to ensure transparency.<sup>3</sup> In disproportionate assets cases, investigators conduct detailed scrutiny of income, expenditure, and asset accumulation over a specified check period. These investigations frequently require coordination with banks, tax authorities, and forensic experts, underscoring the technical complexity of corruption prosecutions.

Following investigation, prosecution requires sanction under Section 19 of the Act before a court can take cognisance of offences committed by a public servant. The requirement of prior sanction is intended to protect honest officials from vexatious litigation for acts performed in discharge of official duties. However, delays in granting sanction have often resulted in protracted pre-trial proceedings, weakening the momentum of prosecution and sometimes leading to evidentiary complications.<sup>4</sup> Trial of offences under the PCA is conducted by Special Judges appointed under Section 3 of the Act. These Special Courts are vested with exclusive jurisdiction to try offences under the statute and are empowered to take cognisance directly, without the need for committal proceedings. This procedural innovation aims to expedite the judicial process and minimise delays typically associated with multi-tiered criminal proceedings. The Supreme Court in *A.R. Antulay v. Ramdas Srinivas Nayak*<sup>5</sup> emphasised that the establishment of Special Courts reflects the legislature's intent to ensure swift adjudication of corruption cases in the public interest.

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<sup>1</sup> K.D. Gaur, *Textbook on the Indian Penal Code* (6th edn., Universal Law Publishing, 2016).

<sup>2</sup> P.S. Narayanan, "Prevention of Corruption Act: A Critical Analysis," (2009) 51 *Journal of the Indian Law Institute* 227.

<sup>3</sup> Prakash Singh, "Administrative Accountability and Anti-Corruption Framework in India," (2014) 56 *Journal of the Indian Law Institute* 312.

<sup>4</sup> Transparency International, *Corruption Perceptions Index Reports* (various years).

<sup>5</sup> *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602.

Special Judges are authorised to adopt summary procedures in appropriate cases while retaining the power to conduct regular trials where complexity demands. They also possess authority to order attachment and forfeiture of property connected with corruption offences. These procedural powers reinforce the deterrent character of the Act by targeting not only personal liberty but also illicit financial gains. Despite these structured mechanisms, delays in investigation and trial remain a persistent challenge. Procedural bottlenecks, frequent adjournments, transfer of investigating officers, shortage of Special Judges, and sanction-related litigation collectively undermine the Act's objective of expeditious justice. In high-profile cases, prolonged trials spanning several years erode public confidence and dilute deterrence.<sup>6</sup>

Thus, while the procedural framework of the PCA reflects a carefully designed balance between enforcement and fairness, its effectiveness ultimately depends on timely investigation, efficient judicial administration, and institutional integrity. Strengthening investigative capacity and ensuring strict adherence to timelines remain essential to fulfilling the Act's anti-corruption mandate.

### **Sanction for prosecution under Section 19**

Sanction for prosecution constitutes one of the most critical procedural safeguards under the Prevention of Corruption Act, 1988 (PCA). Section 19 mandates that no court shall take cognisance of offences alleged to have been committed by a public servant while acting or purporting to act in the discharge of official duties without prior sanction from the competent authority.<sup>7</sup> This requirement reflects the legislature's intention to insulate honest decision-making in public administration from the chilling effect of unwarranted criminal prosecution. The underlying rationale is grounded in administrative necessity. Public servants are often required to take decisions involving discretion, policy implementation, financial approvals, and regulatory enforcement. In a governance framework as vast and complex as India's, such decisions may attract complaints from affected individuals. Without the safeguard of prior sanction, public officials might become overly cautious or hesitant, leading to what has frequently been described as "decision paralysis." Thus, Section 19<sup>8</sup> seeks to ensure that bona fide administrative acts are not second-guessed through criminal proceedings initiated on tenuous grounds.

