

The Act with Instructions for the Parliamentary Ombudsmen, Sweden

The Act with Instructions for the Parliamentary Ombudsmen (Lag [1986:765] med instruktion för Riksdagens ombudsmän - “JO-instruktionen”)

issued 13 November 1986

In accordance with the decision of the Riksdag the following has been determined.

Tasks

1. In accordance with 8.11 of the Riksdag Act, there are four Ombudsmen, a Chief Parliamentary Ombudsman and three Parliamentary Ombudsmen. In addition to this, there may be Deputy Ombudsmen.

The Chief Parliamentary Ombudsman and the Parliamentary Ombudsmen are to supervise, to the extent laid down in Article 2, that those who exercise public authority are to obey the laws and other statutes and fulfil their obligations in other respects. Act (1995:404).

2 . Those supervised by the Ombudsmen are

1. state and municipal authorities,
2. officials and other employees of these authorities,
3. other individuals whose employment or assignment involves the exercise of public authority, insofar as this aspect of such activity is concerned,
4. officials and those employed by public enterprises, while carrying out, on behalf of such an enterprise, activities in which through the agency of the enterprise the Government exercises decisive influence

Where officers in the armed forces are concerned, however, this supervision extends only to commissioned officers with the rank of second lieutenant or above, and to those of corresponding rank.

The supervision of the Ombudsmen does not extend to

1. Members of the Riksdag,
2. The Riksdag Board of Administration, the Riksdag's Election Review Board, the Riksdag's Complaints Board or the Clerk of the Chamber,
3. Members of the Governing Board of the Riksbank, members of the Executive Board of the Riksbank, except to the extent of their involvement in exercise of the powers of the Riksbank to make decisions in accordance with the Act on the Regulation of Currency and Credit (1992:1602),
4. the Government or Ministers,
5. the Chancellor of Justice, and
6. members of policy-making municipal bodies.

An Ombudsman is not subject to the supervision of any other Ombudsman.

The term official is used in this act, unless otherwise indicated by the context, to refer to those who are subject to the supervision of the Ombudsmen.

- 3 . The Ombudsmen are to ensure in particular that the courts and public authorities in the course of their activities obey the injunction of the Instrument of Government about objectivity and impartiality and that the fundamental rights and freedoms of citizens are not encroached upon in public administration.

In supervision of municipal authorities the Ombudsmen are to take into consideration the forms taken by municipal self-determination.

- 4 . The Ombudsmen are to contribute to remedying deficiencies in legislation. If, during the course of their supervisory activities, reason is given to raise the question of amending legislation or of some other measure by the state, the Ombudsmen may then make such representations to the Riksdag or the Government.

The Parliamentary Ombudsmen are to consult the Chief Parliamentary Ombudsman before making the representations referred to in the above paragraph.

- 5 . Supervision is exercised by the Ombudsmen in assessing complaints made by the public and by means of inspections and such other inquiries as the Ombudsmen may find necessary. The Ombudsmen are to consult the Chief Parliamentary Ombudsman on the inspections and other inquiries they intend to carry out.
6. The Ombudsmen conclude cases with an adjudication, which states an opinion as to whether a measure taken by an authority or an official is in breach of the law or some other statute, or is otherwise erroneous or inappropriate. The Ombudsmen may also make statements intended to promote uniform and appropriate application of the law.

In the role of extra-ordinary prosecutor, an Ombudsman may initiate legal proceedings against an official who, in disregarding the obligations of his office or his commission, has committed a criminal offence other than an offence against the Freedom of the Press Act or right to freedom of expression. If an inquiry into a case gives an Ombudsman reason to believe that such a criminal offence has been committed, the stipulations in the law concerning preliminary inquiries, prosecution and waiver of prosecution are to apply, together with those regarding the powers otherwise afforded to prosecutors in criminal cases subject to public prosecution. Cases brought before a district court are to be pursued to the Supreme Court only if there are exceptional grounds for doing so.

