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Report on

**WEBINAR ON “SPEEDY AND QUALITATIVE DISPOSAL
OF ACD & CBI CASES”**

Held on: 27th July 2020

Organised by: Rajasthan State Judicial Academy, Jodhpur

Hon’ble Resource Person:

Hon’ble Mr. Justice Joymalya Bagchi
(Judge, Calcutta High Court)

Report prepared by: Shubham Shandilya (Research Scholar)

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- Objective of Rajasthan State Judicial Academy is to educate and sensitize its officers and other stake holders about the latest laws and procedure to achieve the constitutional mandate of securing the “Rule of Law”.
- With the restrictions on physical gathering due to the spread of novel coronavirus, the innovations in technology have come to aid us in our ever going quest for knowledge. Through the use of softwares and advancement of computer technology it is possible to continue imparting knowledge through webinars. A novel solution indeed for a novel crisis.
- Making full use of the advances in the field of technology and keeping up with its constitutional mandate in mind, The Rajasthan State Judicial Academy on **27th July 2020** organized a **Webinar on 'Speedy and Qualitative Disposal of ACD & CBI Cases'** at **4.30 pm**, which was presided over by **Hon’ble Mr. Justice Joymalya Bagchi (Judge, Calcutta High Court)**.
- The webinar saw a participation of total 35 Judicial Officers (Presiding Officers of ACD Cases Courts and CBI Cases Courts) across the various Judgeships of the State of Rajasthan.
- **Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** welcomed **Hon’ble Mr. Justice Joymalya Bagchi (Judge, Calcutta High Court)** on the webinar. The Hon’ble Resource Person began the discourse by providing a brief historical account of the development of anti-corruption laws in India for fighting the menace of corruption.

Short Historical Background of the Prevention of Corruption Act

- It was stated that corruption had raised its ugly head in the back drop of the IInd World War. Upon attainment of Independence in 1947, Executive Rules in the form of Defence of India Rules were consolidated as a standalone legislation for fighting against corruption which was called the Prevention of Corruption Act, 1947.
- The Prevention of Corruption Act, 1947 was a substantive legislation which provided for crimes pertaining to corruption and the investigating mechanism for the same.
- The Criminal Law Amendment of 1952, provided for the constitution of special courts throughout the country in addition to the locals laws. This provided for special courts which dealt with cases of crimes by public servants.
- The Indian Penal Code in Chapter IX(before it was repealed) had a number of provisions which provided for the offence of bribery of public servants.
- Thus, it was seen that the Prevention of Corruption Act, 1947 and the Indian Penal Code in the early 50s along with the Criminal Law Amendment Act, 1952 created a statutory forum for trial of corruption cases. They were the triumvirate for dealing with corruption matters.
- In addition to the above mentioned laws, the Delhi Police Special Establishment Act, 1946, provided for dealing with crimes committed by public servants associated with the central government as well as the railways.
- The Hon’ble Resource Person stated that corruption cases have plagued our nation since independence and presented the nation with some peculiar problems; one of the major issues being, that the corruption matters take an inordinate amount of time to investigate and prosecute.
- It is important to note that corruption cases by their very nature require specialized forms of investigation which are not always within the knowledge, training and expertise of the police force of the country. Special nature of these offences and the prolonged file mechanisms are something which are unique to corruption cases from the beginning. These are the reasons which led to a number of corruption cases being improperly investigated, ineffectively prosecuted and thereby resulting in unjust acquittals.
- It was also stated that corruption was used as a tool for victimization; particularly of unrelenting public servants and also for political considerations. Therefore, it is required to hone the skills of the investigation and prosecution on one hand but also to see that the corruption cases do not become a menace at the hands of unscrupulous individuals including politically and socially motivated individuals to victimize the minority and weaker

vulnerable sections, including individuals having non association with the governmental agencies.

