CHAPTER – 4

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OVERVIEW:

Chief justice of India Mr. K.G.Balakrishnan favored statutory provision for seizure of illegal properties and assets of government officials convicted in corruption cases. He also wanted specialist team of lawyers to ensure that they progressively develop expertise in presenting corruption cases. If a public official amasses wealth at the cost of public, then the state is justified in seizing such assets. Chief Justice of India said at national seminar during Septembor on fighting crimes related to corruption. "One prominent suggestion is the inclusion of statutory remedy that will enable confiscation of properties belonging to persons who are convicted of offence under Prevention of Corruption Act", Chief Justice of India said. He further said that "procedural delay like granting sanction and difficulty in marshalling large number of witness were the major hurdles in achieving meaningful convictions when anticorruption agencies was already finding it difficult to grapple with 9000 pending cases due to shortage of designated courts". It is necessary that there should be a speedy manner of granting sanction. The prosecution becomes ineffective if the sanction is granted after six to seven years, he said. Justice Balakrihnan expressed deep concern that CBI relies on large number of witnesses in the corruption related matter instead of coming out with solid witness which unnecessarily prolongs the trial of cases for three to four years. "Instead of having eight to ten witnesses, emphasis should be on hearing on one solid witness to prove the case", he said.

Chief Justice of India Mr.K.G.Balakrishnan delivered keynotes address at National Summit Organized by foundation for restoration of national values on 18.11.2008 at India habitate centers New Delhi.

As reported, Chief Justice of India said that corruption is the violation of human rights. The question comes in the summit i.e. the restoration of national value and whether decision on abstract ideas will serve any constructive purpose. However, after going through the programme schedule and the writing of Swami Bhoomananda Tritha, these doubts were quickly dispelled. There is clear focus on evolving specific measure for instilling values in public as well as private life and the impressive list of speakers consist of those who have led by personal example in their respective fields. Chief Justice of India emphasized firstly corruption in public institution secondly the means used for conflict resolution in our society. He has given special emphasis that these two themes in particular since they have direct bearing on the common understanding of citizenship on morality. Chief Justice of India has further remarked that corruption is identified with any person or institution who misuses the power and discretion conferred on the same. Ordinary citizen face unnecessary problems in their routine interaction with government agencies. Practices such as acceptance of favor or misappropriation of public fund have actually come to be described as perks for holding public office and employment. Admittedly the extent of corruption may have link with increasing disparity between pay scale offered in the public and private sector. However pervasive culture of graft provokes pessimism about the quality of governance.

It is true that a judge is certainly not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness. But he cannot be a silent spectator to the destruction of legislative

supremacy. Some critics are of view that this is judicial activism but in common people, it is judicial dependence on the part of common people and such type of judicial dependence has created a salutary impact and it has provided a safety valve to general people against arbitrary action on the part of executive and legislature. With the help of judiciary, corruption related cases such as various scam, scandals of political executive and bureaucrats have been exposed and offenders have been booked which has created faith amongst ordinary people. It is surprising that both legislature and executive often tend to forget that all organs of states are under obligation to provide justice to people in general. Due to non functioning or mal functioning on the part of executive, judicial dependence have been increased though it is termed as judicial activism. It is indispensable that nation must have judges who are independent and constructive.

The framers of Art 32, 226 and 141of constitution of India provides power to higher judiciary for dispensing justice to widest sense and not to limit itself to review circle otherwise independent judges have never hesitative to perform in the interest of justice which may be called as act of judicial engineering.

In 1615 Chief Justice Coke of England had ruled that function and power of courts were not only to correct errors but all acts of misgovernance so that no wrong can be done. It is unfortunate that all organs of State are over politicized and atmosphere prevailing in the entire country, the court must act effectively without fear or favor to ensure that constitution and law of land are not violated.

A. CODE OF CONDUCT OF JUDGES:

Chief Justice of India has recommended that any judicial officer who is unfit, ineffective, and incompetent or has

doubtful integrity may be retired from service. In a communiqué with Chief Justices of all High courts throughout India, Chief Justice of India during December 2009 said "with a view to provide that Judicial Officer who is unfit, ineffective, incompetent and has doubtful integrity may be retired from service even before his continued ability's assessed in terms of direction of Supreme Court in all India judges association case. Chief Justice of India further said that if such procedure is implemented in right earnest, such provision will keep deviant behavior in check besides getting rid of those who are found to be indolent, ineffective or with doubtful integrity. A review on the lines of provision contained in rule be carried out firstly when judicial officer attain the age of 55 years. This would be in addition to assessment being carried out at the age of 58 years in terms of direction of Supreme Court in all India Judges Association Case.

It has been reported that judiciary best exemplies the problems allegation of corruption even in higher judiciary has demonstrated that very little has been done to initiate much needed reforms. During November 2006 Chief Justice of India appealed to all Chief Justices of High Courts to take appropriate steps to weed out Judges of subordinate courts found to be indolent, infirm or with doubtful integrity. This exercise is laudable but corruption in the entire judicial system is real and poses clear and present danger to judicial independence. These are few studies that describe corrupt practices and analyze the impact of entrenched corruption on the development of judiciary in demo crating country. Low compensation and weak monitoring system are traditionally considered to be main causes. But there are other systematic factors, procedural complexities in the provision of public services, administrative inefficiency, lack of transparency in judicial appointment and delay in filling vacancies especially in High Courts and subordinate courts. This fastens corrupt practices and endangers inefficiency in the administration and

dispensing of justice. Let's take West Bengal as case study and make some statistical comparison. Available data and descriptive sources indicate that State Judicial Health is unsound. Immediate remedial and revolutionary steps are needed unless it is to become mockery of institutional design the founders of constitutional envisaged.

B. ESTABLISHMENT OF SPECIAL COURT:

Both Prime Minister and Chief Justice of India made strong speech on 20.04.2008 for setting up special courts to tackle quickly on the menace of corruption in public life. Ascertaining that corruption poses challenge to both government and judiciary, Prime Minister said Chief Justice of India suggested to establish special courts to deal with corruption cases and Prime Minister also agreed that there urgent need to do so. This will instill greater confidence in our Justice delivery system at home and abroad. Chief Justice of India stressed the need for quick disposal of cases registered under Prevention of Corruption Act and favored creation of special vigilance courts. Despite repeated efforts, allocation of fund for starting new courts is not encouraging, Justice Balakrishnan said. His Lordship asked State Governments to start more special courts to dispose of corruption related cases. Prime Minister and Chief Justice of India were addressing a conference of all Chief Minister and all Chief Justices of all High Courts all over country. After establishment of fast track Courts, we could dispose of large number of such cases. Even then numbers of courts are not sufficient to dispose of the cases. Mr. Justice Balakrishnan said. Both Chief Justice of India and Prime Minister expressed serious concern over range of issue including mushroom pendency of cases in the county's courts abysmal existing infrastructure of courts and severe problems be setting the Judicial architecture and delivery of justice to common people. While stressing

the nod of serious Judicial reforms at various levels, Chief Justice of India demanded higher budgetary allocation to set up new courts to combat pendency of cases saying the present allotment is grossly inadequate. We have got an independent judiciary. We received rebuke from public to many things to which we are not responsible. Chief Justice of India said referring to the limitation under which judiciary works. Backing judicial reforms, Chief Justice of India said adequate laws, institutional mechanism and sufficient infrastructure were also needed.

