



CONSTITUTIONAL VALIDITY OF SECTION 17A OF THE PREVENTION OF CORRUPTION ACT: A CASE COMMENTARY

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INTRODUCTION

Independent India's first Home Minister, Shri Sardar Vallabhbhai Patel, referred to civil servants as the 'Steel Frame of India'. The constitutional validity of Section 17A of the Prevention of Corruption Act, 1988 came under scrutiny in *Centre for Public Interest Litigation v. Union of India*, where the Supreme Court was confronted with the question whether requiring prior executive approval before initiating an investigation against public servants undermines the principle of equality, rule of law, and accountability. The Division Bench, consisting of Justice B.V Nagarathna and K.V Vishwanathan, gave divergent opinions, and the matter has been referred to the Hon'ble Chief Justice of India.

CONTENTIONS OF THE PETITIONER

The petitioner challenges the constitutional validity of Section 17A of the Prevention of Corruption Act, 1988, contending that it violates Articles 14 and 21 of the Constitution. It is argued that Section 17A effectively reintroduces a regime of prior approval for investigation that had earlier been struck down by the Supreme Court in *Vineet Narain v. Union of India* and *Subramanian Swamy v. Director, Central Bureau of Investigation (CBI)*. According to the petitioner, such prior approval obstructs the collection of material evidence and undermines investigative independence.

The petitioner further submits that Section 17A expands protection to all levels of public servants, thereby institutionalising arbitrariness. Reliance is placed on data furnished by the Union of India, indicating that prior approval was refused in a substantial number of cases, without any disclosed transparent criteria. This, it is contended, creates a reasonable apprehension of selective targeting and shielding of politically connected officials.

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It is also argued that Section 17A defeats the purpose of the Lokpal and Lokayuktas Act, 2013, by vesting screening power in the executive rather than an independent authority. The provision is further alleged to be inconsistent with the mandate of mandatory FIR registration laid down in *Lalita Kumari v. Government of Uttar Pradesh*, and contrary to India's obligations under the United Nations Convention against Corruption. In the alternative, the petitioner submits that if prior approval is retained, the screening process must be entrusted to an independent body such as the Lokpal.

CONTENTIONS OF THE RESPONDENT

The Union of India defends Section 17A on the ground that statutory provisions carry a presumption of constitutionality. It is contended that the provision was enacted after extensive deliberation by parliamentary committees and the Law Commission. The respondent distinguishes earlier judgments by arguing that the impugned provision is statutory in nature and applies uniformly to all public servants, unlike earlier executive instructions or selectively applicable provisions.

According to the respondent, Section 17A serves a salutary purpose by protecting honest public servants from harassment and ensuring that bona fide decisions taken in discharge of official duties are not subjected to motivated investigations. The provision is described as a screening mechanism designed to balance accountability with administrative efficiency. It is further argued that adequate safeguards exist in the form of time limits, standard operating procedures, judicial review, and exceptions such as on-the-spot arrests.

The respondent also relies on judicial precedents extending pre-investigative and pre-prosecutorial protection to members of the judiciary, contending that similar protection for public servants cannot be regarded as unconstitutional. It is emphasised that Section 17A is narrowly tailored and applies only where there is a reasonable nexus between the act complained of and the discharge of official duties.

BACKGROUND

Section 17A was introduced by the Prevention of Corruption (Amendment) Act, 2018. Before the insertion of Section 17A, a "Single Directive" governed investigations against senior public officials, requiring prior sanction before inquiry. This executive instruction was struck down in *Vineet Narain v. Union of India* on the ground that executive directions could not override statutory investigative powers. The present challenge raises the question of whether Section

17A, though statutory, revives the substance of the same pre-investigation control that was earlier held to be incompatible with constitutional governance.

Under Section 17A, no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under the Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval of the authority prescribed therein. The provision prescribes that no such approval is necessary for cases involving the arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person. It is also prescribed that the concerned authority is to convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

The legislative intent behind Section 17A was to protect honest public servants from complaints that are maliciously motivated and to prevent administrative paralysis in decision-making.

JUDICIAL DIVERGENCE

Justice B.V Nagarathna questioned the constitutionality of Section 17A, observing that public servants operate within interconnected administrative hierarchies, making prior approval susceptible to institutional bias. This results in a conflict of interest, thereby helping in the concealment of corrupt practices.

Justice K.V. Vishwanathan, on the other hand, supported keeping Section 17A, saying that it was important to protect public officials from false claims and damage to their reputations. According to him, the concerns of bias could be addressed through independent mechanisms such as a neutral screening authority, rather than striking down the provision in its entirety.

CONSTITUTIONAL ISSUES

A central issue raised by Section 17A is the conflation of investigation with culpability. Investigation is a fact-finding process intended to determine whether allegations are true or false; it is not a declaration of guilt. Conditioning investigation on prior approval assumes an assessment of credibility without the use of investigative tools, creating a logical circularity. If

investigation is barred at inception, the legal system is deprived of the very mechanism through which truth is established.

The classification of public servants as a separate category is permissible under Article 14, granting them immunity from investigation, which itself raises concerns of disproportionate privilege. Protection against false cases is ordinarily ensured through procedural safeguards during investigation and trial, which applies to all citizens. By establishing a pre-emptive executive veto, Section 17A deviates from this common framework.

The rule of law requires that no individual or authority be placed beyond scrutiny. By allowing the executive to decide whether allegations against its own officials may even be investigated, Section 17A risks eroding institutional accountability. The absence of objective criteria and mandatory reasoning for granting or refusing approval further increases the chances for arbitrariness.

Different legal frameworks acknowledge the need to safeguard public officials from frivolous prosecutions while preserving investigative independence at the same time. In jurisdictions such as the United Kingdom and Canada, prior executive permission is not required to initiate an investigation into corruption-related allegations.

Justice Vishwanathan's suggestion of involving the Lokpal seeks to introduce neutrality; however, vesting a single institution with the whole pre-investigation authority risks replicating bureaucratic delay and opacity. A more constitutionally adequate approach would include limited judicial oversight at the threshold stage, where an independent magistrate examines whether prima facie material exists to permit investigation. Such a model preserves both the dignity of public servants and the integrity of investigative processes without creating executive immunity.

CONCLUSION

While the objective of protecting honest public servants is legitimate, shielding them from investigation at the threshold raises serious constitutional concerns. Investigation should function as a neutral instrument of truth-finding, not as a discretionary privilege. The unresolved question before the Chief Justice of India is whether Section 17A represents a reasonable safeguard or an impermissible departure from the principles of equality, democratic accountability and rule of law.

REFERENCES

1. *Centre for Public Interest Litigation v. Union of India*, Writ Petition (Civil) No. ___ of 2026 (Supreme Court of India) (pending).
2. *Vineet Narain v. Union of India*, (1998) 1 S.C.C. 226 (India).
3. *Subramanian Swamy v. Director, Central Bureau of Investigation*, (2014) 8 S.C.C. 682 (India).
4. *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 S.C.C. 1 (India).
5. Prevention of Corruption Act, No. 49 of 1988, § 17A (India).
6. Lokpal and Lokayuktas Act, No. 1 of 2014 (India).