If proceedings can be taken by means of disciplinary measures against an official who, in disregarding the obligations of his office or his commission, has committed an error, the Ombudsmen may report the matter to those empowered to decide on such measures. In the case of an individual with professional certification or some other authorisation entitling him to practise within the medical profession, as a dentist, or in retail trade in pharmaceutical products, or as a veterinary surgeon, who has displayed gross incompetence in his professional activities or shown himself in some other way to be obviously unsuitable to practise, the Ombudsmen may submit a report to those who have the authority to decide on the revocation of the qualification or the authorisation.

A similar request for limitation of the scope of the qualification may be made when somebody with such qualifications has abused his powers in some other way. If an individual with professional certification or some other authorisation entitling him to practise within the medical profession, as a dentist, or in retail trade in pharmaceutical products, has displayed incompetence in his professional activities or shown himself in some other way unsuitable to practise his profession, the Ombudsman may request the imposition of a probationary period of those who have the authority to make such a decision.

Should the Ombudsmen consider it necessary that the official be dismissed or temporarily deprived of his office because of criminal acts or gross or repeated misconduct, the Ombudsman may report the matter to those empowered to decide on such a measure. When an Ombudsman has made a report of the kind referred to in the two preceding paragraphs, he is to be given the opportunity to supplement his own inquiry into the case, and to submit an opinion on any inquiry into the case carried out by some other person, as well as the right to be present if oral questioning occurs. This is not to apply, however, if the case concerns temporary deprivation of office. Act (1998:540)

7. If an authority has decided against an official in a case involving application of special regulations in the law or other statutes concerning officials and matters of discipline, or dismissal or temporary deprivation of office because of criminal acts or misconduct, an Ombudsman may refer the case to a court of law for amendment of the decision. This is also to apply to the decision of an authority in a case concerning disciplinary measures against medical or hospital staff, veterinary surgeons, those serving in the armed forces or subject to discipline according to the Act on Discipline within Total Defence etc. (1994:1811) as well as the decision of an authority in cases concerning probationary periods or issues concerning certification of the kind referred to in the third paragraph of Article 6. More detailed regulations about such referral are issued in the form of law or some other statute.

If an official, in accordance with the stipulations in force, has applied to a court for amendment of a decision of the kind referred to in the above paragraph, and if the decision was made as a result of a report from an Ombudsman, the Ombudsman is to act on behalf of the public against the official during the dispute. This is also to apply if the Ombudsman has sought amendment of the decision.

The stipulations of laws or other statutes applying to employers are, where disputes referred to in this paragraph are concerned, to apply correspondingly to the Ombudsmen. The stipulations in 4.7 and 5.1 of the Act on Litigation in Labour Disputes (1974:371) are not, however, to apply in cases where the action is being brought by an Ombudsman. Act (1998:540).

8. The Ombudsmen should not intervene against a subordinate official with no independent powers, unless there are exceptional reasons for doing so.
9. The powers of the Ombudsmen to initiate legal proceedings against a member of the Supreme Court or the Supreme Administrative Court or to press for the dismissal or deprivation of office of such an official, or for the requirement that the official submit to medical examination are laid down in the Instrument of Government.

10. The Ombudsmen are obliged to initiate and prosecute those legal proceedings which the Committee on the Constitution has decided to institute against a Minister, in accordance with 12.3 of the Instrument of Government, and also legal proceedings against officials within the Riksdag or its agencies decided by committees of the Riksdag, in accordance with the regulations, but not, however, legal proceedings against an Ombudsman.

The Ombudsmen are also obliged to assist committees of the Riksdag in preliminary inquiries concerning those officials cited in the previous paragraph.

11. The Ombudsmen are to submit, by 15 November at the latest, each year a printed report on the discharge of their office covering the period from 1 July of the preceding year until the following 30 June. This report is to contain an account of the actions which have been taken by virtue of paragraph 1 of Article 4, paragraphs 2 - 4 of Article 6, and Article 7, together with other significant decisions published by the Ombudsmen. The report is also to contain a survey of their activities in other respects.