Chief Justice of India by his letter dated 07.09.2008 had requested government of India to set up additional special courts to deal with corruption related cases. He also said that National case management system was being developed in Bhopal to guard against judicial delay. He also further said that government should undertake administrative reforms to deal with monitoring cases in courts. Lack of good and proper governance adds to the number of cases coming to courts. Chief Justice of India repeatedly stressed for appropriate increase in the number of judges and better financial commitment from government for upgrading judicial infrastructure to tackle the problems of judicial delay. Besides, large numbers of cases are pending throughout India in different courts. According to conservative estimates, there are 105 judges per million populations.Morethan 46000 cases are pending before Supreme court 36 lakhs cases are pending before different High courts throughout India and more than 2.5 crores cases are pending before Ld.subordinate courts throughout India. Besides, large number of cases is pending before different tribunal and quasi judicial bodies.

As on April 2008, Calcutta High Court accounts for 283273 cases out of 36 lakhs cases pending in different High Courts

throughout India. On the other hand, number of pending cases of all subordinate courts throughout West Bengal account for 2194631 out of total 2.5 crores cases pending in different subordinate courts throughout India. The high incidence of pending cases especially in West Bengal is due to lack of attitude of High Court which are responsible for administrative supervision of lower courts towards filling of vacancies in the rank of District Judges. It is to be mentioned in this connection that sanctioned strength of Calcutta High Court is 58 but the man on roll is 40. The picture in state subordinate judiciary is even more dismal. West Bengal ranks 4th in the list of States where as vacancies of District and Additional District Judges are very high as 204 as on April 2008. As far as West Bengal is concerned, the problems of pending cases will be compounded by next year out of 204 courts and 12 temporary courts, one third are functioning. By the end of 2008, there have been 26 vacancies in District and Additional District Judges level. This will undoubtedly choke the already clogged justice delivery system. In 2002, Supreme Court desired that in every state people judge ratio should be 100000: 50. During last six years, State Government has not taken steps to increase the number of subordinate courts to match population growth. The result has been piling up the cases. Add to the woes of West Bengal Judicial Officers who have to clear examination for every promotion. Some West Bengal Judicial Officers are of view that this contributes to corruption because for next level busy they themselves preparing for examination rather than dealing Judicial works.

C. CORRUPTION IN HIGHER JUDICIARY:

It has been reported that Ex Chief Justice of India Mr. K.N.Singh remarked on the unfortunate controversy regarding Chief Justice of Karnataka High Court Mr.Dinkaran on charge of corruption.

He remarked that allegation against sitting Chief Justice of Karnataka High Court was worse to learn that charges are being investigated by collector of District. Such exercise has damaged the credibility and image of entire Judiciary.

It has been reported that an open court will hear Provident Fund corruption case involving lone Supreme Court Judge, 13 serving and retired High Court Judges and other both serving and retired District Judges, the apex court decided. The move followed calls from transparency and several petitioners that demanded thorough probe into allegation that the judges defrauded the Ghaziabad court treasury for rupees 2.3 crores scams. "Every one was unanimous that the matter should be heard in court". Solicitor general Mr.G.E.Vahanvata said minutes after closed down hearing afternoon. Open court hearing means the public can be present and the media can report the proceeding though the court might at later stage decide in chamber proceeding, where only lawyers are allowed. Former Law Minister Mr.Shanti Bhusan said that open court hearing is important as public got to watch the proceeding and see how decision is taken. It will instill a sense of confidence in the public. Another petitioner transparency International also called for CBI probe or one by police officer of unimpeachable character if the Judiciary wanted to nip growing perception that it was closing rank and trying to brush the role of Judicial Officer under the carpet. Ghaziabad police have already filed FIR against 82 lower court staff for allegedly siphoning of rupees 7 crores from Provident Fund Employees. But no FIR has been registered so far against apex court Judge, 7 High Court Judges and 10 District Judges. Now FIR has been lodged against 6 retired High Court Judges and 2 retired District Judges alleged to be involved in the scam. District police had written to Chief Justice of India seeking permission to go ahead with investigation against accused judges. Chief Justice of India has since allowed the cops to send questionnaires to judges outlining specific charges against them. He said that he would permit

interrogation those judges whose answer was unsatisfactory. A corruption case against former Chief Justice Madras High Court who was later elevated to Supreme Court was heard by apex court which ordered enquiry. Justice V.Ramaswami was found guilty and recommended action but Parliament motion to impeach him fell through.

Supreme Court made it clear that it would not tolerate increasing corruption in the Judiciary when for the first time it allowed CBI to interrogate sitting Judges of High Court whose names have been cropped for judges scam. This is the first time in India where sitting High Court Judges will be subjected to police investigation. According to earlier Judgement, *Veera Swami v. Union of India*[1], it was held that the need for preserving the independence of judiciary and the fact that Chief Justice of India being the head of judiciary is primarily concerned with the integrity and impartiality of the judiciary, the court has directed that Chief Justice of India is required to be consulted at the stage of examining the question of granting sanction for prosecution. Accordingly Chief Justice of India accorded permission to interrogate setting Punjab & Haryana High Court Judges who have been named in the scam. CBI got permission after taking over investigation of scam in which former Advocate General of Haryana Mr.Sanjib Bansal is in jail custody for his alleged involvement in the delivery of rupees 15 lakhs at the resident of Mrs. Justice Nirmalzeet Kaur. She immediately called police and also informed Chief Justice of High Court about the attempt to bribe her. Mr. Bansal had informed during investigation by CBI reportedly confessed that he was regular conduit between Mr. Justice N.Yadav and Mr.Rabindra Pal Singh. Supreme Court on 09.09.2008 asked Uttar Pradesh Government to inform court within two weeks if it is agreeable to CBI on enquiry involving rupees 7 crores GPF scam of

[1](1991) 3SCC.655

Ghaziabad District Court in which 36 judges including lone Supreme Court Judge have been named as beneficiaries. A bench consisting of Justice Dr. Arijit Paswat, Justice V.S.Sirpurker and Justice G.S.Singhvi sought response from State Government on the issue as its consent is necessary before ordering CBI probe. Supreme Court passed order on 23.09.2008 in multi crore Ghaziabad court treasury scam. Earlier probe orders were administrative in nature issued by judges who headed court adalat where allegation surfaced and FIR filed in local police station at Ghaziabad against accused lower court staff on having siphoned off crores of rupees from employees Provident Fund in between 1995 and 2001. At least 13 High Court Judges and lone Supreme Court Judge were said to have received favor. FIR named 82 people in connection with withdrawal of money from treasury. Division bench led by Justice Dr.Arijit Paswat directed CBI to take over proof from Uttar Pradesh police. The order came after it heard argument from local lawyer Mr.Nahar Singh Yadav on behalf of local Bar Association which filed Public Interest Litigation. Supreme Court asked CBI to take all records related to the case immediately. The agency was directed to microfilm the documents to prevent tampering. CBI has been directed to submit report within three months and no limitation has been imposed to probe the scam related matter. The bench also clarified in its earlier judgment barring registering of FIR's applied in sitting or retired judges and it would be decided whether FIR's should be registered once if received CBI report.

