

# NOTES & COMMENTS

## COMBATING CORRUPTION IN INDIA<sup>†</sup>

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In order to appreciate the subject matter in its true perspective, it would be appropriate at the threshold to analyse as to what the word, “corruption” means. Corruption affects morality and increases feelings of distrust and cynicism thereby producing a state of social disorganisation. As per Stroud’s Judicial dictionary, “corruption” means moral obliquity or moral perversity, whereas Dr. P. Ramanath Aiyar says that corruption is something against law, something forbidden by law, it is an act or intent to gain advantage not consistent with official duty and the rights of others. Corruption has a significant meaning in respect of elections. It means something different from and additional to bribery, personation, treating and undue influences. In fact it is an evil having direct bearing on the fabric of the society in the context of socio-economic problems which requires immediate attention.

### I. LEGISLATIVE MEASURES

Corruption has been considered as grave menace to the healthy administration of the Government. Therefore, it is inevitable to frame meaningful legislation with a view to arm the State machinery to adopt remedial measures to combat the evil of corruption.

The Prevention of Corruption Act, 1947 was enacted by the Parliament with an avowed object of making more effective provisions for the prevention of bribery and corruption by public servant, which are offences punishable under Chapter IX of the Indian Penal Code 1860 (IPC).

The legislation of 1947 (old Act) was, however, repealed by the Prevention of Corruption Act, 1988 (new Act). The new Act provides for appointment of Special Judges to take immediate cognizance of the offence of corruption. The Special Judges have been clothed with the powers and functions which are exercisable by a District Judge under criminal law. The procedure of summary trials has been envisaged. Where Special Judge tries an offence specified in sub-section (1) of section 3 of the new Act allegedly committed by the public servant in relation to the contravention of any special order

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referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 or of an order referred to in clause (a) of sub-section (2) of that section, the Special Judge has been armed with all necessary powers to try such offences in a summary manner and the provisions of sections 262 to 265 of the Criminal Procedure Code, 1973 shall be applied to such trials. Right of an appeal has been refused to a convicted person where sentence of imprisonment does not exceed one month and the fine does not exceed rupees two thousand while an appeal shall lie in excess of aforesaid limit against the order of the Special Judge. This indeed is a commendable effort of the legislature to ensure speedy trials of corruption cases.

## II. INBUILT DELAYS IN CRIMINAL JUSTICE SYSTEM IN INDIA

Our criminal justice delivery system is undoubtedly suffering from maladies of delay—delay being occasioned in adopting procedures contemplated in the Acts, which require obtaining of prior sanction for launching prosecution against the public servant before the Court notwithstanding flawless cases having been made out against him on the basis of investigations done by the specialised agencies, like Investigation Bureau (IB), Central Bureau of Investigation (CBI), Ombudsman like Lokayukta or Chief Vigilance Commissioner. In the changing environment of criminal justice delivery system, these uncalled for procedures result in delays in launching prosecution which can be avoided for ensuring speedy trial of corruption cases. The dycotheme of procedural requirements such as to obtain prior sanction of prosecution against public servant, as envisaged in Chapter V of the New Act, particularly section 19, can be done away with by special amendment in the enactment. The Courts are barred to take cognizance of the matter unless a complaint has been filed by a particular person or prosecution has been launched after obtaining requisite sanction. To obtain prior sanction by the prosecuting agency in absence of which prosecution can not be launched, the cases result not only in delay but also accede benefit to the accused of tampering with vital evidence which the prosecution may bring forth during trial.

A constitutional bench of the Apex Court in *P.V. Narsimharao v. State*<sup>1</sup> renownedly known as “JMM bribery case” per majority view has ruled that since the Member of Parliament is required to perform public functions, he is a public servant for the purposes of the new Act. The Court then observed that until the new Act is suitably amended to name the competent authority to accord sanction for prosecution against a Member of Parliament, the prosecuting agency shall obtain permission of the Presiding Officer of the Legislative body concerned for launching prosecution. The Court has

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1. AIR 1998 SC 2120.

thus recognised the requirement of obtaining prior sanction for prosecution as condition precedent to launch prosecution of public servant.