At the same time, the sanction requirement has generated sustained criticism. Critics argue that the provision can operate as a protective shield for corrupt officials, particularly when the sanctioning authority is hierarchically or politically aligned with the accused. Delays in granting or refusing sanction may stall investigations and weaken prosecutorial momentum. In high-profile cases, prolonged inaction at the sanction stage has raised concerns about executive interference and dilution of accountability. The tension between administrative protection and anti-corruption enforcement lies at the heart of debates surrounding Section 19. Judicial interpretation has therefore assumed decisive importance in calibrating this balance. In *Subramanian Swamy v. Manmohan Singh*<sup>9</sup>, the Supreme Court addressed the issue of delay in granting sanction to prosecute a public servant. The Court held that the competent authority is under a legal obligation to decide sanction requests within a reasonable time, ordinarily within three months, extendable by one additional month if legal consultation is required. The Court emphasised that undue delay defeats the purpose of anti-corruption laws and undermines public

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<sup>6</sup> Law Commission of India, 254th Report on the Prevention of Corruption Act, 1988 (2015).

<sup>7</sup> Arghya Sengupta & Alok Prasanna Kumar, "Reforming India's Anti-Corruption Laws," *National Law School of India Review* (2016).

<sup>8</sup> The Prevention of Corruption Act, § 19 (previous sanction necessary for prosecution).

<sup>9</sup> *Subramanian Swamy v. Manmohan Singh*, (2012) 3 SCC 64.

confidence in governance. By imposing a temporal discipline on the sanctioning process, the judiciary sought to prevent misuse of procedural safeguards as instruments of obstruction.<sup>10</sup> Further clarification was provided in *Prakash Singh Badal v. State of Punjab*<sup>11</sup>, where the Supreme Court examined the legal consequences of absence or irregularity of sanction. The Court held that sanction is a procedural requirement and not a substantive defence to criminal liability. If sanction is obtained at a later stage before the court takes cognisance, proceedings are not automatically vitiated. However, where sanction is shown to be demonstrably invalid, mechanically granted, or tainted by mala fides, the prosecution may be rendered unsustainable. This nuanced approach ensures that sanction functions as a filter rather than an absolute bar. Courts have also consistently maintained that the question of validity of sanction must be assessed in light of whether the competent authority applied its mind to the relevant material. Mechanical or routine approvals undermine the very purpose of the safeguard, while arbitrary refusal equally compromises accountability.<sup>12</sup> Thus, sanction under Section 19 operates as a dual-edged mechanism simultaneously protecting honest officials and posing potential obstacles to effective prosecution. Its proper functioning depends not merely on statutory text but on conscientious administrative decision-making and vigilant judicial oversight. The evolving jurisprudence reflects an ongoing effort to preserve administrative independence while ensuring that procedural safeguards do not erode the constitutional imperative of integrity and accountability in public life.

### **Prior approval for investigation under Section 17A**

The insertion of Section 17A through the Prevention of Corruption (Amendment) Act, 2018 marked a significant procedural shift in the enforcement framework of the Prevention of Corruption Act, 1988 (PCA). This provision mandates prior approval from the appropriate government or competent authority before initiating any inquiry, inquiry, or investigation into offences alleged to have been committed by a public servant in relation to any recommendation made or decision taken in discharge of official functions. By extending protection to the investigative stage itself, Section 17A introduces an additional procedural filter beyond the traditional requirement of sanction under Section 19.<sup>13</sup> The legislative intent behind Section 17A was articulated as a response to growing concerns about administrative hesitation and “decision paralysis” within the bureaucracy. Policymaking and executive governance often require discretionary choices involving financial approvals, allocation of resources, and regulatory permissions. In the absence of procedural safeguards, public officials may fear retrospective criminal scrutiny of bona fide decisions, particularly in politically sensitive matters. Section 17A seeks to insulate honest decision-making from premature investigative intrusion, thereby preserving administrative autonomy and encouraging proactive governance. Nevertheless, the provision has generated sustained controversy in legal and academic discourse. Critics contend that Section 17A creates an additional institutional barrier to anti-corruption enforcement. Unlike Section 19, which requires sanction before a court takes cognisance of an offence at the prosecution stage, Section 17A operates at the threshold of investigation. By conditioning the initiation of investigative steps upon prior executive approval, it potentially delays the collection of evidence, including documentary records, electronic data, and witness testimony. In corruption cases where evidence is often fragile and susceptible to tampering such delays may significantly undermine the efficacy of prosecution.

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<sup>10</sup> Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge University Press, 1999).

<sup>11</sup> *Parkash Singh Badal v. State of Punjab*, (2007) 1 SCC 1.