In another case, in an enquiry, it is held by Chief Justice of India that Mr. Justice Soumitra Sen. of Calcutta High Court was allegedly found to have indulged in financial misconduct prior to elevation of High Court Judge in December 2003. Mr. Sen. as practicing advocate is said to have received rupees 32Lakhs as court appointed receiver in 1993 in a law suit between Steel Authority India Limited and Shipping Corporation of India in which he is accused of depositing in his personal account. Acting on Chief Justice of India's

report, the centre is preparing to move a motion in Parliament to impeach Mr. Justice Sen. of Calcutta High Court. Ultimately Rajya Sabha passed resolution by majority votes for impeachment against Mr.Justice Sen but Mr.Sen resigned prior to facing Lok Sabha.

D.VIEW OF HON'BLE SUPREME COURT ON CORRUPTION:

Supreme Courts urged courts to refrain from suspending conviction on corrupt official saying the brethren enables them to hold on to their officers and harm public interest irreparably. Supreme Court also observed that it is necessary that courts should not aid public servant who stands convicted for corruption charges to only hold public office until he is exonerated after adjudication at the appellate level. A public servant found guilty of corruption should be treated as corrupted until Supreme Court exonerates him. The bench said "the mere fact that an appellate forum has challenged and to go into findings one again should not temporarily absolved him. If such public servant becomes entitled to hold office and to continue official act until he is absolved from such finding by suspension of conviction, it is public interest which suffers and some times irreparably" the bench said. The suspension of conviction impairs the moral of others and erodes the confidence of people in public institution. It added that other honest public servants are compelled to take from proclaimed corrupt officers on account of suspension of conviction the fallout would be one of shaking the system itself. The above judgement came in the case where Apex court set aside the order of Punjab & Haryana High court staying the convection of Patwari (land revenue officer) under Prevention of Corruption Act. Sec. 9 of Prevention of Corruption Act which was applied to this case makes "illegal gratification for any official act a crime". Sec. 13 (1) (d) says any pecuniary advantage for an official act would be construed as criminal

misconduct by public servant. Sec. 13 (2) says that the punishment should not be less than three years imprisonment and maximum seven years imprisonment. He was sentenced to three years rigorous imprisonment and slapped with fine for rupees 2000. High Court stayed conviction saying the official would lose job otherwise Apex court lifted stay and made following observation. "Corruption by public servant has now reached a monstrous dimension in India. Its tentacles have started grappling even the institution created protection of republic. Proliferation of corrupt public servant could cripple the social order if such men are allowed to continue and to manage to operate public institution.

E. DIRECTION OF SUPREME COURT ON ELECTION COMMISSIN:

Supreme Court issued direction upon election commission in 2002 to the effect that rule must be framed to get candidates seeking election to Parliament or state legislature to file affidavit on any criminal activities so that general people may think over before giving their choice of electing either law maker or law breaker of the country. Election commission complied with above direction of Hon'ble Supreme Court despite unprecedented political pressure. The election commission was able to generate popular awareness over the fact that politicians were acting like criminals and criminals getting space in the union polity.

F. DIRECTION OF DELHI HIGH COURT ON RTI ACT:

It has been reported that Delhi High Court while rejecting supreme court appeal in respect of judges asset declaration

case held that Chief Justice of India come within the ambit of Right to Information Act and held that Judicial independence is not judges personal privileges and responsibility cast upon that office.A full bench headed by Chief Justice of Delhi High Court held that office of Chief Justice of India is public authority. It was further held that judges of Supreme Court should make public their assets as they are not less accountable than judicial officers in lower court who are bound by service rules to declare assets. Full bench have been pleased to dismiss the argument of Supreme Court which opposed carrying Chief Justice of India's office within the purview of RTI Act on the ground that it would encroach in to its judicial independence. "Judicial independence is not personal privilege or prerogative of the individual judges. It is the responsibility imposed on each judges to enable him or her to adjudicate a dispute honestly and impartially on the basis of law and the evidence", the bench held.

The case has been filed by one Sri S.C.Agarwal under RTI Act 2005. Delhi High court judgment emanated on an appeal filed by apex court by challenging order dated 12.09.2009 of single bench of Delhi High Court. High court held that higher judge is placed in the judicial hierarchy;

Greater is the standard of accountability and stricture the scrutiny. "If declaration of assets by a subordinate judicial officer is seen as essential to enforce accountability at that level, then the need for such declaration by judges of the constitutional courts is even greater", the bench held rejecting the prayer that Supreme Court Judges are not bound to declare their assets. By giving detail interpretation to transparency law which has been marked as most historical judgment. High Court held that the Right to Information is the part of fundamental rights enshrined in Art 14, 19(1) (a) and 21. "The source of right to information does not emanate from Right to

Information Act. It is a right that emerges from constitutional guarantees under Art 19 (1) (a) as held by Supreme Court in catena of decision. The Right to Information Act is not repository of the right to information" the bench held. High Court expressed extremely high standard of judicial behavior both on and off the bench. For a judge to deviate from such standard of honesty and impartiality is to betray the trust reposed to him. A judicial scandal has been regarded has far more deplorable than scandal involving either the executive or legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm, bench held. It has been further held that legislature or administration may be found guilty of corruption without apparently endangering the foundation of states. But a judge must keep himself absolutely above the level of any suspicion to preserve the impartiality and independence of judiciary and to have the public confidence thereafter. "That judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law. Even when all other protection fails, it provides a bulwark to the public against any encroachment of its right and freedom under the law". In the appeal petition filed before division bench, Delhi High court, Supreme Court registry had contended that the single judge had erred in holding that Chief Justice India's Office come within the ambit of transparency law and had interpreted its provision too broadly which was "unnecessary and illogical"

G. ROLE OF JUDICIARY IN RESPECT COMPLAINT OF INTERTI WHERE ALLEGATION OF CORRUPTION ARE MADE AGAINST HIGH DIGNITARIES.

It is to be mentioned in this connection that major part of discursion in this section where high dignitaries involved in corruption related matters shall be main focus and it is within the domain of judicial review under Art 32 read with Art 142 of

Constitution of India and it could be effective instrument for achieving the investigative process which is under the control of executive.