- The above were some of the issues that were addressed by a committee constituted in the 1960s called the **Santhanam Committee**. They gave a report stating that the Prevention of Corruption Act should be made all inclusive and the IPC offences be done away with. It also provided for a clear definition of *criminal misconduct* for public servants. It further stated that the crime related to corruption has a unique angle to it which requires the proceeds of crime to be attached and taken away from the hands of the offender as much as punishment of the offender through imprisonment.
- The very idea of corruption offences is unlike other offences; punitive-ness of the crime cannot be equated with incarceration. The gravity of the crime and the punitive character of the crime have an economic angle to it; it creates an economic aggrandizement and when it creates an economic aggrandizement, it can always be said that the mere incarceration of an individual will not be adequately deterrent. In addition to such incarceration, the proceeds of crime is required to be traced out, identified, attached and forfeited. This was also a proposal made by the Santhanam Committee.
- These proposals were made in 60s and two decades later i.e. in 1988 we arrived at the present law viz. The Prevention of Corruption Act, 1988. The Act of 1988 improves on the earlier law in the sense that it creates not only the offences but also the forum for the trial and investigation of those offences. The Act of 1988 also provided for a substantial definition of a new crime i.e. Criminal Misconduct in cases of Appropriation and Disproportionate assets. These are the two developments in the Act of 1988.
- One important omission by the Act of 1988 with regards to the recommendation of the Santhanam Committee was that there was no provision with regard to identification and forfeiture of the proceeds of crime.

Essential changes brought into the 1988 Act vis-à-vis the 2018 Amendment Act

(A) Changes with respect to substantive law

- In 2018 there have been substantive amendments to the Prevention of Corruption Act.
- Section 7 of the Act provides for unfair undue advantage to a public servant for doing an official act in a dishonest manner or for refraining from doing an official act. The word illegal gratification or gratification other than legal remuneration in the new law has been substituted by undue advantage. But on seeing the definition of undue advantage, it is observed that the change is cosmetic. However, the substantial change in Section 7 in relation to the earlier provision can be found in clause (c).
- Before this clause was incorporated as part of the crime, solicitation of a bribe was not an offence. The offence was limited to “an offer or an attempt of offer or an acceptance of a bribe”, which amounted to gratification as per the old law.
- Section 7 has thus been expanded to include passive bribery. No offer is now required to constitute an offence; even mere solicitation by a public servant for something which he has already done has been made an offence.
- Further, as per Section 8, the bribe giver is today no longer protected (until within 7 days of being compelled to give a bribe, he gives a report to the law enforcement agents). Thus, a bribe giver is now liable to be prosecuted under Section 8 and the earlier provision of Section 24 of the PC Act protecting the prosecution of the bribe giver pursuant to the statement, no longer holds the field and is repealed.
- Another, important change in the substantive law is relating to corruption offences is the amalgamation of the old sections 7 and 8 of the Act which provided for individuals (Non public servants) who take gratification to influence public servants. These offences have been clubbed together to form Section 7A.
- Also, Abetment has been made a general offence.
- The amended Section 9 and 10 of the PC Act, creates corporate liability when the bribe giver is a person associated with a corporate organization or a corporate association. As per Section 9 and 10 when a commercial organization through its person gives bribe, not only is

the person made liable for such offence but also the commercial organization and the persons in charge of the organization who are in connivance and were aware of the bribe being given on their behalf been made liable.

- Section 11 essentially remains the same, only change being that valuable thing has been substituted with undue advantage.
- With respect to Section 12 the case of abetment has been enlarged. Now not only the bribe giver but the public servant who has been influenced under Section 7A can be prosecuted under Section 12.
- An important change can be found with respect to disproportionate assets as provided for in Section 13 of the Amended Act. Earlier the disproportionate assets were compared to the *known sources of income* but now the word used is *intentional enrichment*. As per intentional enrichment; the definition of it is equivalent to disproportionate assets compared to income which is lawful. There is change that, earlier, known sources of income meant income which was not only lawful but also within the knowledge of the employer.

