

## **CHAPTER – 2**

### **DEVELOPMENT OF LAW OF CORRUPTION IN INDIA**

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#### OVER VIEW:

Since dawn of independence, Government of India has been taking continuous efforts to deal with corruption. Initiating from Bakshi Tek Chand Committee in 1949 to review the working of Prevention of Corruption Act 1947 and measure of success achieved by Delhi Special Police Establishment in curbing corruption from the society. Governments of India have formed various committees from time to time to measure the extent of corruption in public offices. The appointment of Santhanam Committee in 1962 has opened the crusade against menace of corruption. After making exhaustive enquiries, the committee submitted comprehensive report on all aspects of problem and suggested various steps to curb the menace of corruption. Most of the recommendations made by above committee have been accepted by the government. Based on the recommendation of Santhanam Committee, Anti Corruption Law (Amendment) Act 1964 was enacted with a view to make anti corruption law more effective and to ensure speedy trial of cases. In pursuance of recommendation made by Santhanam Committee in 1962, Government of India constituted Central Vigilance Commission in 1964. At the time of formation of above commission, it was made advisory body. Following direction of Supreme Court in *Vineet Narain case*<sup>1</sup> CVC was made statutory body. Apex court in the above case directed that CVC must be selected by a committee headed by Prime Minister of India. Union Home Minister and Leader of opposition were other two members of the committee. Sri N.Vittal was the first Central Vigilance Commissioner who had suggested three point formulas to curb the menace of corruption. Firstly,

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<sup>1</sup> AIR 1998 SC 889

emphasis is to be given at the whole issue corruption like malaria. Secondly one can deal with individual case or malaria or one can prevent the breeding of mosquitoes. Obsolete laws can be very conducive for corruption. Following the principle of sun set laws adopted by United States, it was suggested that obsolete and obscure laws do not become instrument for corrupt public servant to exploit the public.

After 2<sup>nd</sup> World War, large number of bureaucrats has amassed wealth which is disproportionate to the known source of income and government expenditure has been increased in manifold. Corrupt officers who have amassed wealth by illegal means do not leave any evidence through they may be caught. The existing provision of Indian Penal Code was not adequate to deal with new type of offence relating to corruption. Since Indian Penal Code was enacted 150 years back, the provision of Indian Penal Code is not equipped enough to deal with corrupt officers. The above situation necessitated passing of Prevention of Corruption Act 1947. When Prevention of Corruption Act 1947 came into force, possession of disproportionate assets was not substantive offence and it has become criminal offence when Anti Corruption Law (Amendment) Act 1964 came into effect.

Possession of disproportionate assets is a criminal misconduct in the discharge of official duty. Prevention of Corruption Act 1988 prescribes punishment for possession of disproportionate assets and court can impose fine and the discretion of court to impose sentence less than a year has been deleted. If court convicts public servants for possession of disproportionate assets, a minimum sentence of one year has to be imposed. The possession of disproportionate assets is substantive offence by itself. Integrity of public servants is vital asset of the country specially in developing country like India. Prevention of Corruption Act 1947 and its amendment 1964 and Prevention of Corruption Act 1988 has been imposed onus on the public servant to prove that his assets which are suspected to be disproportionate were satisfactorily not acquired by illegal means. If the accused persons cannot satisfy possession

of properties alleged to be disproportionate to the known source of income, the court shall presume that the accused is guilty of criminal misconduct which is substantive offence by itself.

#### **A. REPORT OF TEKCHAND COMMITTEE:**

A committee was set up by Government of India in 1949 with Dr. Bakshi Tekchand as Chairman and to report on the special police establishment with a view to assess, among other things, the success achieved by special police establishment in combating corruption and to make recommendations regarding the continuation, strengthening, curtailment or abolition of special police establishment. An extract from what has come to be known as Tekchand Committee Report is furnished below:

“At an early stage of last work, it came to the notice of government that the enormously expanded expenditure for purposes connected with the war had brought about a situation in which unscrupulous persons both official and non official were enriching themselves dishonestly at the cost of public. The necessity of setting up an organization to investigate offences connected with these transactions was felt, and, under an executive order, the Special Police Establishment was created under a Deputy Inspector General of Police. The superintendence of the force was vested in the then Defence Department, later known as the War Department. In 1942, the jurisdiction of this Department to exercise the powers of investigation was challenged before High Court. This led to the promulgation of ordinance number xxii of 1943 conferring the requisite legal sanction and the authority on the Department. The ordinance lapsed on 30<sup>th</sup> September 1946 and was replaced by the Delhi Special Police Establishment Act (xxv of 1946), which came into force on 19<sup>th</sup> November-1946. This Act enabled the establishment to function in the Provinces (with the concurrence of the Provincial Government) to the limited

extent of investigating certain specified offences in which Central Government Employees were involved or departments of the Government of India were concerned. The Establishment had no jurisdiction in the old Indian States.)

## **B. THE OBJECT OF PASSING PREVENTION OF CORUPTION ACT:**

The Bill is intended to make the existing anti corruption laws more effective by widening their coverage and by strengthening the provision. The Prevention of Corruption Act 1947 was amended in 1964 based on the recommendation of the Santhanam Committee. There are provisions in Chapter-ix of Indian Penal Code 1860 to deal with public servants and those who abate them by way of criminal misconduct. There are also provisions in Criminal Amendment Ordinance 1944 to enable attachment of ill gotten wealth/ properties obtained through corrupt means including from transferees of such wealth. The Bill seeks to incorporate all these provisions with modification so as to make the provision more effective in combating corruption amongst public servant from the society.

The Bill inter alia envisages widening the scope of the definition of expression "Public Servant" incorporation of offences under Sec 161 to 165A of Indian Penal Code 1860, enhancement of penalties provided for these offences and incorporation of provisions that order of trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceeding for day to day trial of cases and prohibitory provisions with regard to grant of stay and exercise of power of revision on interlocutory orders have been included. Since the provisions of Sec 161 to 165A of Indian Penal Code 1860 are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain these Sections in Indian Penal Code.

Consequently it is proposed to deal it those sections with necessary saving provisions.

The statement of objects and reasons attached to the Bill prior to the enactment of Prevention of Corruption Act 1947- “the scope of bribery and corruption of public servants had been enormously increased by war conditions and though the war is now over, opportunities for corrupt practices will remain for considerable time to come. Contracts are being terminated; large amount of government surplus stores are being disposed of; there will be years of shortage of various kinds requiring imposing of controls and extensive schemes of post war reconstructions, involving disbursement of very large sums of government money. Al these activities offer wide scope of corrupt practices and seriousness of the evil and possibility of its continuance or extension in future are such as to justify immediate and drastic action to stamp it out.”