Supreme Court passed judgment in respect of eradicating corruption from the society in a following case. Supreme Court held in *Vineet Narain v. Union of India*.[2]

Supreme Court held that whenever there is complaint of inertia by CBI in matters where accusation are made against high dignitaries, it is within the domain of judicial review under Art 32 read with Art 142 of constitution of India and it could be effective instrument for achieving the investigative process which is under control of executive.

Supreme Court struck down single directive issued to CBI by Government of India which requires prior sanction of designated authority to initiate investigation against officers of government, Public Sector Undertaking and Nationalized Bank at certain level. It was held that if accusation of bribery is supported by direct evidence of accusation of illegal gratification by them including trap cases, it is obvious that no other factor is relevant and the level or status of the officer is irrelevant. It is for this reason that it was conceded that such cases i.e. bribery including trap cases are outside the scope of single directive and that single directive cannot include within its ambit cases of possession of disproportionate assets by the offender. The question now is only in respect of cases other than those bribery including trap cases and of possession of disproportionate assets being covered by single directive of Government of India. Supreme Curt held that power of superintendence over the functioning

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[2] AIR 1998 SC 889

of CBI vested in Central Government under Sec 4 (1) of Delhi Special Police Establishment Act 1946 does not extend to initiation and actual process of investigation of others which are governed by statutory provisions. The general superintendence over the functioning of department and specification of the offences which are to be investigated by the agency is not the same as and would not include within its control of the initiations and actual process of investigation i.e. direction, once CBI is empowered to investigate an offence generally by its specification under Sec 3, the process of investigation including its initiation is to be governed by the statutory provision which provide for initiation and manner of investigation of offence. This is not the area which can be included within the meaning of "superintendence' under Sec 4(1). Supreme Court further held that necessity of previous sanction for prosecution is provided under Sec 6 of Prevention of Corruption Act 1947 (Sec 19 of Prevention of Corruption Act 1988) without which no court can take cognizance of an offence punishable under Sec 5 of that Act. There is no such previous sanction for investigation provided for either in Prevention of Corruption Act or Delhi Special Police Establishment Act or in any other statutory provisions. The above is the only manner in which Sec 4 (1) of the Act can be harmonized with Sec 3 and other statutory provision.

Supreme Court directed CBI to report CVC about the progress of investigation in following manner.

a. CVC shall be given statutory status.

b. Selection for the post of Central Vigilance Commissioner shall be made by a committee comprising Prime Minister, Home Minister and leader of opposition from the panel of outstanding civil servants and other with unimpeachable integrity to be

furnished by cabinet secretary. The appointment will be made by President on the basis of recommendation made by the committee. This shall be done immediately.

c. Central Vigilance Commission shall be responsible for the efficient functioning of CBI. While government shall remain answerable for the CBI's functioning to introduce visible objectivity in the mechanism to be established for over viewing the CBI's working, the Central Vigilance Commission shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to Central Vigilance Commission about cases taken up by it for investigation, progress of investigating cases in which charge sheets are filed and their progress. The Central Vigilance Commission shall review the progress of all cases moved by CBI for sanction of prosecution of public servants which are pending with competent authorities specially those in which sanction has been delayed or refused.

d. The Central Government shall take all measures necessary to ensure that CBI functions effectively and efficiently and in non partisan way.

e. The Central Vigilance Commission shall have separate section in its annual report on CBI's functioning after supervisory function is transferred to it.

f. Supreme Court held that CBI and other government agency had not carried out public duty to investigate the offences disclosed that none stands above the law so that an alleged offences by him is not required to be investigated. Supreme Court would

monitor investigation to see that investigation process progressed while yet ensuring that they did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial.

g. That the task of the monitoring court would end the moment a charge sheet was file in respect of a particular investigation and that ordinary processes of the law would be applied.

h. In respect of order in which investigations were leading, Supreme Court felt it necessary to direct CBI not to report the progress of the investigation to the person occupying high office in the political executive in order to remove any impression of bias or lack of fairness and to maintain the credibility of the investigations.

Supreme Court in Veneet Narain attempted to begin the cleansing of Indian political corruption by focusing on two specific institutions within Indian Society that required modification. Supreme Court acknowledged that Central Vigilance Commission needed to be given statutory status to ensure the continuance of its efforts. Supreme Court struck down the single directive and advocated Central Bureau of Investigation's severance from Central Government Authority by giving Central Vigilance Commission superintendence power over Central Bureau of Investigation. However Central Government overturned Supreme Courts decision. Central Government passed CVC Act in half hearted manner to comply with the directive passed in Veneet Narain case. Central Government once again retained its power to sanction or stop investigation of high ranking public servant. The language of CVC Act does not implicate the exact challenge presented in Veneet Narain instead sway court focused on Art 14 equility of law

challenge to the section of CVC Act that reconsider single directive. Supreme Court in Veenit Narain case had used harsh words about the unfairness present in single directive application. The sum and substance of this order is that CBI and other governmental agencies had not carried out their public duty to investigate the offence disclosed that none stands above the law so that an alleged offence by him not required to be investigated. Hon'ble court emphasized "Be you ever so high, the law is above you". The government's prior sanction requirement is in clear violation of courts definition of equality before law because it creates two classes of offenders with no rational basis for the distinction beyond reprehensively protection of one class of public servant. The supreme court's emphasis on the degradation of fundamental rights as the central issue in sway is fitting because corruption in India not only poses a significant danger to the quality of governance but also threaten in an accelerated manner the very foundation of India's democracy, rule of law. Veneet Narain filed his petition against the inaction on the part of CBI and single directives corruption application as Public Interest Litigation. By accepting Veneet Narain case as Public Interest Litigation, Supreme Court implied that corruption free government services are public interest and lack of corruption free government services constitute a violation of fundamental right.

H. CONFISCATION OF PROPERTIES OBTAINED BY ILLEGAL MEANS AND WHICH IS DISPROPORTIONATE TO THE KNOWN SOURCE OF INCOME AND CONSTITUTIONAL VALIDITY OF SMUGGLERS AND FORESIGN EXCHANGE MANIPULATORS ACT 1997 (SAFEMA)

The major source of agony is the accumulation of wealth possessed by public servant which has been acquired by corrupt and illegal acts. Due to such activities of corrupt public servant, parallel economy is running which has caused obstruction to the growth of national economy. It has enlarged the growth of black money. Due to such corrupt practices, state fund is diverted.
Supreme Court delivered judgment in *Delhi Development Authority v Skipper Construction (P) Ltd*[3] and made following observation.