Organisation

12. In accordance with 8.11 of the Riksdag Act, the Chief Parliamentary Ombudsman is the administrative head and decides on the overall direction activities are to take. In his administrative directives he is to issue regulations about the organisation of these activities and the allocation of cases among the Ombudsmen.

The Chief Parliamentary Ombudsman is responsible for ensuring that internal audits of the Institution take place. Internal audits are to comprise independent review of the Institution's internal management and monitoring procedures and its compliance with the requirements relating to its financial accounting. This audit is to be conducted in compliance with good practice for internal auditing.

The Parliamentary Ombudsmen adopt the audit plan for their operations after consultation with the National Audit Office.

13. The activities of the Ombudsmen are to be administered by an Ombudsmen's secretariat (Ombudsmannaexpedition), which is to employ an Administrative Director, Heads of Division and other administrative staff as laid down by the Riksdag. To the extent needed, and insofar as funds are available, the Chief Parliamentary Ombudsman may appoint other staff, experts and referees. The Chief Parliamentary Ombudsman is to decide on the duties assigned to the staff.

The Administrative Director is to direct the work of the secretariat, as subordinate to the Chief Parliamentary Ombudsman, and is otherwise to afford the Ombudsmen such assistance as they may require.

14. In addition to these instructions and those laid down in his administrative directives, the Chief Parliamentary Ombudsman is to issue the rules and regulations needed for the work of the secretariat.

The Chief Parliamentary Ombudsman is to consult the Committee on the Constitution on organisational issues of importance.

Before consultation with the Committee on the Constitution, an Ombudsman is to consult the Chief Parliamentary Ombudsman.

15 . Irrespective of the import of the administrative directives, the Chief Parliamentary Ombudsman may make a specific decision allocating a particular case or group of cases to himself or one of the other Ombudsmen.

In addition, the Chief Parliamentary Ombudsman may in the administrative directives or through some other decision authorise

- officials within the Ombudsmen's secretariat to take measures in preparing a case,
- officials to carry out inspections, without, however, the right while doing so to make comments or other pronouncements on behalf of the Ombudsman, and also
- the Administrative Director to make administrative decisions, but not however concerning the appointment of heads of division.

The Chief Parliamentary Ombudsman is to decide whether a Deputy Ombudsman is to serve as an Ombudsman. A Deputy Ombudsmen may be appointed to serve if an Ombudsman is prevented by a considerable period of illness or on some other special grounds from performing his duties, or if a need arises for the services of a Deputy Ombudsman for some other reason. Act (1995:404).

16 . When the Chief Parliamentary Ombudsman is on holiday or is prevented from discharging his duties, of the other Ombudsman the one with the longest period of service is to act as his deputy. If two or more of the Ombudsmen have served for the same length of time, the oldest is to take precedence. Act (1995:404).

Complaints

17. Complaints should be made in writing. The written complaint should indicate which authority the complaint is made about, the action which the complainant is referring to, the date of the action, together with the name and address of the complainant. If the complainant possesses a document which is of significance in dealing with and assessing the case, this should be appended.

A person who has been deprived of his liberty may write to the Ombudsmen, without being prevented by the restrictions on sending letters and other documents which may apply to him.

At the complainant's request, confirmation is to be issued by the secretariat of receipt of the complaint.

General regulations about the treatment of cases

18. If an issue arising from a complaint is of such a nature that it can appropriately be investigated and appraised by an authority other than the Ombudsman, and if that authority has not previously reviewed the matter, the Ombudsman may refer the complaint to the authority for action. Complaints may, however, only be referred to the Chancellor of Justice after prior agreement.