“The existing law has proved inadequate for dealing with problems which has arisen in recent years and the Bill is intended to render the criminal law more effective in dealing with cases of bribery and corruption of public servants:.( Gazette of India dated 23<sup>rd</sup> Nov,1946 Part v page 374)

The statement of object and reasons is certainly not admissible as an aid to the construction of a statute. But it can be cited for certain purpose of identifying the conditions prevailing at the time which prompted to introduce the Bill and the extent and urgency of the evil which he sought to remedy. – *M.K.Ranganathan v. Government of Madras*<sup>2</sup>.

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<sup>2</sup> AIR 1955 SC 604

Reference to the statement of the object and the reasons attached to the Bill or the circumstances under which certain word came to be deleted from certain provisions of the bill are not aids to the constructions of the terms of a statute which have of course to be given their plain and grammatical meaning. It is only when the terms of the statute are ambiguous or vague that resort may be had to them for the purpose of arriving at the true intention of the legislature. –*Expressed Newspapers Pvt. Ltd. V- Union of India*<sup>3</sup>.

The court may strive to so interpret the statute as to protect and advance the object and the purpose of enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy in mind in applying the provisions of the Act to the facts of the cases.–*Kameswar Singh v. Additional District Judge, Lucknow*<sup>4</sup> .

The matter has been considered in number of cases by Apex Court and from review of judgment, the position that evolves may be stated thus; “though reference to the statements of objects and reasons cannot be made as an aid to the interpretation or for ascertaining the meaning of particular or words in a statute nevertheless, it is permissible to refer to the objects and reasons for the correct appreciation of:-

- a. What was the law before the Act was passed:
- b. What was the mischief or defect for which the law had not provided?
- c. What remedy the Legislature had appointed: and
- d. The reasons for the remedy.”

Prevention of corruption Act 1947 being a penal statute and it can not be retrospective in operation. An entirely new offence of criminal misconduct by a public servant in the discharge of duty was created for the

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<sup>3</sup> AIR 1958 SC 578

<sup>4</sup> AIR 1987 SC 138

first time under Prevention of Corruption Act 1947. It was held that acts done prior to coming into force of Prevention of Corruption Act 1947 can not be made punishable under the above Act. (*Sajjan Singh v. State of Punjab*<sup>5</sup>).

Prevention of Corruption Act was brought in the statute in 1947. The law was enacted to make more effective provision for the Prevention of bribery and corruption which was rapidly spreading in the public service. This itself indicates that the existing law was found inadequate to deal with growing evil which had become rampant and so it had to be supplemented by new measure which could deal with it more effectively.

The legislature therefore had a dual intention in enacting this law. Firstly, it wanted such offence to be tried by such court which could inflict adequate punishment for those crimes and secondly it wanted a speedy procedure to dispose of these cases. Several courts were therefore created to deal with the situation and enhanced and deterrent punishment was to be awarded to the offence, it become necessary to have experienced Judicial Officers as the Presiding Officers of the court. Then came the question as to what would be most suitable mode of trial, for a court of session is not the court of original jurisdiction and if this procedure had been accepted, it would have considerably delayed the disposal of these cases, for commitment proceeding would have been necessary as laid down in Sec 193 of CrPc and it would have defeated one of the main objects of this enactment, namely speedy disposal.

The scope of Criminal Law (Amendment) ordinance 1944 has been fairly enlarged. The property has been made liable for attachment. Any conspiracy to commit or attempt to commit an offence has been brought under the provision of Prevention of Corruption Act 1988. In addition, all pending

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<sup>5</sup> AIR 1964 SC 464

investigation or prosecution punishable under Prevention of Corruption Act 1947 can be continued. Prevention of Corruption Act 1947 shall not be bar for instituting any investigation. It shall be deemed as if Prevention of Corruption Act 1988 has not been passed.

**C. MODIFICATION AND HISTORICAL EVOLUTION OF SECTION 161 IPC IN FRAMING SECTION 7 OF PREVENTION OF CORRUPTION ACT 1988:**

The words 'with imprisonment of either description for a term which may extend to three years or with fine, or with both' are replaced by the words 'with imprisonment which shall not be less than six months but which may extent to five years and shall also be liable to fine'. Thus the maximum sentence for this offence has been raised from three years to five years and minimum sentence of six months has been made compulsory. Previously there was no minimum sentence of imprisonment Offence under Sec 161 IPC was punishable with imprisonment of either description up to three years or with fine or both.

Initially as per provision of Criminal Procedure Court, the offence was non-cognizable. It was made cognizable by Sec 3 of Prevention of Corruption Act 1947. Subsequently, the schedule was amended by the code of Criminal Procedure (Amendment) Act 1955 making the offence cognizable. Sec 161 IPC was excluded from the purview of Sec 3 of Prevention of Corruption Act 1947. As per the proviso of Sec 3 of Prevention of Corruption Act 1947, no police officer below the rank of Deputy Superintendent of Police could investigate an offence under Sec 161 IPC without the order of 1st Class Magistrate. Subsequently, the proviso to Sec 3 was deleted and Sec5A was incorporated in the Prevention of Corruption Act 1947 by the Prevention of Corruption (2<sup>nd</sup> Amendment) Act, 1952 laying down the rank of police officer who could investigate the offence under Sec 161 IPC. As per Sec 6 of

Prevention of Act 1947, sanction of prosecution of the competent authority was required for the court to take cognizance of offence under Sec 161 IPC. Offence under Sec 161 IPC was exclusively triable by special judge as per Sacs 6 & 7 of Criminal Law Amendment Act 1952. Sec 161 IPC has been omitted from IPC by the Prevention of Corruption Act 1988 and offence has been incorporated under Prevention of Corruption Act 1988 with modification as Sec 7. Investigation of an offence under Sec 7 of Prevention of Corruption Act 1988 is required to be conducted by police officer of the rank as specified under Sec 17 of the Act. Previous sanction of the competent authority is necessary for prosecution under as laid down in Sec 19 of the Act, for the court to take cognizance of the offence. Special judge has exclusive jurisdiction to try the offence as per Secs 3 & 4 of the Act. The offence is punishable with imprisonment for a minimum period of six months which may extend to five years and also with the fine’.