"----------A Law providing for forfeiture of properties acquired by holders of public office (including the offices/ posts in the public sector corporations) by indulging in corrupt and illegal acts and deals, is a crying necessity in the present state of our society. The law must extend not only to – as does Smugglers and Foreign Exchange Manipulators Act 1997 – proprieties acquired in the name of holder of such property but also to properties held in the name of his spouse, children or other relatives and associates. Once it is proved that the holder of such office has indulged in corrupt acts, all such properties should be attached forthwith. The law should place the burden of proving that the attached properties were not acquired with the aid of monies/ properties received in the course of corrupt deals upon the holder of the property as does SAFEMA whose validity has already been upheld by this court in the aforesaid decision of the larger

[3] AIR 1996 SC 2005

constitution bench. Such a law has become an absolute necessity, if the canker of corruption is not to prove the death knell of this nation. According to several perceptive of observers, indeed, it has already reached near fatal dimensions. It is for the Parliament to act in this matter, if they really mean business".

The constitutional validity of SAFEMA has been upheld by Supreme Court. The said Act provide that where any person is believed to be in possession of illegally acquired property, the appropriate authority shall give him a notice calling upon him to show cause why the said property be not forfeited to the state (Sec 6). Unless person concerned establishes that the said properties have been acquired by lawful means, the property will be forfeited to the state (Sec 7) in other words, the burden of proving the lawful acquisition of such properties is placed upon him i.e. the holder of such properties evidently for the reason that he alone should know how has he come to hold or possesses the said properties (Sec 8). It is equally equivalent to notice that the Act extends not only to the persons convicted under specified crimes and those detained under COFEPOSA, who are found in possession of illegally acquired properties but extends to their relatives and associates as well. The expression relative takes in not only wife but also near relatives (Sec.2)

When the constitutionality of the SAFEMA was challenged in *Attorney General of India v Amratlal Prajivandas*[4] It was explained by the Supreme Court that the idea of underline the Act is "to forfeit the illegally acquired properties of the convict/ detenue irrespective of the fact that such properties are held by or kept in the name of or screened in the name of any relative or associate as defined in the said two explanations. The idea is not to forfeit the independent

[4] 1994(5) SCC 54

properties of such relatives or associates which they may have acquired independently but only to reach the properties of the convict/ detenue or properties traceable to him, whenever they are ignoring all the transactions with respect to those properties". It was held by the Supreme Court that the definition of the expression "illegally acquired property" is not arbitrary or over –inclusive and that having regard to the seriousness of the evil sought to be curbed, the law had to be made strict. In other words, the law must be equal to the mischief sought to be remedied. An insufficient and inadequate law is no law at all. The following observations are most relevant.

" .....We see no substance in the submission that the definition is arbitrary or discriminatory nor do we see any reason for reading down the said definition to continue it to the violation of the acts referred to in Section 2 (2) (a) of SAFEMA. We can take note of the fact that persons engaged in smuggling and foreign exchange manipulations do not keep regular and proper accounts with respect to such activity or its income or of the assets acquired there from. If such person indulges in other illegal activities the position would be no different. The violation of foreign exchange laws and laws relating to export and import necessarily involves violation of tax laws. In deed, smuggling, foreign exchange violation, it is well known fact that over the last few decades, tax evasion, drugs and crime have all got mixed-up Evasion of taxes is integral to such activity. It would be difficult for any authority to say, in the absence of any accounts or other relevant material that among the properties acquired by smuggler, which of them or which portions of them are attributable to smuggling and foreign exchange violations and which properties or which portion thereof are attributable to violations of other laws (which the Parliament has the power to make). It is probably for this reason that the burden of proving that the properties specified in the show cause notice are not illegally acquired properties is placed upon the persons concerned. May be this is the case where a dangerous deceases

requires a radical treatment. Bitter medicine is not bad medicine in law. It is not possible to say that definition is arbitrary or is couched in unreasonable wide terms"

I. CONCEPT OF IMPLIED TRUST AND BREACH OF TRUST ON THE PART OF BRIBE TAKER.

The emphasis has been given how bribe taker has acquired and possessed properties by illegal way at the cost of people and state. It is stated that interest of society is of paramount importance rather that individual interest.

The concept of 'implied trust and breach of trust' on the part of bribe takers- more important, the constitution bench evolved the concept of implied trust and breach of trust on the part of bribe takers. The following observations bring out the said concept.

".....After all, al these illegally acquired properties are earned and acquired in ways illegal and corrupt- at the cost of people and the state. The state is deprived of its legitimate revenue to that extent. These properties must justly go back where they belong to the state. What we are saying is nothing new or heretical. Witness the facts and ratio of decision of the Privy Council in *Attorney General for Hong Kong v Reid*[5] , the respondent Reid was a crown prosecutor in Hong Kong. He took bribes as an inducement to suppress certain criminal prosecution and with those monies, acquired properties in New Zealand, two of which were held in the name of himself and his wife and the third in the name of his solicitor. He was found guilty of

[5] 1993 (3) WLR 1143

the offence of bribe taking and sentenced by criminal court. The Administration of Hong Kong claimed that the said properties in New Zealand were held by the owners there of as constructive trustees for the crown and must be made over to the crown. The Privy Council upheld this claim overruling the New Zealand court of appeals. Lord Temple man delivering the opinion of the judicial committee, based his conclusion on the simple ground that they benefit obtained by a fiduciary through a breach of duty belongs in equity to the beneficiary. It is held that a gift accepted by a person in a fiduciary position as an incentive for his breach of duty constituted a bribe, and, although in law it belonged to the fiduciary, in equity he not only became a debtor for the amount of the bribe to the person to whom the duty was owed but he also held the bribe and any property acquired therewith on constructive trust for that person. It is held further that if the value of the property representing the bribe depreciated, the fiduciary had to pay to the injured person, the difference between that value and the initial amount of the bribe, and if the property increased in value the fiduciary was not entitled to retain the excess since equity would not allow him to make any profit from his breach of duty. Accordingly, it is held that to extant that they represented bribe received by the first respondent, the New Zealand properties were held in trust for the crown, and the crown had and equitable interest therein. The Ld. Law Lord observed further if the theory of constructive trust is not applied and properties interdicted when available, the properties "can be sold and the proceeds whisked away to some Shangri La which hides bribes and other corrupt monies in numbered bank accounts"- to which we are tempted to add. One can understand the immorality of the bankers who maintained numbered accounts but it is difficult to understand the morality of the governments and their laws which sanction such practices - in effect encouraging them. The ratio of this decision applies equally where a person acquires properties by violating the law and at the expense of and to the detriment of state and its revenues. Where and enactment provides for such a course even if the fiduciary relationship referred to in Reid is not present. Here is the case of

express statutory provision providing for such forfeiture. May we say in conclusion that the interest of society is paramount to individual interests and the two must be brought in to just and harmonious relation? A mere property career is not the final destiny of mankind, if progress is to be law of future as it has been of the past. (Lewis Henry Morgan ancient society)

J.SANCTION OF COMPETENT AUTHORITY FOR PROSECUTION OF PUBLIC SERVANT.