If a complaint concerns an official who is a member of the Swedish Bar Association, and if the issue raised by the complaint is such that it can, in accordance with the fourth

paragraph of 8.7 of the Code of Judicial Procedure, be appraised by a body within the Bar Association, the Ombudsman may refer the complaint to the Association for action.

19. The Ombudsmen shall inform a complainant without delay as to whether his complaint has been rejected, filed, referred to some other agency, in accordance with Article 18, or has been made the subject of an inquiry.
20. The Ombudsmen should not initiate inquiries into circumstances which date back two or more years, unless there are exceptional grounds for doing so.
21. The Ombudsmen are to carry out the investigative measures required in appraising complaints and other cases.

When the Ombudsmen, in accordance with the stipulations of the Instrument of Government, request information and statements in cases other than those in which it has been decided to institute a preliminary inquiry, they may do so on penalty of fine not exceeding 10,000 Swedish Crowns. The Ombudsmen may impose such a penalty, if incurred.

If there are ground for suspecting that an official subject to the regulations about disciplinary measures in the Act on Official Employment (1994:260), is guilty of misconduct for which disciplinary measures should be invoked, and there is reason to fear that a written caution, as laid down in the article 17 of that Act, cannot be issued to him within two years of the misconduct, the Ombudsmen may issue a corresponding caution. This provision is also to apply to those who, by virtue of other statutes, are also subject to regulations on disciplinary measures and to cautions and corresponding notification.

When an Ombudsman is present at the deliberations of a court or other public authority, he does not have the right to express an opinion. Act (1997:561).

- 22 . An Ombudsman may authorise some other person to administer an inquiry which he has decided to initiate and to institute and prosecute legal proceedings he has decided on, unless these measures concern a member of the Supreme Court or the Supreme Administrative Court.

A decision to appeal a judgement or a decision to a superior court may only be made by an Ombudsman.

In cases referred to in Article 7, the Ombudsman may appoint an official on the Ombudsmen's staff to prosecute the legal proceedings on behalf of the Ombudsman.

In cases referred to in the third and fourth paragraphs of Article 6, the Ombudsmen may authorise officials on the Ombudsmen's staff to undertake action required.

23. Cases are concluded after oral presentation, for which an official on the staff of the ombudsmen's secretariat or specially appointed for the task is responsible. Decisions to reject a case or file it, can, however, be made without such presentation. The Ombudsman may also conclude other cases without oral presentation if there are exceptional grounds for doing so.

Documents that have been submitted to the Parliamentary Ombudsman in connection with a case may not be returned until the case has been concluded. If in such a case an authority is deprived of the original document, this may be returned subject to the submission of a certified copy of the document. Act (1994:1649)

24. A journal is to be kept for all cases and for the actions taken in connection with them.

Documentary records for every decision are to be kept at the Ombudsmen's secretariat showing who made the decision, who was responsible for the oral presentation and the date and content of the decision.

A register is to be kept of specially designated decisions. Written records are to be kept during inspections and when needed for other reasons.

Miscellaneous regulations

25. When the annual report is submitted to the Riksdag, journals, written records and registers covering the same period are to be presented at the same time to the Committee on the Constitution.

26. The Ombudsmen's secretariat is to be open to the public during the hours decided on by the Chief Parliamentary Ombudsman.

27. Documents are to be issued free of charge, unless otherwise justified for special reasons.

If a charge is to be made, it should be fixed according to the regulations in force for public authorities in general.

No appeal may be made against a decision to impose a charge.

The revenue from charges is at the disposal of the Parliamentary Ombudsmen.

28. The Chief Parliamentary Ombudsman appoints officials within the Ombudsmen's secretariat and other staff, insofar as he has not delegated these tasks, as laid down in Article 15, to the Administrative Director.

29. Regulations concerning appeal against decisions in matters of appointment to posts or otherwise affecting staff within the Ombudsmen's secretariat, are laid down in the Regulations for Appeal for the Riksdag and its Agencies.