#### **D. HISTORICAL EVOLUTION AND DEVELOPMENT OF SECTION 162 INDIAN PENAL CODE AND SECTION 8 OF PREVENTION OF CORRUPTION ACT 1988**

- a. Sec. 162 Indian Penal Code provides punishment of offence with imprisonment of either description up to 3 years or with fine or both.
- b. Initially the offence was non-cognizable as per schedule of Criminal Procedure Court till it was made cognizable by amendment of the schedule by the code of Criminal Procedure (Amendment) Act 1955.
- c. Proviso to Sec 3 or Sec 5A of Prevention of Corruption Act 1947 specifying the rank of police officer who could investigate did not cover an offence under Sec 162 IPC.

- d. The question of sanction of prosecution by the competent authority did not arise since accused not being a public servant. So Sec 6 of Prevention of Corruption Act 1947 had no application.
  
- e. Initially, special judge had no jurisdiction to try an offence under Sec 162 IPC and he was vested with exclusive jurisdiction, with the amendment of Sec 6 of Criminal Law Amendment Act 1952 by Prevention of Corruption (Amendment) Act 1955.
  
- f. Sec 162 has been omitted from Indian Penal Code by the Prevention of Corruption Act 1988 and the offence has been incorporated in the Prevention of Corruption Act 1988, with modification, as Sec 8.
  
- g. Investigation of an offence under Sec 8 of Prevention of Corruption Act 1988 is required to be conducted by police officer of the rank as specified under Sec 17 of the Act. There is no question of requirement of sanction of prosecution for the court to take cognizance of the offence. Special judge has sole jurisdiction to try the offence under Secs 3 & 4 of the Act. The offence is punishable with imprisonment for a minimum period of 6 months, which may extend to 5 years and also with fine

**E. HISTORICAL EVOLUTION AND DEVELOPMENT OF SECTION 163 INDIAN PENAL CODE AND SECTION 9 OF PREVENTION OF CORRUPTION ACT**

- a. Sec 163 IPC provides punishment for offence with simple imprisonment up to 1 year or with fine or both.
  
- b. Initially, the offence was non-cognizable as per schedule of Criminal Procedure Code, till it was made cognizable by an amendment of the schedule by the Code of Criminal Procedure (Amendment) Act 1955.
  
- c. Proviso to Sec 3 or Sec 5A of Prevention of Corruption Act 1947 specifying the rank of police officer who could investigate did not cover an offence under Sec 163 IPC.
  
- d. The question of sanction of prosecution by competent authority did not arise since accused not being public servant. So Sec 6 of Prevention of Corruption Act 1947 had no application.
  
- e. Initially, the special judge had no jurisdiction to try an offence under Sec 163 IPC and he was vested with sole jurisdiction, with the amendment of Sec 6 of Criminal Law Amendment Act 1952 by Prevention of Corruption (Amendment) Act 1955.

- f. Sec 163 has been deleted from IPC by Prevention of Corruption Act 1988 and the offence has been incorporated under Prevention of Corruption Act 1988, with modification as Sec 9.
  
- g. Investigation of an offence under Sec 9 of Prevention of Corruption Act 1988 is required to be conducted by police officer of rank as specified in Sec 17 of the Act. There is no question of requirement of sanction of prosecution for the court to take cognization of the offence. Special judge has sole jurisdiction to try the offence as per Secs 3 & 4 of the Act. The offence is punishable with imprisonment for minimum period of 6 months, which may be extended to 5 years and also with fine.

**F. MODIFICATION MADE IN THE DEFINITION OF 'CRIMINAL MISCONDUCT' UNDER PREVENTION OF CORRUPTION ACT 1988:**

Sec 13 (1) of the Prevention of Corruption Act 1988 corresponds to Sec 5(1) of the Prevention of Corruption Act 1947 while Sec 13 (2) corresponds to Sec (2) of the old Act. Clause (a) to (e) of Sec 13(1) corresponds to clause (a) to (e) of Sec 5(1) of the old Act. But clauses (d) and (e) of Sec 13 (1) which correspond to clauses (d) and (e) of the old Act contain drastic changes.

Supreme Court interpreted the repealed clause (d) of Sec 5 (1) of Prevention of Corruption Act 1947 that the element of abuse of office was an essential requirement in cases where corrupt or illegal means are adopted by public servant.

Supreme Court held in *M.Narayan Nambiar v. State of Kerala*<sup>6</sup> that the element of abuse of office was essential requirement even in cases where illegal or corrupt means are adopted by public servant to obtain pecuniary benefits. Since the word “otherwise” in the 2<sup>nd</sup> part of Sec 5 (1) (d) of old Act has created some confusion in the interpretation, it was considered that the objective of the Legislature should be made quite drastic and clear by amending the section suitably. Accordingly, the clause (d) has been divided into three clauses.

Clause (e) of Sec 13 (1) corresponds to clause (e) of Sec 5 (1) has been amended. Under the new clause, the previous concept ‘known source of income’ has undergone radical change. As per explanation given under the new clause the prosecution is relieved of the burden of investigation into ‘sources of income’ of an accused person to a large extent, as it is stated in the explanation that ‘known source of income’ means income obtained from lawful source, the receipt of which has been intimated according to the provision of any law, rules, or orders for the time being applicable to a public servant.

Under Sec 13 (2) of New Act corresponding to Sec 5(2) of the old Act, the minimum imprisonment of one year prescribed in the old Act is retained and at the same time, the discretion given to the special judge to impose a sentence of imprisonment less than one year for special reasons has been taken away by omitting the proviso to Sec 5(2) of the old Act.

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<sup>6</sup> AIR 1963 SC 1116

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**G. AMENDMENT TO SECTION – 5 OF PREVENTION OF  
CORRUPTION ACT 1947**

**a. FIRST AMENDMENT:**

By Sec. 4 of Prevention of Corruption (2nd Amendment) Act 1952, the original Sub-Sec.4 was omitted and following Sub Sec. was incorporated in its place as Sub- Sec 4: “(4) the provisions of this sections shall be in addition to, and not in derogation of; any other law for the time being in force, and nothing contained hearing shall exempt any public servant from any proceeding which might, apart from the section, be instituted against him”.

**b. SECOND AMENDMENT:**

By Sec. 3 of Criminal Law Amendment Act 1958, the original Sub- Section (2) was omitted and Sub-Sections (2) and (2A) was replaced which read as follows:

“(2) any Public Servant who commits Criminal misconduct in discharge of his duty shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine: Provided that court may for any special reason recorded in writing, impose a sentence of imprisonment of less than one year.