It is the mandatory requirement under Sec.197 Criminal Procedure code and Sec.19 of Prevention of Corruption Act 1988 that sanction to prosecute public servant is necessary. Sanction to prosecute is made on condition precedent for the code for cognizance of an offence alleged to have been committed by the public servant. Failure to place before the competent authority all the relevant materials vitiated the sanction. Before giving sanction to prosecute public servant, competent authority has to apply his mind without any influence and it is not mere formality.

Supreme Court in *R.S.Nayak v A.R.Antuly*[6] held "the expression office in the three sub clause of Sec 6 would clearly denote that office which public servant misused or abused for corrupt motive for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary by competent authority entitling to remove him from that office which he has abused. This interrelation between the office and its abuse, if severed would render Sec 6 devoid of any meaning and this interrelation clearly provides a clue to the understanding of the provision of Sec 6 providing for sanction by competent authority

[6] AIR 1984 SC 684 : 1984 Cri LJ 613

which would be able to judge the action of public servant before removing ban by granting sanction for taking any cognizance of the offence by the court against the public servant. Therefore it unquestionably follows that the sanction to prosecute can be given by the authority competent to remove public servant from the office which he has misused or abuse because that authority alone would be able to know whether there has been misused or abused of the office by the public servant and not same rank outside".

In another Para Supreme Court held "therefore upon a true construction of Sec 6 it is implicit therein that the sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office in which he is alleged to have misused for corrupt motive or for which a prosecution is to be launched against him". Supreme Court held that a grant of sanction is not a formality but solemn and sacrosanct act which removes the umbrella of protection of government servant against frivolous prosecution and the aforesaid requirements must therefore be strictly complied with before any prosecution could be launched against public servant. It was also held "the bar is to the taking cognizance of offence by the court. Therefore, when the court is called upon to take cognizance of such offences, it must inquire whether there is valid sanction to prosecute public servant for the offence alleged to have been committed by him as public servant. It therefore appears well settled that relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by public servant as required by Sec 6 is the date on which the court is called upon to take cognizance of the offence of which he is accused"..

The order of Governor is amenable to judicial scrutiny. When there is request to sanction for prosecution of Chief Minister, the Governor would as a matter of propriety, necessarily act in his own discretion and not on the advice of Council of Minister. The Governor has to apply his mind to the facts of the case; the evidence collected and other

incidental facts before according sanction. Sanction of a solemn and sacrosanct act but not an ideal formality.

K. THE QUESTION OF VALIDITY OF SANCTION TO PROSECUTE PUBLIC SERVANT.

The validity of sanction under Sec.19 of Prevention of Corruption Act 1988 and Sec 197 of Criminal Procedure Code stand on different footing because in cases covered under Prevention of Corruption Act 1988, sanction is of automatic in nature but cases related to Sec 197 of Criminal Procedure Code, the substratum and basic feature of the case have to be considered whether alleged act has got any nexus to the discharge of duties.

Supreme Court in Lalu *Prasad Yadav v. State through CBI, Patna*[7] held following observations;

a. in regard to validity of the sanction issued in this case that the sanction had been given by the Governor. The prosecution did not obtain sanction separately so far as the appellant Rabri Devi is concerned as she was only a house wife and not a public servant during relevant period. In the sanction order in respect of the appellant – Lalu Prasad Yadav, it has been expressly mentioned that the acts of Ravri Devi amounted to aiding and abetting of commission of offence under Sec 13 (1) (e) by her husband Lalu Prasad Yadav and she was thus liable to be prosecuted for offence punishable under Secs. 107 & 109 of Indian Penal Code, 1860.

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[7] Iv(2006)CCR 328 (SC)

b. As regards the plea that the effect of Law Commission's report and Dr. Bakshi Tekchand report has not been considered by the legislature and therefore this is a case of 'casus ommissus', the Supreme Court explained the legal principles of constructions relating to casus ommissus and held that is contention is clearly without any substained.

c. Regarding the scope of Secs. 19 of Prevention of Corruption Act and Sec 197 CrPC, the Supreme Court held that Sec 197 of the code and Sec 19 of the Act operate in conceptually different fields. In cases covered under the Act, in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely in a case related to Sec 197 of the code, the substratum and basic feature of the case have to be considered to find out whether the alleged act has any nexus to the discharge of duties while the position is not so in case of Sec 19 of the Act.

d. On the plea that reasons should be recorded both for the discharging or framing the charge, Supreme Court observed that framing of charge is different from a case of opinion on the basis of which an order of discharge of the accused is passed. Secs 227 & 228 of the court deal with in regard to discharge of the accused and framing of charges against the accused respectively in a case triable by court of Session and Secs 239 & 240 deal with discharge and framing of charge in a case of warrant triable by the Magistrate where as Sec 245 deals with discharge and framing of charges in cases instituted other than on the police report, which indicates the difference.

In view of above observations, Supreme Court held that there is no merit in the appeal and dismissed the same.

L. PROSECUTION OF PUBLIC SERVANT FROM VEXATIOUS CRIMINAL PROCEEDING.

Sec. 197 of Criminal Procedure Code provides protection to the responsible public servant against the institution of vexatious criminal proceeding for offences alleged to have been committed by public servant while discharging official duties. It is the intention of the legislature that to provide necessary protection to public servant to ensure that they are not to be prosecuted for anything done in the discharge of their official duties. The main intention of legislature is to provide protection so that they work in good faith while discharging official duties.

Supreme Court in *Prakash Singh Badal v. State of Punjab*[8] held that the protection given under Sec 197 of CrPC is to protect responsible public servants against the institutions of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of legislature is to afford adequate protection to public servants to ensure that they are not required to be prosecuted for anything done by them in the discharge of their official duties without reasonable cause and if sanction is granted, to confer on the government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably

[8] (2007) 1 SCC 1

connected with the discharge of his official duty, he acted in excess of his duty but there is reasonable connection between the act and performance of official duty. The excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of offence such as whether the alleged offence contained in an element necessarily dependent upon the offender being a public servant, but whether it was committed by public servant acting or purporting to act as such in the discharge of his official capacity. Before Sec 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because official act can be performed both in the discharge of official duty as well as in the dereliction of it. The act must fall within the scope and range of the official duties of public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty.. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and official duty, nor is it possible to lay down any such rule. This aspect makes it clear that the concept Sec 197 does not get immediately attracted on institution of the complain case.

So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Sec 197 of the court unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the condition and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression; no court shall take cognizance of such offence except with the previous sanction. Use of the words 'no' and

'shall' make it absolutely clear that bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred.

M. ISSUE OF WHETHER MEMBER OF PARLIAMENT ENJOYS IMMUNITY FOR BEING PROSECUTED UNDER ART 105 (2) & 105 (3) OF CONSTITUTION OF INDIA.