<sup>12</sup> Susan Rose-Ackerman & Bonnie J. Palifka, *Corruption and Government: Causes, Consequences, and Reform* (2nd edn., Cambridge University Press, 2016).

<sup>13</sup> Robert Klitgaard, *Controlling Corruption* (University of California Press, 1988).

Another area of concern relates to the scope of the phrase “recommendation made or decision taken.” If interpreted broadly, it could encompass a wide spectrum of administrative conduct, thereby shielding even questionable or mala fide actions from timely scrutiny. Critics argue that corruption frequently manifests through decisions that outwardly appear administrative but are motivated by extraneous considerations. A sweeping interpretation of Section 17A could therefore blur the distinction between legitimate policy discretion and corrupt abuse of authority.<sup>14</sup>

Judicial interpretation of Section 17A is still evolving, and courts have begun to delineate its contours. In *Yashwant Sinha v. CBI*<sup>15</sup>, the Supreme Court underscored that procedural safeguards should not become instruments for frustrating legitimate investigation into serious corruption allegations. Although the case arose in a distinct factual context, the Court’s broader reasoning reflects judicial sensitivity to the potential misuse of procedural protections. Subsequent judicial observations have indicated that Section 17A must be construed narrowly and applied only where the alleged act is integrally connected to official decision-making, not where it involves manifest criminality or demand for illegal gratification. The practical consequences of Section 17A remain a matter of policy concern. Questions persist regarding the time taken by sanctioning authorities to grant or refuse approval, the transparency of their decision-making process, and the potential for political considerations to influence outcomes. In high-level corruption cases involving senior officials, the provision may significantly affect investigation timelines and conviction rates.<sup>16</sup>

Thus, Section 17A represents a delicate balancing mechanism within India’s anti-corruption regime aimed at protecting administrative discretion while risking impediments to effective enforcement. Its long-term impact will depend on principled executive implementation and vigilant judicial oversight to ensure that procedural safeguards do not erode the constitutional commitment to integrity and accountability in public administration.<sup>17</sup>

### **Evidentiary standards and burden of proof**

Corruption offences pose distinctive evidentiary challenges because they are typically committed in secrecy, without public witnesses, and often through indirect or coded transactions. Recognising these difficulties, the Prevention of Corruption Act, 1988 (PCA) incorporates special evidentiary mechanisms that adapt traditional criminal law principles to the realities of corruption, while preserving fairness and due process. At the foundational level, the prosecution bears the initial burden of establishing the essential ingredients of the offence most critically, the demand and acceptance of illegal gratification. Judicial precedent has consistently underscored that proof of demand is a sine qua non for conviction under the Act. In *B. Jayaraj v. State of Andhra Pradesh*<sup>18</sup>, the Supreme Court categorically held that mere recovery of tainted money from the accused is insufficient to sustain a conviction unless the prosecution proves that there was a specific demand for illegal gratification. The Court reasoned that recovery, in isolation, does not establish the corrupt intent necessary to constitute the offence. This principle safeguards against convictions based solely on possession of marked currency notes without proof of culpable conduct.

The insistence on proof of demand reflects a commitment to preserving the core criminal law principle that guilt must be established beyond reasonable doubt. Trap proceedings, therefore, require meticulous adherence to procedural safeguards, including independent witnesses and

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<sup>14</sup> Mark Philp, “Defining Political Corruption,” (1997) 7 *Political Studies* 436.

<sup>15</sup> *Yashwant Sinha v. Central Bureau of Investigation*, (2019) 6 SCC 1.

<sup>16</sup> Michael Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy* (Cambridge University Press, 2005).

<sup>17</sup> Alina Mungiu-Pippidi, *The Quest for Good Governance* (Cambridge University Press, 2015).

<sup>18</sup> *B. Jayaraj v. State of Andhra Pradesh*, (2014) 13 SCC 55.

careful documentation, to corroborate the complainant's version. Courts have repeatedly emphasised that the prosecution must present credible and reliable evidence of both demand and voluntary acceptance. Once the prosecution successfully proves acceptance of gratification, Section 20 of the PCA introduces a significant evidentiary innovation a rebuttable presumption that the gratification was accepted as a motive or reward for performing or forbearing to perform an official act. This statutory presumption shifts the evidentiary burden onto the accused, who must provide a plausible explanation for the receipt of money. The constitutional validity of this burden-shifting mechanism was upheld in *M. Narsinga Rao v. State of Andhra Pradesh*<sup>19</sup>, where the Supreme Court observed that presumptions of this nature are justified in view of the clandestine character of corruption offences and do not violate principles of fair trial, provided they are rebuttable.