(2A) where a sentence of fine is imposed under Sub-section (2), the court, in fixing the amount of fine, shall take into consideration the amount or value of the property which the accused person has obtained by committing the offence of Criminal misconduct or where the conviction is based on the presumption under Sub-section (3), the pecuniary resources or

property defined in that Sub-section for which the accused person is unable to account satisfactorily”.

**c. THIRD AMENDMENT:**

Some important amendments were made to this section by Anti Corruption Law's (Amendment) Act 1964.

- i. In Sub-sections (1) & (2) the words “in the discharge of his duty” were omitted.
- ii. After clause (d) in Sub-section (1) another clause (e) was incorporated.
- iii. Sub-sections (2A) and (3) were deleted and Sub-sections(3), (3A) and (3B) were incorporated in their place.

By adding clause (e) to Sub-section (1) of Section (5), the possession of assets disproportionate to the known source of income of public servant has been made a substantive offence. Under Sub-section (3) habitual commission of the offence under section 162 or 163 or 165A of Indian Penal Code has been punishable with imprisonment, which may extent to seven years and also with fine. It has been prescribed that the sentence of imprisonment shall not be less than one year unless the court for special reasons to be recorded in writing imposes sentence of imprisonment for a lesser period than one year.

Sub-section(3A) makes attempt commit offences punishable under section 5(1) (c) or 5(1) (d) punishable with imprisonment which may extend to three years or with fine or with both.

Sub section (3B) provides that while imposing fine under section 5(2) or section 5(3), Ld.Court in determining the amount of fine shall take into account the amount or the value of the property if any which accused person has obtained by committing offence and in case of punishment under section 5(1) (e) of the pecuniary resources of the property state in the clause.

#### **H. JUSTIFICATION FOR RETENTION OF SECTION 5 OF PREVENTION OF CORRUPTION ACT 1947:**

When Prevention of Corruption Act was passed in 1947, it was stated in Sub-section (3) of section 1 and section 5 shall remain in force for three years from the commencement of the Act. By section 2 of Prevention of Corruption (Amendment) Act 1950, the expression “three years” was substituted by the expression “five years”. By section 2 of Prevention of Corruption (Amendment) Act 1952, the expressions “five years” were substituted by the expression “ten years”.

After promulgation of Prevention of Corruption (Amendment) Ordinance 1957, this Sub-section was repealed. This Ordinance itself was repealed by section 3 of the Prevention of Corruption (Amendment) Act 1957, by which, section 5 of the Act was made permanent.

It was found essential to retain section 5 permanently because, according to statement of objects and reasons of the Prevention of Corruption

(Amendment) Bill 1957, this section had provided valuable weapon to abolish corruption from the society.

### **I. MISCONDUCT BY PUBLIC SERVANT NEED NOT BE IN CONNECTION WITH HIS OFFICIAL DUTY:**

The constitution Bench of Supreme Court in *Daneshwar v. Delhi Administration*<sup>7</sup>, made following observation while laying down the above principle by overruling the judgement in *State of Azmer v. Shivjilal*<sup>8</sup>.

“It will be observed that the heading of Sec.5 is ‘Criminal misconduct in the discharge of official duty’. That is a new offence which was created by the Act, apart from and in addition to offences under the Indian Penal Code, like those under section 161. The Legislature advisedly widened the scope of crime by giving a very wide definition in section 5 with a view to punish those who, holding public office and taking advantage of their official position, obtain any valuable thing or pecuniary advantage. The necessary ingredient of an offence under section 161 IPC, is the clause as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or Legislature of any State, or with any public servant, but it need not be there in order to bring an offence under section 5 of the Act home to the accused. The offence under the section is, thus, wider and not narrower, than the offence of bribery as defined in section 161 IPC. The words ‘in the discharge of his duty’ do not constitute an essential ingredient of the offence. The mistake in the judgement of this court in the aforesaid ruling in 1959 Supp

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<sup>7</sup> AIR 1962 SC 195

<sup>8</sup> AIR 1959 SC 847

8 SCR has arisen from reading those words, which are part merely of the nomenclature of the offence created by the statute whose ingredients are set out in sub-clauses (a) to (d) that follow, as descriptive of an essential and additional ingredients of each of the types of offence in four sub-clauses. That is the source of the mistake is apparent from the erroneous way in which section has been quoted at P-744 of SCR (at P-849 of AIR) in the paragraph preceding the paragraph quoted above. The ingredients of the particulars offence in clause (d) of section 5(1) of the Act are:

- a. That he should be a public servant;
- b. That he should use some corrupt or illegal means or otherwise abuse his position as a public servant.
- c. That he should have thereby obtained a valuable thing or pecuniary advantage; and
- d. For himself or for any other person. In order to bring the charge home to an accused person under clause (d) of above section, it is not necessary that the public servant in question while misconducting himself, should have done so in the discharge of his duty. It would be anomalous to say that a public servant has misconducted himself in the discharge of his duty. 'Duty' and 'misconduct' go ill together. If a person has misconducted himself as a public servant, it would not ordinarily be in the discharge of his duty, but the reverse of it. That 'misconduct' which has been made criminal by section-5 of Act, does not contain element of discharge of his duty, by public servant, is also made clear by reference to the provisions of clause © of section-5 (1). It is well settled that if a public servant dishonestly or fraudulently misappropriates property entrusted to him, he can not be said to have

been doing so in the discharge of his official duty ( *Hori Ram Singh v. Emperor, 1939 FCR 159.*)<sup>9</sup> An application for special leave to appeal from that decision was refused by Privy Council in *Hori Ram Singh v. Emperor, 1940 FCR 15.*<sup>10</sup> This court, therefore, misread the section when it observed that the offence consists in Criminal misconduct in the discharge of official duty. The error lies in importing the description of the offence in to the definition portion of it . It is not necessary to constitute the offence under clause (d) of the section that the public servant must do something in connection with is own duty and their by obtain any valuable thing or pecuniary advantage. It is equally wrong to say that if a public servant were to take money from a third person, by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servants, without there being any question of his misconducting himself in the discharge of his own duty, he has not committed an offence under section-5 (1) (d). It is also erroneous to hold that essence of an offence under section-5 (2) read with section-5 (1) (d), is that the public servant should do something in the discharge of his own duty and thereby obtained a valuable thing or pecuniary advantage.”

## **J. LAW OF CORRUPTION IN INDIA PRIOR TO INDEPENDENCE:**

Prior to independence of India, offences relating to public servant have been dealt under Indian Penal Code. Section 161 to Section 165A of Indian Penal Code 1860 deal with offences pertaining to public servant which are as follows:-

- a. Public servant taking gratification other than legal remuneration in respect of official act (Sec.161 IPC).

