

# Newsletter1\_Piyush\_Kamal\_Ex-IRS

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## **“Non-performance of duty by a public servant is a form of corruption.” Do you agree with this view?**

Let's start the analysis—by

1. Examining the question from multiple dimensions
2. The latest amendment in PCA-2018
3. The contextual understanding of the statement for a developing country like India.

### **Definition of Public Servant**

While determining whether a specific individual or a person is a 'Public Servant,' one of the aspects is to see whether he holds office under an authority which is 'State' within the meaning of Article 12 of the Constitution of India. This aspect is in addition to the context of the definition of 'Public Servant' under the Prevention of Corruption Act.

### **Definition of Corruption**

The following are the broad offenses under the Prevention of Corruption Act—

1. Taking gratification other than legal remuneration in respect of an official act.
2. Taking gratification in order to influence public servant by corrupt or illegal means.
3. Taking gratification for the exercise of personal influence with a public servant.
4. Any public servant who commits criminal misconduct.

### **Definition of Non-Performance**

The duty that is prescribed by law and is capable of being monitored through objective parameters can be made enforceable.

The non-performance of functions that is obligatory by law and results in dereliction of prescribed duty can be a valid reason to relieve a public servant from his/her official responsibilities. But this can't be equated to corruption.

Unless it has been proved beyond doubt that the public servant has voluntarily refrained from performing his duty in place of certain pecuniary or non-pecuniary gains.

## **The Latest amendment in PCA-2018**

In fact, seen from the lens of the latest amendment in 2018, the above statement becomes more clear—

### **Any public servant who—**

**(a)** obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause the performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

**(b)** obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

**(c)** performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,

It means that unless there is some undue advantage to be gained by the public servant, a public servant's Non-performance of duty is difficult to equate with corruption.

## **The Way Forward**

Non-performance of duty by a public servant should ideally be equated with corruption. Because being a developing country, we can't afford any dereliction of duty, especially from our public servants who play a critical role in national development.

Hence, there is an urgent need to have a ready reference of objective parameters to assess every public servant's performance and non-performance who are gainfully employed at the exchequer's cost.

And these objective criteria of assessment need to be made available to the public through departmental portals. Unless we do have those parameters in place, it would be impossible to prove the allegation of non-performance against public servants.