Art 105 (2) of constitution of India provides protection to Member of Parliament for being prosecuted in the court of law in respect of taking bribe but such protection does not extend to the bribe givers. The object of such protection is to provide opportunity to enable Members of Parliament to speak their mind in Parliament freed of the fear of being made answerable on that account in the court of law.

The question came up before constitution bench of Supreme Court of India whether a Member of Parliament enjoys immunity from being prosecuted under Art 105 (2) or 105 (3) of constitution of India. Supreme Court in *P.V.Narasimha Rao v. State (CBI/SPE*[9]) held following observations.

Their Lordships Bharucha, S.Rajendra Babu & G.N.Ray agreeing with them held that alleged bribe takers are protected under Art 105 (2) of the constitution of India from being prosecuted in court of law in respect of charges sought to be made out against them but the immunity does not extend to the bribe givers and the prosecution against them must go ahead. Majority view of Justice Bharucha, Justice Rajendra Babu & Justice G.N.Ray are as follows.

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[9] AIR 1998 SC 2120 : (1998)SCC 626

"Art 105 (2) protects a Member of Parliament against proceedings in the court that relate, or concern or have a connection or nexus with anything said or a vote given, by him in Parliament. The charge against the alleged briber takers is that they were party to a criminal conspiracy and agreed to or entered into an agreement with the alleged bribe givers to defeat the no confidence motion and in pursuance thereof the alleged bribe givers passed on several lakhs of rupees to the alleged bribe takers which amounts were accepted by them. The stated object of the alleged conspiracy and agreement is to defeat the no confidence motion and the alleged bribe takers are said to have received moneys as a motive or reward for defeating it. The nexus between the alleged conspiracy and bribe and the no confidence motion is explicit. The charge is that the alleged bribe takers received bribe to secure defeat of no confidence motion. While it is true that the charge against them does not refer to the votes that the alleged bribe takers Ajit Singh excluded actually cast against no confidence motion and that it may be established de hors those votes.

We can not ignore the fact that the votes were cast and if the facts alleged against the bribe takers are true, that they were cast pursuant to the alleged conspiracy and agreement. It must then follow, given that the expression "in respect of "must receive a broad meaning that the alleged conspiracy and agreement had a nexus to and were in respect of those votes and that the proposed enquiry in the criminal proceedings is in regard to the motivation thereof.

The object of protection is to enable members to speak their mind in Parliament and vote same way, freed of the fear of being made answerable on that account in the court of law. It is not enough that members should be protected against civil action and criminal

proceeding, the cause of action of which is their speech or their vote. To enable members to participate fearlessly in Parliamentary debates, members need the wider protection of immunity against all civil and criminal proceeding that bear a nexus to their speech or vote. It is for that reason that a member is not liable to any proceeding in any court in respect of anything said or any vote given by him.

We are actually conscious of the seriousness of the offence that the alleged bribe takers are said to have committed. If true, there bartered most solemn trust committed to them by those they represented. By reason of the lucre that they received, the enabled government to survive. Even so they are entitled to protection that the constitution plainly affords them. Our sense of indignation should not lead us to construe the constitution narrowly impairing the guarantee to effective Parliamentary participation and debate.

Our conclusion is that the alleged bribe takers other than Ajit Singh have the protection of Art 105(2) and are not answerable in a court of law for the alleged conspiracy and agreement. The charges against them must fail. Ajit Singh, not having cast a vote on the no confidence motion, drives no immunity from Art 105(2).
What is the effect of this upon the alleged bribe givers? In the first place, the prosecution against Ajit Singh would proceed, he not having voted on the no confidence motion and therefore not having the protection of Art 205(2). The charge against the alleged bribe givers of conspiracy and agreement with Ajit Singh to do an unlawful act would therefore proceed.

Art 105(2) does not provide that what is otherwise an offence is not an offence when it is committed by a Member of

Parliament and has a connection with his speech or vote therein. What is provided there by is that a Member of Parliament shall not be answerable in a court of law for something that has a nexus to his speech or vote in Parliament. If a Member of Parliament has, by his speech or vote in Parliament, committed an offence, he enjoys by reason of Art 105(2) immunity from prosecution therefore. Those who have conspired with the Member of Parliament in the commission of that offence have no such immunity. They can, therefore be prosecuted for it.

The alleged bribe takers except Ajit Singh, who are entitled to the immunity conferred by Art 205(2), are not liable to be tried in the Lok Sabha for the offences set out in the charges against them or any other charges, but the Lok Sabha may proceed against them for breach of privileges or contempt. There is therefore, no question of two for coming to difference conclusion in respect of the same charges.

The criminal prosecution against alleged by givers must, therefore, go ahead. For breach of Parliament's privileges and its contempt, Parliament may proceed against the alleged bribe takers and the alleged bribe givers.

N. ISSUE OF WHETHER APPELATE COURT CAN STAY CONVICTION IN ADDITION TO SENTENCE.

It is true that appellate court has power to admit appeal but appellate court should not suspend the operation of sentence only because appeal has been filed by challenging conviction in exceptional circumstances. Their reason is that if convicted person in the event of

conviction by the court below if released by the order of appellate court may influence witness by exercising power which is not at all desirable for the interest of prosecution and even convicted person may try to destroy evidence.

The question came up before Supreme Court whether appellate court can stay conviction in addition to sentence. Supreme Court in *K.C.Sareen v C.B.I Chandigarh*[10] observed as follows.

"Though the power to suspend an order of conviction apart from the order of sentence is not alien to Sec 389 (1) of the code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look all aspects including the ramifications of keeping such conviction in abeyance. It is the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under Prevention of Corruption Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under Prevention of Corruption Act, the superior court should normally suspend the sentence of imprisonment under disposal of appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of offence under Prevention of Corruption Act, de hors the sentence of imprisons man as a sequel thereto, is a different matter.

[10] (2001)6 SCC 5824

O. ISSUE OF WHETHER STATE GOVERNMENT IS AUTHORISED TO APPOINT SPECIAL JUDGES FOR AN AREA OR AREAS OR FOR A CASE OR GROUP OF CASES.

It is quite difficult for the legislature as to the requirements of number of special judges for particular area or areas due to technicalities. It is the wisdom of the government to decide the issue since appointment of special judges depends upon certain factors which is within the knowledge of government. This is why, legislature is not in position to decide the issue and leave the matter to the discretion of the government. Moreover, state government has to exercise power as per Sec.3 of the Act. The exercise of discretion by the government has to be guided by the element of requirement of public interest but not for individual interest.

In another case, the question came up before Supreme Court whether the power of state government to appoint special judges for an area or areas or for a case or group of cases is absolute, unfettered or unguided was considered in *J.Jayalalitha v. Union of India*[11]. Supreme Court held that discretion of the government is not unguided or unfettered and observed following.