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<sup>9</sup> AIR `1939 FC 43

<sup>10</sup> AIR 1940 PC 54

- b. Taking gratification by corrupt or illegal means, to influence public servant (Sec.162 IPC).
- c. Taking gratification for exercise of personal influence with public servant (Sec.163 IPC).
- d. Abetment of offences by public servant (Sec.164 IPC).
- e. Public servant obtaining valuable thing without consideration from person in possession or business transacted by such public servant (Sec.165 IPC).
- f. The offence is made cognizable offence which was treated as a non-cognizable offence under Criminal Procedure Code ( Sec.165A IPC ).

Under the Criminal Procedure Code, most of the offences relating to public servants are not cognizable. This provision has been made clearly because public servants have to work diligently without fear or favour and some times they have to work under peculiar situation. Keeping in view of above situation; they should not be placed to any harassment or investigation either by CBI or by Police. In order to give protection to them, a specific provision was made in the Act that unless a Magistrate is satisfied that it is a fit case for investigation, no investigation need to be made. This provision in this Act lays the onus of proof on the prosecution but it does not provide any punishment for various kinds of Criminal misconduct committed by public servants in the discharge of their official duties.

## **K. LAW OF CORRUPTION IN INDIA AFTER INDEPENDENCE:**

Prevention of Corruption Act 1988 obtained the assent of President of India on 9<sup>th</sup> September 1988 and said Act came in to force on that date. Present statute consolidates the provision of Prevention of Corruption Act 1947, Sec 161 to 165A of Indian Penal Code 1860, Criminal Law Amendment Ordinance 1944 and Criminal Law (Amendment) Act 1952. The sole purpose is that the relevant provisions of above legislation are brought in the single statute. Various provisions have been inserted effectively with a view to curb the menace of corruption from the society as a whole.

Since the existing provisions of Indian Penal Code were not exhaustive to deal with the menace of corruption and in order to make the law more effective, Prevention of Corruption Act was passed in 1947. The object of passing such legislation was that the scope for bribery amongst public servants had increased during 2<sup>nd</sup> world war. The large number of corrupt officers has amassed huge wealth which is disproportionate to the known source of their income. The above situation necessitated passing of Prevention of Corruption Act 1947. Possession of disproportionate assets was not then substantive offence.

The essential feature of above legislation is that it makes it obligatory on the part of court to make certain presumption of guilt against the accused. It is totally departure from the general rule under which the prosecution is under obligation to prove 'beyond doubt' all the essentials of an offence. Generally, the accused is treated as innocent till the guilt is proved. The burden of proof was shifted to the accused instead of prosecution. It was obligatory on the part of court to pass minimum sentence of imprisonment

when convicted. However, lesser sentence can be passed when special reasons are recorded in the judgement by the court.

Both Prevention of Corruption Act 1947 and Prevention of Corruption Act 1988 give idea, significance and importance of the expression 'corruption' in Independent India. This Act was the expression of an effort to eradicate corruption from the society. Prevention of Corruption Act may be termed as more effective provision for Prevention of bribery of corruption. After few years, it was felt necessary that the provision of Prevention of Corruption Act is required to be further strengthened. Subsequently Criminal Law Amendment Act came into force in 1952. Indian Penal Code, Prevention of Corruption Act give concept and importance of corruption in Administrative set up. They are supporting and supplementary to each other.

This Act provides safeguard to the public servant that they cannot be prosecuted in the court of law without approval from competent authority for the criminal offence committed by them in discharge of their official duties. This provision has been incorporated in the statute with a view to protect honest public servant. Thereafter Prevention of Corruption Act 1988 came in to force in September 1988. After passing of above Act, the definition of public servant has been widened. With the strength of various judgment of Apex court, Bank Manager of Nationalized Bank and even Member of Parliament and Member of Legislative Assembly would come under the purview of public servant.

The scope of Criminal Law (Amendment) Ordinance 1944 has been enlarged. Now the property has been made liable for attachment. Any conspiracy to commit or attempt to commit an offence has been brought under the provision of Prevention of Act 1988. Besides, all pending investigations or cases under the provision of Prevention of Corruption Act

1947 be continued and Prevention of Corruption Act 1947 shall not be a bar for commencing any investigation. It shall be deemed as if Prevention of Corruption Act 1988 has not been passed. After the passing of Prevention of Corruption Act 1988, the existing laws for corruption have been more effective and streamlined with a view to combat the menace of corruption from the society. Effective provisions have been incorporated for day to day trial of cases so that proceeding is concluded within a very short time.

#### **L. FORMATION OF CENTRAL VIGILANCE COMMISSION UNDER CENTRAL VIGILANCE COMMISSION ACT 2003:**

As per recommendations of the committee on Prevention of Corruption headed by Sri K.Santhanam, Central Vigilance Commission was established in 1964 by a resolution. The above resolution suggested that Central Vigilance Commission would be linked to the Ministry of Home Affairs but in the exercise of its power and function it will not be subordinate to any Ministry. The above commission should have same independence and autonomy like Union Public Service Commission. The said resolution further suggested that Central Vigilance Commissioner will be appointed by President of India by warrant under his hand and seal and Central Vigilance Commissioner will not be removed or suspended from his office except in the manner as provided for the removal and suspension of Chairman of Union Public Service Commission. The said resolution was amended in 1995 which provided for deletion of the provision relating to appointment of Central Vigilance Commissioner by President of India by warrant under his hand and seal.

Thereafter in 1997, Government of India established an Independent Review Committee consisting of Sri B.G.Deshmukh, Sri S.V.Giri & Sri N.N.Vohra. The said committee suggested suitable measures

for strengthening and streamlining anti-corruption activities. One of the vital recommendation of above committee was that question of providing statutory status to Central Vigilance Commission. It was further suggested that Central Vigilance Commission should be made responsible for efficient functioning of CBI.

Subsequently Supreme Court in *Vineet Narain v. Union of India*<sup>11</sup> passed following directions:

- a. Central Vigilance Commission shall be given statutory status.
  
- b. Apex court struck down the single directive issued to CBI by Government of India which requires prior sanction of the competent authority to initiate investigation against officers of government, public sector undertaking and Nationalized Bank above a certain level. Apex Court further directed that if the accusation of bribery which is support by direct evidence of accusation of illegal gratification by them including trap cases, it is clear that no other factor is relevant and the level or status of the offender is irrelevant. Supreme Court further directed that the power of superintendence over the functioning of the CBI vested in the Central Government under Section 4(1) of Delhi Special Police Establishment Act 1946 does not extend to initiation and actual process of investigation of the offence which are governed by the statutory provision.
  