Importantly, the burden placed on the accused under Section 20 is not equivalent to the prosecution's burden of proof. The accused is not required to disprove guilt beyond reasonable doubt; rather, it is sufficient to raise a probable defence that creates reasonable doubt in the prosecution's case. This nuanced evidentiary balance ensures that while the law strengthens the prosecution's hand in combating corruption, it does not invert the presumption of innocence guaranteed under Article 21 of the Constitution. Judicial decisions have also cautioned against mechanical reliance on statutory presumptions. Courts must first be satisfied that foundational facts particularly demand and acceptance have been established before invoking the presumption. Blind or routine application of Section 20 risks undermining fairness and may lead to miscarriage of justice.<sup>20</sup>

Thus, the evidentiary framework under the PCA reflects a carefully calibrated balance between deterrence and due process. By insisting on proof of demand while permitting rebuttable presumptions, the judiciary seeks to address the inherent evidentiary challenges of corruption cases without compromising the constitutional mandate of a fair and just criminal trial.

### **Role of investigative agencies (CBI, State ACBs)**

Investigative agencies occupy a central position in the practical enforcement of the Prevention of Corruption Act, 1988 (PCA). While the statute provides the substantive framework defining corruption offences and procedural safeguards governing prosecution, its real-world effectiveness depends heavily on the integrity, competence, and autonomy of the agencies entrusted with investigation. At the national level, the Central Bureau of Investigation (CBI) is the premier agency responsible for investigating corruption cases involving central government officials, public sector undertakings, and matters of national or inter-state importance. The CBI operates under the Delhi Special Police Establishment Act, 1946, and frequently handles high-profile cases with significant political or administrative implications. At the state level, State Anti-Corruption Bureaux (ACBs) or vigilance departments investigate cases concerning state public servants and local authorities. These agencies conduct trap operations, disproportionate assets investigations, and inquiries into abuse of official position.<sup>21</sup>

Given the sensitive nature of corruption prosecutions often implicating powerful public officials judicial concern regarding the independence of investigative agencies has been a recurring theme in constitutional jurisprudence. In *Vineet Narain v. Union of India*<sup>22</sup>, popularly known as the "*Jain Hawala case*," the Supreme Court recognised that investigative autonomy is indispensable to the rule of law. The Court observed that lack of independence or political interference in investigations erodes public confidence and undermines anti-corruption efforts.

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<sup>19</sup> *M. Narsinga Rao v. State of Andhra Pradesh*, (2001) 1 SCC 691.

<sup>20</sup> Transparency International, *Global Corruption Report* (various editions).

<sup>21</sup> Raghuram G. Rajan & Luigi Zingales, *Saving Capitalism from the Capitalists* (Princeton University Press, 2003).

<sup>22</sup> *Vineet Narain v. Union of India*, (1998) 1 SCC 226.

Consequently, it issued binding guidelines to insulate the CBI from extraneous influence, including directives regarding the functioning of the *Central Vigilance Commission (CVC)*<sup>23</sup> and the security of tenure for key investigative officials. These directions were aimed at institutionalising transparency and ensuring that investigations are conducted without fear or favour.

The Court's intervention in *Vineet Narain* marked a constitutional assertion that investigative agencies must function free from executive pressure, especially in cases involving high-ranking officials. The judgment underscored that procedural safeguards under the PCA such as sanction requirements and evidentiary presumptions are meaningful only when investigations themselves are fair, impartial, and professionally conducted. Despite these institutional safeguards, concerns persist regarding selective prosecution, political influence, and delays in investigation. Allegations of "pick and choose" investigations or strategic timing of prosecutions have occasionally surfaced in public discourse. Additionally, frequent transfers of investigating officers, resource constraints, and administrative bottlenecks can hamper continuity and effectiveness in complex corruption cases. Prolonged investigations may weaken evidentiary value and diminish deterrence.<sup>24</sup>