"In order to achieve the object of the Act, how many special judges would be requiring in an area could not have been anticipated by the legislature as that would depend upon various factors. The number of judges require for an area would vary from place to place and time to

[11] AIR 1999 SC 1912

time. So also requirement of separate special judge for a case or group of cases in addition to the area special judge, who could have otherwise dealt with that case or those cases, would also depend upon various variable circumstances. Therefore, no fixed rule or guideline in that behalf could have been laid down by the legislature. The legislature had to leave it to the discretion of the government as it would be in a better position to know the requirement. Further, the discretion conferred upon the government is not absolute. It is in the nature of statutory obligation or duty. It is the requirement which would necessitate exercise of power by the government. When a necessity would arise and what type being uncertain the legislature could not have laid down any other guideline except the guidance of "Necessity". It is really for that reason that the legislature while conferring discretion upon the government has provided that the government shall appoint as many special judges as may be necessary. The words 'as may be necessary' mean what is indispensable, needful and essential.

The legislature has enacted Prevention of Corruption Act and provided for speedy trial of offences punishable under the Act in public interest as it had become aware of rampant corruption amongst the public servant. While replacing Prevention of Corruption Act 1947 by the present Act the legislature wanted to make the provisions of the Act more effective and also to widen the scope of the Act by giving a wider definition to the term 'public servant'. The reason is obvious. Corruption corrodes the moral fabric of the society and corruption by public servant not only leads to corrosion of the moral fabric of the society but is also harmful to the national economy and national interest, as the persons occupying high posts in government by misusing their power due to corruption can cause considerable damage to the national economy, national interest and image of the country. It is in the context of public interest that we have

to construe meaning of the word 'necessary' appearing in the Sec 3. Considering the object and scheme of the Act and the context in which it is used it would mean requirement in public interest and cannot be said to be so vague as not to provide a good guideline. Thus the exercise of discretion by the government under Sec 3 has to be guided by the element of requirement in public interest.

Again conferment of such wide discretion by Sec 3 is not likely to lead to discrimination either in the matter of the court by which the accused is to be tried or the procedure by which he is to be tried. Whether he is tried by special judge for the area or special judge appointed for a case or a group of cases he will be tried by a judge of same class and by the same procedure. We have already pointed out earlier that appointment of special judge to try a particular case or group of cases is not the same thing as establishing a special court for trying a case or cases. The accused will be tried by special judge who is also a session judge appointed under the code of Criminal procedure, to be followed by special judge whether he is an area special judge or judge appointed specially for a case is the same. Thus the accused is not exposedto a different treatment as regards the court by which he is to be tried or the procedure to be followed in his case.

For all these reasons we are of the view that the discretion conferred by Sec 3 upon the government is not unfettered or unguided and, therefore, challenge to the validity of Sec 3 (1) of the Act must fail".

SUM UP:

Chief Justice of India Mr.K.G.Balakrishnan delivered key notes address at National Summit Organized by foundation for restoration of National values on 18.11.2008 at India habitate Centre, New Delhi. Justice Balakrishnan said that corruption is the violation of human rights. The question comes in the summit i.e. restoration of national value and whether decision on abstract ideas will serve any constructive purpose. However, after going through the programmed schedule and the writing of Swami Bhoomananda Tritha, these doubts were quickly dispelled. There is clear focus on evolving specific measure for instilling values in public as well as private life and the impressive list of speakers consists of those who have led by personal example in there respective fields. Chief Justice of India emphasized firstly corruption in public institution secondly the means use for conflict resolution in our society. He has focused special emphasis that these two themes in particular since they have direct bearing on the common understanding of citizenship on morality. He further remarked that corruption is identified with any person or institution who misuses the power and discretion conferred on the same. Ordinary citizen face unnecessary problems in their routine interaction with government agencies. Practices such as acceptance of favour or misappropriation of public fund have actually come to be described as perks for holding public office and employment. Admittedly the extent of corruption may have link with increasing disparity between pay scale offered in the public and the private sector. However pervasive culture of graft provokes pessimism about the quality of governance.

Chief Justice of India said that procedural delay like granting sanction and difficulty in marshalling large number of witnesses were the major hurdles in achieving meaningful conviction.

Chief Justice of India also has recommended that any Judicial Officer who is unfit, in effective, and incompetent or has doubtful integrity may be retired from service even before his continued ability's assessed in terms of direction of Supreme Court in All India Judges Association case. If such procedure is implemented in right earnest, such provision will keep deviant behaviour in check. Low compensation and weak monitoring systems are traditionally considered to be main causes. Besides, there are other systematic factors such as procedural complexities in the provision of public service, administrative inefficiency, lack of transparency in judicial appointment and delay in filling vacancies. These factors fasten corrupt practices and endanger inefficiency and dispensing of justice.

Both Prime Minister and Chief Justice of India during last week of April 2008 delivered speech for setting up special courts to tackle quickly on the menace of corruption in public life. Corruption poses challenge to both government and judiciary. Chief Justice of India stressed the need for quick disposal of cases registered under Prevention of Corruption Act and favoured creation of special vigilance courts. This exercise will instill greater confidence in our justice delivery system at home and abroad. Both Prime Minister and Chief Justice of India expressed serious concern over range of issue including mushroom pendency of cases in the country's courts abysmal existing infrastructure of courts and severe problem be setting the judicial architecture and delivery of justice to common people. Prime Minister and Chief Justice of India were addressing a conference of all Chief Minister's and all Chief Justices of all High Courts all over the country. Backing judicial reforms, Chief Justice of India said that adequate laws, institutional mechanism and sufficient infrastructure were also needed.

Supreme Court made in clear that it would not tolerate increasing corruption in the Judiciary when for the first time it allowed CBI to interrogate sitting judges of High Court whose names have

cropped up in GPF scam of Ghaziabad and District Court involving Rs.7 crores. Division Bench led by Justice Dr.Arijit Paswat, Supreme Court directed on 23.09.2008 CBI to take over proof from Uttar Pradesh Police. Above direction came on the basis of Public Interest Litigation filed by local Bar Association. CBI has been directed to report within three months and agency has been directed to microfilm all documents to prevent tampering.

Supreme Court during July 2008 urged courts to refrain from suspending conviction on corrupt official saying the brethren enables them to hold on to their officers and harm public interest irreparably. Apex Court observed that it is necessary that courts should not aid public servant who stand convicted on corruption for corruption charges to only hold public office until he is exonerated after adjudication at the appellate level. A public servant found guilty of corruption should be treated as corrupted until Supreme Court exonerates him. Apex court directed that "the mere fact that appellate forum has decided to entertain his challenge and to go into findings once again should not temporarily absolve him. If such public servant becomes entitled to hold office and to continue official act until he is absolved from such finding by suspension of conviction, it is public interest suffers and some times irreparably." Supreme Court further observes that "corruption by public servant has now reached a monstrous dimension in India. Its tentacles have started grappling even the institution created protection of republic. Proliferation of corrupt public servant could cripple the social order if such men are allowed to continue and to manage to operate public institution".