- c. Central Vigilance Commission shall be responsible for efficient functioning of CBI while government shall remain answerable for the CBI's functioning, to introduce visible objectivity in mechanism to be established for over viewing the CBI's working, and the

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<sup>11</sup> AIR 1998 SC 889

Central Vigilance Commission shall be entrusted with the responsibility of Superintendence over the CBI's functioning. CBI shall report to the Central Vigilance Commission about the cases taken up by it for investigation, progress of investigation cases in which charge sheets are filed. The Central Vigilance Commission shall review the progress of all cases initiated by CBI for sanction of prosecution of public servants which are pending with the competent authority and specially in those cases where sanction has been delayed or refused.

- d. The Central Government shall take all measures necessary to ensure that CBI functions effectively and efficiently and it should be acted as unbiased and non partisan agency.

Keeping in view of the urgency involved in the matter and to comply the above direction of Apex Court, Government of India decided to put the proposed law in place through an ordinance to confer statutory status to Central Vigilance Commission.

Prior to enactment of Central Vigilance Commission Act 2003, Central Vigilance was non-statutory body. Since Supreme Court in Vineet Narain case directed that statutory status should be conferred to Central Vigilance Commission, it is indispensable to comply with the direction of Supreme Court to reintroduce the Bill under the heading 'The Central Vigilance Commission Bill 1999' conferring statutory status to Central Vigilance Commission. Accordingly, Bill seeks to confer statutory status of Central Vigilance Commission in compliance with the order of Supreme Court and also to repeal the resolution dated 4<sup>th</sup> April 1999 of Government of India.

The Central Vigilance Commission was passed by both the houses of Parliament which received the assent of President of India during September 2003 it came and termed as Central Vigilance Commission Act 2003 ( 45 of 2003 ).

Central Vigilance Commission Act being Apex Anti-corruption body has taken effective steps for formulating a draft National Anti-corruption strategy. Its purpose is to reshape of the country's integrity system through collective action. The above strategy does not include not only initiatives to be taken by the Government but also request for action by citizen, civil society organization, non-government organization, Business community, media, political parties and the judiciary.

#### **M. PRESUMPTION OF GUILT**

The question came up before Supreme Court whether presumption of guilt of accused under section 4 (1) is violative of Article 14 of constitution of India? The constitution bench of Supreme Court in *C.I. Emden v. State of U.P.*<sup>12</sup>. held that the presumption of guilt is not violative of Article 14 of Constitution of India due to following reasons:

“The Act was passed in 1947 with the object of effectively preventing bribery of corruption. Section 4 (1) provides that where in any trial of an offence punishable under section 161 or 165 of Indian Penal Code it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification ( other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or

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<sup>12</sup> AIR 1960 SC 548

obtained or agreed to accept or attempted to obtain, the gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or , as the case may be, without consideration or for all consideration which he knows to be inadequate. Mr. Anthony for the appellant, contends that this section offends against the fundamental requirement of equality before law or the equal protection of laws. It is difficult to appreciate this argument. The scope and effect of fundamental right guaranteed by Article 14 has been considered by this court on several occasions, as a result of the decision of this court, it is well established that Article 14 does not forbid reasonable classification for the purposes of legislation; no doubt it forbid class legislation; but if it appears that the impugned legislation is based on a reasonable classification founded on intelligible differentia and that said differentia have a rational relation to the object sought to be achieved by it, its validity cannot be successfully challenge under Article 14 in *Shri Ram Krishna Dalmia v. S.R. Tendolkar*<sup>13</sup> . In the present case there can be no doubt that the basis adopted by legislature in classifying one class of public servant who are brought within the mischief of Section 4(1) is a perfectly rational basis. It is based on an intelligible differentia and there can be no difficult in distinguishing the class of persons covered by the impugned section from committing other offences. Legislature presumably realized that experience in some courts should how difficult it to bring home to the accused persons the charge of bribery beyond reasonable doubt. Legislature felt that the evil of corruption amongst public servant posed a serious problem and had to be effectively rooted out in the interest of clean and efficient administration. That is why the legislature decided to enact Section 4(1) with a view to require the raising of the statutory presumption as soon as the condition precedent prescribed by it in that behalf is satisfied. The object which the legislature thus wanted to achieve is the eradication of corruption from amongst public servants, and between the said object and the intelligible differentia on which the classification is based there is a rational and direct relation. We have

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<sup>13</sup> AIR 1959 SC 538

therefore, no hesitation in holding that the challenge to the vires of Section 4(1) on the ground that it violates Article 14 of the constitution must fail”.

#### N. NATURE OF REBUTTAL OF PRESUMPTION:

The constitution Bench of Supreme Court in *Dhanvantrai v. State of Maharashtra*<sup>14</sup> passed following direction:

“Mr. Chari contends that upon the view taken by High Court it would mean that an accused person is required to discharge more or less the same burden for proving his innocence which the prosecution has to discharge for proving the guilt of an accused person. He referred us to the decision in *Otto George Gfeller v. the King*<sup>15</sup> and contended that whether a presumption arises from the common course of human affairs or from a statute there is no difference as to the manner in which that presumption could be rebutted. In the decision referred to above the Privy Council, when dealing with a case from Nigeria, held that if an explanation was given which the jury think might reasonably be true and which is consistent with innocence, although they were not convinced of its truth, the accused person would be entitled to acquittal inasmuch as the prosecution would have failed to discharge the duty cast upon it of satisfying the jury beyond reasonable doubt of the guilt of the accused. That, however, was a case where the question before the jury was whether a presumption of the kind which in India may be raised under Section 114 of the Evidence Act could be raised from the fact of possession of goods recently stolen, that the possession of goods was either a thief or receiver of stolen property. In the case before us, however, the presumption arises not under section 114 of the Evidence Act but under section 4(1) of Prevention of Corruption Act. It is well to bear in

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<sup>14</sup> AIR 1964 SC 575

<sup>15</sup> AIR 1943 P.C.211

mind that where as under section 114 of the Evidence Act, it is open to the court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact and it is not obligatory upon the court to draw such presumption, under Sub-Section (1) of Section 4, however, if a certain fact is proved, that is, where any gratification ( other than legal gratification) or any valuable thing is proved to have been received by an accused person the court is required to draw a presumption that the person received that thing as a motive of reward such as is mentioned in Section 161 of Indian Penal Code. Therefore, the court has no choice in the matter, once it is established that the accused person has received a sum of money which was not due to him as a legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case could not as light as it is where a presumption is raised under Section 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probably. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occurred in this provision make it clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.