Though much emphasis has been laid by the Apex Court on the right of an accused to speedy trial to the extent that it has become an integral part of right to life and liberty under the Constitution but the very trial, itself, suffers from procedural malady of obtaining prior sanction in the absence of which not only the entire trial comes to a stand still but also frustrates the outcome of the efforts of the investigating agency. Hence, the formal requirement of obtaining sanction before prosecution against a public servant makes the investigating agency entirely dependable upon the authority concerned empowered to issue such sanction. Even such a requirement puts a bar on powers of the Court to take cognizance of such serious matters. Moreover, sometimes it seems to be a mere formality rather than an additional right of the accused to get the prosecution delayed by tampering with the evidence at his own whims by adopting illusory and dilatory tactics, which adds a further step to enlarge corruption.

### III. FUTILITY OF PRIOR SANCTION

Once the Act empowers the Court to take cognizance on the basis of material evidence collected during investigation, there is no reason for curtailing such power by contemplating procedural requirement of obtaining prior sanction to launch prosecution against the accused. The law relating to sanction deserves to be suitably amended in the light of observations made by the Apex Court from time to time<sup>2</sup> so that a real culprit does not go unpunished or scot free for want of prosecution.

The object of the new and old Acts is clearly to widen the scope of definition of expression "public servant". The Apex Court in JMM bribery case<sup>3</sup> observed :

A Member of Parliament has to be treated as a public servant for the purpose of the 1988 Act even though there is no authority who can grant sanction for his prosecution under section 19(1) of the 1988 Act.

There is no justifiable reason why prior sanction should be obtained in case of public servants in view of over all deterioration in bureaucratic functioning, while in case of common citizens, no such sanction is necessary.

In *Habibulla Khan v. State of Orissa*<sup>4</sup> Division Bench of the Apex court gave a laudable decision under the 1988 Act where question for

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2. See *infra*.

3. *Supra* n. 1.

4. AIR 1995 SC 1123.

consideration was as to whether sanction is required for launching a criminal prosecution against the appellants who were Ministers in the State Cabinet of Orissa Government. The Apex Court held that admittedly the appellants were being prosecuted for the misconduct allegedly committed by them during their tenure as the Members of the Council of Ministers and not in their capacity as the MLAs, hence provisions of section 19 of the Act are inapplicable to the facts of the case as held in *R.S. Nayak v. A.R. Antulay*.<sup>5</sup> In *S.A. Venkataraman v. The State*<sup>6</sup> the Apex Court observed:

In construing the provisions of a statute it is essential for a Court, in the first instance, to give effect to the natural meaning of the words used therein, if those words are clear enough. It is only in the case of any ambiguity that a Court is entitled to ascertain the intention of the legislature. Where a general power to take cognizance of an offence is vested in a Court, any prohibition to the exercise of that power, by any provision of law, must be confined to the terms of the prohibition. The words in section 6(1) of the Act are clear enough and must be given effect to. The more important words in clause (c) of section 6 (1) are "of the authority competent to remove him from his office". A public servant who has ceased to be a public servant is not a person removable from any office by competent authority. The conclusion is inevitable that at the time a Court is asked to take cognizance, not only that the offence must have been committed by a public servant but the person accused must still be a public servant removable from his office by a competent authority before the provisions of section 6 can apply.

Likewise in *Veeraswami v. Union of India*<sup>7</sup>, while construing provisions of section 6 of old Act, the Apex Court held that no sanction under section 6 of that Act was necessary for prosecution of the appellant in that case since he had retired from service on attaining the age of superannuation and was not a public servant on the date of filing the charge sheet. Though the contention that the concerned Chief Minister who continued to be an MLA was a public servant and hence prior sanction was necessary before launching prosecution against him was accepted in *R.S. Nayak v. A.R. Antulay*'s,<sup>8</sup> case, but was negated by the Apex Court in *Habibullah's* case.<sup>9</sup> In

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5. AIR 1984 SC 684.

6. AIR 1958 SC 107.

7. 1991(3) SCC 655.

8. *Supra* n. 5.

9. *Supra* n. 4.

*Habibullah's* case, the Supreme Court observed that upon a true construction of section 6 of the Act, it was implicit therein that sanction of the competent authority alone would be necessary which was competent to remove a public servant from the office when he was alleged to have misused or abused his office for corrupt motive and for which a prosecution was intended to be launched against him.

To ensure transparency and accountability in state actions and also speedy trials of corruption cases, it is suggested that section 19 of the Act be suitably amended so as to do away with the malady of delay resulting out of the procedural requirement of obtaining prior sanction which appears to be a technical formality and unnecessary requirement before the prosecution is launched against holder of public office. In this manner, the delinquent gets an opportunity not only to tamper with the evidence but also to prolong the trial which in fact violates his right of speedy trial itself.