(B) Changes with respect to procedural law

- The most important change is with regards to Sanction.
- Incorporation of **Section 17A**- It was stated to the participants that in cases where the alleged official act is a policy decision, there is always a chance of a bonafide mistake being made instead of a malafide exercise of power for undue advantage. There is thus a bar on preliminary inquiry or registration of an offence.
- Section 17A engrafts a very unique distinction in the law of sanction. Earlier the sanction was only in respect of prosecution; investigation did not require any sanction. But as per the amended law, now, *investigation and enquiry or inquiry will also require a sanction* in respect of the alleged “recommendation made” or “decision taken”.
- It was emphasized that one must apply their judicial minds to ascertain what is meant by “recommendation made” or “decision taken”.
- Further, a sanction must be expressly given. As per the amended law, the consequence of expiry of the time frame in which the sanction is to be given has not been provided. Therefore, a sanction can be given even after the expiry of the time period. If time lapses, it does not mean that the sanctioning authority is denuded of its authority to grant sanction as no such consequence has been provided in the Act.
- Sanction for prosecution under PC Act is necessary even after retirement or after the public servant has left the post. Section 19 further provides for an opportunity of hearing to the proposed accused.
- It was also stated that in case of a private complaint, if a sanction is not obtained even after the expiry of 4 months, the complaint remains in suspended animation, awaiting sanction and the same cannot be dismissed for want of sanction.
- The Hon’ble Resource Person also addressed the concerns related to attachment and prosecution of the proceeds of crimes and the difficulty of whether the same would be governed by the PC Act or the Prevention of Money Laundering Act, 2002.
- The Prevention of Corruption Act in 2018 has incorporated a Chapter IV-A (Section 18-A) which states that save as otherwise provided under the Prevention of Money Laundering Act, 2002, the provisions of the Criminal Law Amendment Ordinance, 1944 shall apply to the attachment of the proceeds of crime.
- The Hon’ble Resource Person also pointed out certain provisions which are yet to be clarified by the legislature. Such as Section 19(1) which provides for sanction requirement under Sections 7, 11, 13 and 15 has now repealed the earlier additional requirement of sanction for Section 10 as well.
- Section 10 of the Old Act required sanction for abetment of a public servant who was influenced by a non-public servant upon receiving bribe. That abetment provision has now been merged with Section 12, but Section 12 is no longer a provision which requires a sanction. This as per the Hon’ble Person was a case of a legislative casus omissus.

- Also, habitual offenders which have now been brought under Section 14 of the amended Act, no longer require sanction for prosecution.
 - The Hon'ble Resource Person suggested to the participants that in order to expedite the trial they must make use of the Video Conferencing facility for the deposition of the officers who have been transferred. Further, with respect to delay due to large number of witnesses, it was suggested that one may hold a pretrial conference to rationalize this number, so that an effective quick and result oriented prosecution may take place.
 - The Hon'ble Resource Person addressed the query pertaining to a situation in which if a trial judge feels that a person who ought to have been prosecuted has been left out, then will the powers under Sec 319 CrPC still be applicable and can that person be prosecuted without obtaining the necessary sanction? The Hon'ble Supreme Court in **Surinderjit Singh Mand & Anr. v. State of Punjab & Anr. (2016) 8 SCC 722**, has held that *“Mandate is clear and unambiguous that Court “shall not” take cognizance without sanction. Same needs no further elaboration. Court just cannot take cognizance without sanction by appropriate authority”*. The Apex Court **rejected** the contention that *“where cognizance is taken under Section 319 of Code, sanction either under Section 197 of Code or under concerned special enactment is not a mandatory pre-requisite.”*
 - The webinar concluded with a vote of thanks by **Mrs. Nandini Vyas (Director, Rajasthan State Judicial Academy)** thanking **Hon'ble Mr. Justice Joymalya Bagchi (Judge, Calcutta High Court)** for imparting his valuable knowledge with regards to **“Speedy and Qualitative Disposal of ACD & CBI Cases”**; Director (RSJA) further extended her most sincere gratitude to **Hon'ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** for his guidance and all the participants for making the webinar an interactive and fruitful discussion.
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