How the burden which has shifted to the accused under Section 4 (1) of the Prevention of Corruption Act is to be discharged has been considered by this court in *State of Madras v. A.Vaidyanath Iyer*<sup>16</sup> where it has been observed:

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<sup>16</sup> AIR 1958 SC 61

“Therefore, where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in Criminal Cases and shifts the onus on to the accused. It may be mentioned that the legislature has chosen to use the words ‘shall presume’ and not ‘may presume’, the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but Section 4 of the Prevention of Corruption Act is in pari materia with the Evidence Act because it deals with Branch of Law of evidence i.e. presumptions, and therefore, should have the same meaning. ‘Shall presume’ has been defined in the Evidence Act as follows:

Where it is directed by this Act that the court shall presumption a fact, it shall regard such fact as proved unless and until it is disproved.

It is a presumption of Law and therefore it is obligatory on the court to raise this presumption in every case brought under Section 4 of the Prevention of Corruption Act because unlike the case of presumption of fact, presumptions of laws constitutes a Branch of Jurisprudence.

These observations were made by this court while dealing with an appeal against the order of Madras High Court setting aside the conviction of an accused person under Section 161 of Indian Penal Code. In that case the accused, an Income Tax Officer, was alleged to have received a sum of rupees 1000 as bribe from an assessee whose case was pending before him. His defense was that he had taken that money by way of loan. The High Court found as a fact that the accused was in need of rupees 1000 and had asked the assessee for a loan of that amount. It was of opinion that the versions given by the assessee and the accused were balanced, that the bribe seemed to tilt the scale in favour of the accused and that the evidence

was not sufficient to show that the explanation offered cannot reasonably be rejected. This court reversed the High Court's decision holding that the approach of the High Court was wrong. The basis of the decision of this Court evidently was that a presumption of law cannot be successfully rebutted by merely raising a probability, however reasonable, that the actual fact is reverse of the fact which is presumed. Something more than raising a reasonable probability is required for rebutting a Presumption of Law. The bare word of the appellant is not enough and it was necessary for him to show that upon the established practice his explanation was so probable that a prudent man ought, in the circumstances, to have accepted it.'

#### **O. EXISTENCE OF BLACK MONEY AND ITS CONFISCATION UNDER PREVENTION OF CORRUPTION ACT:**

Corruption is the improper use of public office for private gain and corrupt official enriches at the cost of public. India is recognized as one of the most corrupt country in the world by placing India at 73<sup>rd</sup> out of 100 countries. Corruption increases in our country due to rigid procedure and secrecy. Besides, there is much delay on the part of concerned department to conclude disciplinary proceeding and even after prolong enquiry, there is much delay for taking action against corrupt official and as a result, corruption has been increased at higher level. To mitigate such problems, matter is being regularly followed by Central Vigilance Commission.

Corruption has also been encouraged due to existence of black money and it is stated that parallel economy is running due to existence of such black money. It has been observed that such unaccounted money is the tune of more than 40% of Gross Domestic Product. So black money is a tonic for the growth of corruption. Such black money or unaccounted money could have been utilized for development purpose with

a view to extend benefit to the needy people. When the cases relating to corruption come at presentation of cases, there are maximum delay for making investigation and filling charge sheet. It has been observed that conviction is less than 10 % of total criminal cases. Moreover, corrupt official takes the advantage of rigid procedure of law, prolong trial and inefficient prosecution. Everybody knows that corruption is low risk and high profit business which does not require any investment. General people feels hesitation to report in respect of corruption matter to the investigating agency because of endangering of their life.

Some times there are cases of raiding by CBI or Income Tax Authority in the houses of corrupt public servant and it has been observed that enormous amount of cash and jewelry are seized but ultimately what we see as to how many corrupt public servants have been convicted in the court of law. In order to check the menace of corruption, Central Vigilance Commission has been authorized to exercise enormous power and has also been entrusted with the task of application of Prevention of Corruption Act so far public servants are concerned. The functioning of CBI is controlled by Central Vigilance Commission. In order to discharge the function of CBI effectively, Central Vigilance Commission has taken some positive steps which may be termed as black money scheme (benami). The Central Vigilance Commission being apex anti-corruption body has the jurisdiction, power in respect of matters which the executive power of union extends to undertake inquiry in to any transaction in which public servant is alleged to have acted in corrupt manner. The power of Central Vigilance Commission has been increased after passing Central Vigilance Commission Act 2003 pursuant of the direction of Supreme Court in Vineet Narain Case and Central Vigilance Commission has become statutory body independent of government control. Central Vigilance Commission has initiated systematic campaign against corrupt officials by involving general people in order to remove the menace of corruption from the society. The commission also invites general people of the country to the commission in respect of possession of black money by corrupt public servant which is

disproportionate to the known source of income. The commission has also decided not to disclose the name of people to report for committing such offence for their safety and such persons should be suitably rewarded.

## **P. CONSTITUTION OF SPECIAL COURT:**

The constitution bench of Supreme Court in *A.R.Antulay v. R.S.Nayak*<sup>17</sup> laid down certain guidelines and delivered following judgement:

“Another question seriously canvassed before us related to the consequence flowing from and infringement of right to speedy trial. Counsel for the accused argued on the basis of observations in *Sheela Barse*, AIR 1986 SC 1773 and *Strunk* 1973 (3) Law Ed 2d 56 that the only consequence is quashing of charges or conviction, as the case may be. Normally, it may be so. But we do not think that is the only order open to court. In a given case, the facts including the nature of offence may be such that quashing of charges may not be in the interest of justice. After all, every offence more so economic offences, those relating to public official and food adulteration is an offence against society. It is really the society the state that prosecutes the offender. We may in this connection recall the observations of this court in *State of Maharashtra –vs- C.P.Shah*, AIR 1981 SC 1675. In cases, where quashing of charges/ convictions may not be in the interest of justice, it shall be open to the court to pass such appropriate orders as may be deemed just in the circumstances of the case. Such orders may, for example, take the shape of order for expedition of trial and its conclusion

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<sup>17</sup> (1992) 1 SCC 225; 1992 AIR SCW 1872

with in a particular prescribed period, reduction of sentence when the matter comes up after conclusion of trial and conviction, and so on.