The Bihar Special Courts Bill, 2009

THE BIHAR SPECIAL COURTS BILL, 2009

A BILL

PREAMBLE :— TO PROVIDE FOR THE CONSTITUTION OF SPECIAL COURTS FOR THE SPEEDY TRIAL OF CERTAIN CLASS OF OFFENCES AND FOR CONFISCATION OF THE PROPERTIES INVOLVED.

WHEREAS corruption is perceived to be amongst the persons holding public offices and public servants within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 in the State of Bihar;

AND WHEREAS the Government has sufficient reasons to believe that large number of persons, who have held or are holding public offices and are public servants within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 have accumulated vast property, disproportionate to their known sources of income by resorting to corrupt means;

AND WHEREAS it is obligation of the State to prosecute persons involved in such corrupt practices and confiscate their ill gotten assets.

AND WHEREAS the existing courts of Special Judges cannot reasonably be expected to bring the trials, arising out of those prosecutions, to a speedy termination and it is imperative for the efficient functioning of a parliamentary democracy and the institutions created by or under the Constitution of India that the aforesaid offenders should be tried with utmost dispatch;

AND WHEREAS it is necessary for the said purpose to establish Special Courts to be presided over by the persons who are or have been Sessions Judges/Additional Sessions Judges and it is also expedient to make some procedural changes whereby avoidable delay in the final determination of the guilt or innocence, of the persons to be tried, is eliminated without interfering with the right to a fair trial.

BE it enacted by the Legislature of State of Bihar in the Sixtieth Year of the Republic of India as follows: —

CHAPTER I

PRELIMINARY

- 1. Short title extent and Commencement :-**
 - (1) This Act may be called the Bihar Special Courts Act, 2009.

(2) It shall extend to the whole of the State of Bihar.

(3) It shall come into force at once.

2. Definitions-In this Act, unless the context otherwise requires:-

(a) "Act" means Prevention of Corruption Act, 1988.

(b) "authorised officer" means any serving officer belonging to Bihar Superior Judicial Service and who is or has been Session Judge/Additional Sessions Judge, nominated by the State Government with the concurrence of the High Court for the purpose of section 13;

(c) "Code" means the Code of Criminal Procedure, 1973; (2 of 1974)

(d) "declaration" in relation to an offence, means a declaration made under section-5 in respect of such offence;

(e) "offence" means an offence of criminal misconduct which attracts application of Section-13(1)(e) of the Act either independently or in combination with any other provision of the Act or any of the provision of Indian Penal code. (49 of 1988)

(f) "Special Court" means a Special Court established under section 3; and

(g) words and expressions used herein and not defined but defined in the Code or the Act shall have the meanings respectively assigned to them in the Code or the Act.

CHAPTER II

ESTABLISHMENT OF SPECIAL COURTS

3. Establishment of Special Courts- (1) The State Government shall, for the purpose of speedy trial of offence, by notification, establish as many Courts as considered adequate to be called Special Courts.

- (2) A Special Court shall be presided over by a Judge to be nominated by the State Government with the concurrence of the Patna High Court
 - (3) No person shall be qualified for nomination as a Judge of a Special Court unless he is a member of Bihar Superior Judicial Service and is or has been a Sessions Judge/Additional Sessions Judge in the State.
4. **Cognizance of cases by Special Courts-** A Special Court shall take cognizance of and try such cases as are instituted before it or transferred to it under section 10.
5. **Declaration of cases to Be dealt with under This Act-** (1) If the State Government is of the opinion that there is *prima-facie* evidence of the commission of an offence alleged to have been committed by a person, who has held or is holding public and is or has been public servant within the meaning of section 2(c) of the Prevention of Corruption Act, 1988 in the State of Bihar, the State Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.
- (2) Such declaration shall not be called in question in any Court.
6. **Effect of declaration.**—(1) On such declaration being made, notwithstanding anything in the Code or any other law for the time being in force, any prosecution in respect of the offence shall be instituted only in a Special Court.
- (2) Where any declaration made under section-5 relates to an offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court under this Act, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to Special Court for trial of the offence in accordance with this Act.
7. **Jurisdiction of Special Court as to Trial of Offences-** A Special Court shall have jurisdiction to try any person alleged to have committed the offence in respect of which a declaration has been made under section 5, either as principal, conspirator or abettor and

All of them can be jointly tried therewith at one trial in accordance with the Code.