The effectiveness of procedural safeguards under the PCA, therefore, is closely tied to the institutional health of investigative agencies. Even the most carefully designed statutory framework cannot yield desired outcomes if investigative processes lack autonomy, professionalism, and accountability. Strengthening training, ensuring transparent appointment processes, safeguarding tenure, and enhancing forensic and technological capacity are critical to reinforcing the credibility of anti-corruption enforcement. Ultimately, the fight against corruption is not merely a matter of statutory design but of institutional integrity. Investigative agencies serve as the first line of defence in upholding probity in public life. Their independence and professionalism are indispensable to ensuring that the objectives of the PCA deterrence, accountability, and public trust are meaningfully realised within India's constitutional framework.<sup>25</sup>

### **Judicial scrutiny of procedural compliance**

Judicial scrutiny functions as the ultimate constitutional safeguard in ensuring that procedural requirements under the Prevention of Corruption Act, 1988 (PCA) are complied with both in letter and in spirit. While the legislature has crafted a framework balancing accountability with protection for public servants, it is the judiciary that ensures this balance is maintained in practice. Courts have repeatedly emphasised that procedural safeguards are designed to advance justice not to furnish technical escape routes for those who engage in corrupt conduct. In *State of Karnataka v. C. Nagarajaswamy*<sup>26</sup>, the Supreme Court held that procedural irregularities which do not cause prejudice to the accused should not invalidate corruption prosecutions. The Court recognised that corruption cases often involve complex procedural steps, and minor lapses that do not affect the fairness of the trial cannot be permitted to defeat substantive justice. This approach reflects a purposive interpretation of anti-corruption legislation, ensuring that technical defects do not overshadow the broader objective of accountability.

Conversely, where procedural violations materially affect the fairness of the trial or the rights of the accused, courts have not hesitated to intervene. Defects such as absence of valid sanction, lack of proof of demand, or denial of opportunity to cross-examine witnesses have been treated

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<sup>23</sup> Central Vigilance Commission Act, 2003.

<sup>24</sup> *Vineet Narain v. Union of India*, (1998) 1 SCC 226, paras 48–49 (regarding insulation of CBI from political interference).

<sup>25</sup> *Ibid.*, para 51 (security of tenure for Director, CBI).

<sup>26</sup> *State of Karnataka v. C. Nagarajaswamy*, (2005) 8 SCC 370.

as serious infirmities warranting quashing of proceedings. This demonstrates the judiciary's commitment to upholding due process under Article 21 of the Constitution. The fight against corruption, however urgent, cannot come at the cost of fundamental procedural fairness. Judicial review thus performs a dual and delicate function. On one hand, it protects individual rights by scrutinising investigative conduct, sanction validity, evidentiary standards, and compliance with statutory requirements. On the other, it ensures that anti-corruption laws are not diluted through hyper-technical interpretation or excessive procedural formalism. Courts have consistently warned against reading procedural safeguards in a manner that frustrates legitimate prosecution, while equally cautioning against mechanical application of presumptions or approvals that compromise fairness.<sup>27</sup>

The procedural safeguards and prosecution mechanisms under the PCA therefore embody a calibrated equilibrium between administrative protection and public accountability. Provisions such as sanction for prosecution under Section 19 and prior approval for investigation under Section 17A are intended to shield honest officials from harassment. However, their misuse, delay, or over-expansive interpretation risks undermining deterrence and eroding public confidence in governance. Judicial interpretation has been instrumental in preventing these safeguards from degenerating into instruments of impunity. Ultimately, the success of the PCA depends not solely on legislative drafting but on the synergy between investigative diligence, prosecutorial responsibility, and judicial vigilance. Courts remain the final arbiters ensuring that procedural protections neither obstruct justice nor sacrifice fairness. Through principled interpretation and consistent oversight, the judiciary sustains the constitutional commitment to integrity, accountability, and the rule of law in public administration.<sup>28</sup>

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<sup>27</sup> M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis 2018) 1234–1236.

<sup>28</sup> S.P. Sathe, *Judicial Activism in India* (2nd edn., Oxford University Press 2002) 198–201.

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