In view of above discussions the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and first rules. These propositions are;

- a. Fair, just and reasonable procedure implicit in Art 21 of the constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.
- b. Right to speedy trial flowing from Art 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this court as understood this right and there is no reason to take a restricted view.
- c. The concerns underlying the right to speedy trial from the point of view of the accused are ;
  - i. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be

subjected to unnecessary or long incarceration prior to his conviction;

- ii. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
  
  - iii. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.
- d. At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out 'delay is a known defense tactic'. Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily leave prejudices the prosecution. None availability of witnesses, dis appearance of evidence by lapse of time really works against the interest of prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights an interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by superior court is

by itself is not frivolous. Very often these stays are obtained on *ex parte* representation.

- e. While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work load of the court concerned, prevailing local conditions and so on- what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.
  
- f. Each an every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J.in *Barker*, 1972 (33) Law Ed 2d 101 “it can not be said how long a delay is too long in a system where justice is supposed to be swift but deliberate”. The same idea has been stated by Whitel, J. in *U.S. v. Ewell*, 1966 (15) Law Ed 2d 627 in the following words.

.....The sixth Amendment right to a speedy trial necessarily relative, is consistent with delays and has orderly expedition, the rather than mere speed, as its essential ingredients; and whether delay in competing a prosecution amount to an unconstitutional deprivation of rights depend upon all the circumstances.

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of

incarceration of accused will also be relevant facts. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

- g.** We cannot recognize or give effect to what is called the demand rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such demand and yet he was not tried speedily, it would be a plus point in his favour but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.
- h.** Ultimately, the court has to balance and weigh the several relevant factors-balancing test or balancing process and determine in each case whether the right to speedy trial has been denied in a given case.
- i.** Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the convictions, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may not be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order including an order to conclude the trial within a fix time where the trial is not concluded or reducing the sentence were the trial has concluded as may be deemed just an equitable in the circumstances of the case.

- j. It is neither advisable nor practicable to fix any time limit for trial of offences. Any such rules are bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time limit inspite of the Sixth Amendment. Nor do we think that not fixing any such outer limit in effectuates the guarantee of right to speedy trial.
- k. An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.”

## **Q. BILL TO PROTECT WHISTLE BLOWER**

In a significant step that is likely to encourage whistle bower, Central Government cleared the proposed legislation to protect whistle blower and provide for stringent punishment to those people exposing the identity of people disclosing information. To come out fearlessly in exposing corruption in Central Government,, State Government Department, Local Authority and society, Minister of State of Personnel M.Prithviraj Chowan

on 26.08.2010 introduced in Lok Sabha the Public Interest Disclosure Bill 2010 providing severe punishment for those disclosing their identities or victimizing them.

The necessity of such legislation was urgently felt into the work of reported victimization and even murder of whistle blower including RTI activists engaged in exposing wrong doing of individuals in the government or Private Department. The above Bill seeks to put in place of mechanism that would not only encourage disclosure of information on corruption or deliberate misuse of authority by public servants causing “demonstrable losses” to the government exchequer but also ensure “adequate protection” to the complainants. The above Bill provides Central Vigilance Commission the power of Civil Court to hand down harsh penalty to people revealing the identity of whistle blowers. The Central Vigilance Commission will be the nodal authority to handle complaints against State, Central Government or public sector undertaking employees. The Bill will encourage disclosure of information in public interest, has clauses which provide for fine and penalties to people who punish those exposing corruption.

### **SUM UP :**

To deal with corruption in effective manner, Government of India has taken some positive steps by forming different committees. Initially committee was established in 1949 under the chairmanship of Dr. Bakshi Tekchand. Prevention of Corruption Act 1947 was amended in 1964 based on the recommendation of Santhanam Committee with a view to make anticorruption laws more effective. The scope of bribery and corruption of public servants had been increased in vicious circle due to war but corruption is still in vogue though war is now over. The scope Criminal

Law (Amendment) Act 1944 has been fairly enlarged and the property has been made liable for attachment. All pending investigation or prosecution punishable under Prevention of Corruption Act 1947 can be continued and the said Act shall not be a bar for instituting any investigation. It shall be deemed as if Prevention of Corruption Act 1988 has not been passed.

Under Sec.13 (1) of Prevention of Corruption Act 1988 corresponding to Sec.5 (2) of Prevention of Corruption Act 1947, the minimum imprisonment of one year prescribed in Prevention of Corruption Act 1947 is retained and at the same time, discretion given to special judge to sentence of imprisonment less than one year for special reason has been taken away by deleting provision of Sec.5 (2) of Prevention of Corruption Act 1947.

Prior to independence of India, offences relating to public servant have been dealt with under Indian Penal Code 1860 since there was no special statute dealing with corruption cases. After independence, Prevention of Corruption Act 1988 was passed which consolidates the provision of Prevention of Corruption Act 1947, Sec.161 to 165A of Indian Penal Code 1860, Criminal Law Amendment Ordinance 1944 and Criminal Law Amendment Act 1952. The sole purpose of passing such statute is that relevant provision of above legislation is brought in single statute. Various provisions have been inserted effectively with view to curb the menace of corruption from the society as a whole. After passing Prevention of Corruption Act 1988, the definition of public servant has been widened and with the strength of various judgments of Apex Court, Bank Manager, even Member of Parliament and Member Legislative Assembly would come under purview of public servant.

Previously Central Vigilance Commission was non-statutory body. Supreme Court in Vineet Narain Case directed that statutory status should be conferred to Central Vigilance Commission. In pursuance of above judgment of Apex Court, Central Vigilance Commission Act was

passed in 2003 and accordingly, Central Vigilance Commission was made statutory body. Apex Anti-corruption body has taken some effective steps for formulating a draft national anti-corruption strategy. Its purpose is to reshape country's integrity system through collective action.

Different agency of Government of India have taken some steps to recover black money which has caused grave concern to the country. It has been observed that unaccounted black money is the tune of more than 40% of Gross domestic product. In order to recover black money, Central Vigilance Commission has initiated systematic campaign against corrupt officials who have amassed unaccounted money and commission has decided not to disclose the name of people to report for committee such offence. Recently Central Government has cleared proposed legislation to protect whistle blower and provide stringent punishment to the people exposing the identities of people disclosing information. The necessity of such legislation was urgently felt into the work of victimization and even murder of whistle blower including RTI activists engaged in exposing wrong doing of individual in the Government or Private Department. The Central Vigilance Commission will be nodal authority to handle complain against state, Central Government and Public Sector undertaking employees. The Bill will encourage disclosure of information in public interest and it will provide for fine and penalties to people to punish those exposing corruption.