8. Procedure And powers of Special Courts- (1) A Special Court shall, in the trial of such cases, follow the procedure prescribed by the Code for the trial of warrant cases before a Magistrate.

- (2) Save as expressly provided in this Act, the provisions of the Code and of the Prevention of Corruption Act, 1988(49 of 1988) shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purpose of the said provisions, the persons conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.
- (3) A Special Court may pass, upon any person convicted by it, any sentence authorised by law for the punishment of the offence of which such person is convicted.

9. Appeal against orders of Special Courts- (1) Notwithstanding anything in the Code, an appeal shall lie from any judgment and sentence of a Special Court to the High Court of Patna both on facts and law.

- (2) Except as aforesaid, no appeal or revision shall lie in any court from any judgment, sentence or order of a Special Court.
- (3) Every appeal under this section shall be preferred within a period of thirty days from the date of judgment and sentence of a Special Court.

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied for reasons to be recorded in writing that the appellant had sufficient cause for not preferring the appeal within the period.

10. Transfer of Cases- Notwithstanding the other provisions of this Act, it would be open to the High Court of Patna to transfer cases from one Special Court to another.

11. Special Court not bound to Adjourn a Trial- (1) A Special Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice and for reasons to be recorded in writing.

- (2) The Special Court shall endeavour to dispose of the trial of the case within a period of one year from the date of its institutions or transfer, as the case may be.

12. **Presiding Judge may act on evidence recorded By his Predecessor-** A Judge appointed under section 3 to preside over a Special Court may act on the evidence recorded by his predecessor or predecessors or partly recorded by his predecessor or predecessors and partly recorded by himself.

CHAPTER III

CONFISCATION OF PROPERTY

13. Confiscation of property.—(1) Where the State Government, on the basis of *prima-facie* evidence, have reasons to believe that any person, who has held or is holding public office and is or has been a public servant. has committed the offence, the State Government may, whether or not the Special Court has taken cognizance of the offence, authorise the Public Prosecutor for making an application to the authorised officer for confiscation under this Act of the money and other property, which the State Government believe the said person to have procured by means of the offence.

(2) An application under sub-section (1)—

- (a) shall be accompanied by one or more affidavits, stating the grounds on which the belief, that the said person has committed the offence, is founded and the amount of money and estimated value of other property believed to have been procured by means of the offence; and
- (b) shall also contain any information available as to the location for the time being of any such money and other property, and shall, if necessary, give other particulars considered relevant to the context.

14. **Notice for Confiscation-** (1) Upon receipt of an application made under section 13 of this Act, the authorised officer shall serve a notice upon the person in respect of whom the application is made (hereafter 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 source of his income, earnings or assets, out of which or by means of which he has acquired such money or property, the evidence on which he relies and other relevant information and particulars, and to show cause as to why all or any of such money or property or both, should not be declared to have been acquired by means of the offence and be confiscated to the State Government .

- (2) Where a notice under sub-section (1) to any person specifies any money or property or both 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) Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the authorised officer, by the person affected or the State Government shall be open to be rebutted in the trial before the special court provided that such rebuttal shall be confined to the trial for determination and adjudication of guilt of the offender by the special court under this Act.

15. Confiscation of property in certain cases- (1) The authorised officer may, after considering the explanation, if any, to the show cause notice issued under section 14 and the materials available before it, and after giving to the person affected (and in case here the person affected holds any money or 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 other money or properties in question have been acquired illegally.

- (2) Where the authorised officer specifies that some of the money or property or both referred to in the show cause notice are acquired by means of the offence, but is not able to identify specifically such money or property, then it shall be lawful for the authorised officer to specify the money or property or both which, to the best of his judgment, have been acquired by means of the offence and record a finding, accordingly, under sub-section (1).
- (3) Where the authorised officer records a finding under this section to the effect that any money or property or both have been acquired by means of the offence, he shall declare that such money or property

or both shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances:

Provided that if the market price of the property confiscated is deposited with the authorised officer, the property shall not be confiscated.

- (4) Where any share in a Company stands confiscated 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 share. (1 of 1956)
- (5) Every proceeding for confiscation of money or property or both under this Chapter shall be disposed of within a period of six months from the date of service of the notice under sub-section(1) of section-14.
- (6) The order of confiscation passed under this section shall, subject to the order passed in appeal, if any, under section 17, be final and shall not be called in question in any Court of law.

16. Transfer To be null And void-Where, after the issue of a notice under section 14, any money or property or both referred to in the said notice are transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be void and if such money or property or both are subsequently confiscated to the State Government under section 15, then, the transfer of such money or property or both shall be deemed to be null and void.

17. Appeal- (1) Any person aggrieved by any order of the authorised officer under this Chapter may appeal to the High Court within thirty days from the date on which the order appealed against was passed.

- (2) Upon any appeal preferred under this section the High Court may, after giving such parties, as it thinks proper, an opportunity of being heard, pass such order as it thinks fit.
- (3) An appeal preferred under sub-section (1) shall be disposed of preferably within a period of six months from the date it is preferred, and stay order, if any, passed in an appeal shall not remain in force beyond the prescribed period of disposal of appeal.

18. **Power to take possession-** (1) Where any money or property or both have been confiscated to the State Government under this Act, the concerned authorised officer shall order the person affected, as well as any other person, who may be in possession of the money or property or both to surrender or deliver possession thereof to the concerned authorised officer or to any person duly authorised by him in this behalf, within thirty days of the service of the order:

Provided that the authorised officer, on an application made in that behalf and being satisfied that the person affected is residing in the property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be specified on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property.

- (2) If any person refuses or fails to comply with an order made under sub-section (1), the authorised officer may take possession of the property and may, for that purpose, use such force as may be necessary.
- (3) Notwithstanding anything contained in sub-section (2) the authorised officer may, for the purpose of taking possession of any money or property or both referred to in sub-section (1), requisition the service of any police officer to assist and it shall be the bounden duty of such officer to comply with such requisition.
19. **Refund of Confiscated money or property-**Where an order of confiscation made under section 15 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the price thereof including the money so confiscated with the interest at the rate of five percent per annum thereon calculated from the date of confiscation.

CHAPTER IV

MISCELLANEOUS

20. **Notice or Order not to be invalid for error in description-** No notice issued or served, no declaration made and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein, if

such property or person is identifiable from the description so mentioned.

21. **Act to be in addition to any other law**-The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.
22. **Bar to other Proceedings**-Save as provided in sections 9 and 17 and notwithstanding anything contained in any other law, no suit or other legal proceedings shall be maintainable in any Court in respect of any money or property or both ordered to be confiscated under section 15.
23. **Protection of action taken in good faith**-No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.
24. **Power to Make rules:-** The State Government may, by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.
25. **Notifications under section 3 and declarations under section 5 to be laid**-Every notification made under sub-section (1) of section 3 and every declaration made under sub-section (1) of section 5 shall be laid, as soon as may be, after they are made, before the State Legislature.
26. **Overriding effect:-**
Notwithstanding anything in the Prevention of Corruption Act, 1988 and the Criminal Law Amendment Ordinance, 1944 or any other law for the time being in force, the provisions of this Act shall prevail in case of any inconsistency.

49 of 1988.
Ordinance
No. 38 of
1944.