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**Report on:**

**WEBINAR FOR 'SENSITIZATION OF PRESIDING OFFICERS, JUDICIAL OFFICERS  
HAVING CHARGE, PROSECUTORS & POLICE OFFICIALS CONCERNED WITH ACD  
& CBI CASES'**

**Held on:** 4<sup>th</sup> September, 2021

**Organized by:** Rajasthan State Judicial Academy, Jodhpur

**Resource Persons:**

**Mr. D. C. Jain**

Additional Director, CBI, New Delhi

**Mr. Vijay Kumar Singh**

IG, CID (CB), Jaipur

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## **Rajasthan State Judicial Academy**

- Objective of Rajasthan State Judicial Academy is to educate and sensitise its officers and other stakeholders 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.
- Making full use of the advances in the field of technology and keeping up with its constitutional mandate in mind, the RSJA on **4<sup>th</sup> September 2021** organized a **Webinar for ‘Sensitization of Presiding Officers, Judicial Officers having charge, Prosecutors & Police Officials concerned with ACD & CBI Cases’**.
- The Webinar was conducted under the aegis and guidance of **Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** and was presided over by **Mr. Vjay Kumar Singh [IG, CID (CB), Jaipur]** and **Mr. D.C. Jain (Additional Director, CBI, New Delhi)**.
- The webinar witnessed the participation of esteemed Lordship [Chairman, RSJA], Mrs. Nandini Vyas [Director, RSJA], Kamal Chhangani [Addl. Director (Academic), RSJA], Mr. Ganpat Lal Bishnoi [Addl. Director (Admin), RSJA], Mr. Anutosh Gupta [Deputy Director (Academic), RSJA], Mr. Vikas Kaler [Deputy Director (Admin), RSJA] and 17 Judicial Officers posted in ACD Cases Court, 9 Judicial Officers posted in CBI Cases Courts, 17 ADPs/SPPs posted in various ACD/CBI Courts of Rajasthan & 9 police officers dealing ACD/CBI Cases.
- **Mrs. Nandini Vyas, Director, RSJA** extended gratitude to Chairman Sir, Hon’ble Justice Sandeep Mehta, for his constant support and encouragement

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and welcomed the esteemed resource persons and all the participants to the webinar. Ma'am explained the subject for deliberation and requested all the participants to take maximum benefit of this webinar.

### **SESSION**

- **Mr. Vijay Kumar Singh** requested his colleague Mr. D.C. Jain for his presentation on provisions of 2018 Amendment to Prevention of Corruption Act which is now popularly called the “volatile” legislation.
- **Mr. D.C. Jain**, first introduced the topics Sir would be covering in his presentation which were:
  1. Features of the Prevention of Corruption Act (hereinafter, “PC Act”)
  2. Requirement of Sanction under section 17A of PC Act
  3. Special provisions on presumptions on some issues under the Act

Mr. Jain started presentation with the discussion on the definition of Public Servant and Public Duty u/s 2 (c) and 2(b) of PC Act respectively. Sir discussed the background of the PC Act in India and how the definition of Public Servant and Public Duty has widened over the years. “Public Servant” now includes all persons holding any public offices or in the nature of public offices and not just the government employees. Sir gave illustration of NGOs that are also now covered under the PC Act. While citing the ruling in the case of **CBI v. Ramesh Gelli and Ors.** (2016)3 SCC 788, where the employees of the top management of Private Sector Banks have also been held to be Public Servant under the PC Act.

Sir discussed the changes brought by the new amendment of 2018 to the PC Act like the word “undue advantage” u/s 2(d) which now covers all the advantages/resources that a Public Servant will try to procure by making unfair use of his position. Sir discussed the trial by Special Judges and their powers under sections 4 and 5 of PC Act. The Special Judge may also try other offences along with the offence under the PC Act. The 2018 Amendment Act has also added the time limit for case disposal which is 2 years extendable to 4 years by reasoned order for 6 months at a time. The Special Judge also has power to grant pardon and

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he can exercise powers of Magistrate under CrPC also. Earlier the power vested with District Judge, but this anomaly was removed by the Amendment of 2018 by adding section 18A.

Mr. Jain discussed the types of offences under the amended PC Act. There are four offences under the PC Act:

1. Bribe
2. Misappropriation of Public Funds
3. Abuse of authority
4. Disproportionate Assets

Mr. Jain explained section 7 and every point extensively. Sir enumerated the importance of section 7 because the 2018 amendment has widened its ambit. Attempt was not an earlier but now it is. The scope has widened. Sir, pointed on the ongoing debate on if the offence under the PC Act has been committed by a Public Servant while not discharging his public duty that can be charged under the PC Act. The new amendment also brings the bribe giver under the garb of the PC Act. It is now a substantive offence and only the maximum punishment is provided by the Act. The section does not apply on persons who have been compelled to make such bribe, provided he makes a report of the demand to agency within 7 days from the date of giving undue advantage. Sir also explained the sections from 9 to 11. While drawing a comparison, Sir elaborated that earlier section 13 of the PC Act had 5 sub-sections and now only 2 sub-sections are there. Rule of drawing presumption in Explanation 1 which says that after the recovery, when the Public Servant fails to explain the source of the property he owns/possesses which is disproportionate to his salary.

The Explanation 2 provides the meaning of “Know sources of income” as the income receive from any lawful sources. Section 14 provides for habitual offenders and with the 2018 amendment, it has brought clarity to who shall be considered. Section 17A provides that previous approval for prosecution of the Public Servant is necessary. The competent authority needs to convey the approval within 3 months. Sir explained that the competent authority under section 17A and Section are different and in no way should be confused with. Section 20 deals with when a presumption can be drawn. It states that when a recovery is made, it shall

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imply that offence under section 7 has been committed unless the contrary is proved.

Mr. Jain opened the panel for questions and deliberation. **Hon'ble Justice Sandeep Mehta** also participated amidst the deliberation when one of the participants raised query in a situation where the Public Servant and a Private Person were charged under the PC Act and the Public Servant is discharged by the special judge, so does the Special Judge has power to continue with the trial of the Private Person. Lordship contributed to this discussion and presented his point of view on this. A private person when tried before the special judge is also charged with offences under IPC along with the offences under the PC Act, so in the above circumstances, the Special Judge can return the file to the concerned criminal court which shall try the case under CrPC.

Justice Mehta posed a question on the modality of sanction by the competent authority under the Act where a number of times, the prosecution sanction is not given for a Senior Public Officer, but for Junior Public Officer for the said case. While the **Mansukh Vithaldas Chauhan v. State of Gujarat** it has been made clear by the Supreme Court that the courts cannot direct sanction for prosecution, it has certainly given an arbitrary authority to the competent authority for providing a shield to the higher level of Public Servants.

Mr. Jain participated and shared that a lot of times investigating agencies approach courts and directs them to bring fresh material to present to the sanction authority. And a lot of times they request the sanction authority for giving speaking orders citing the directions of the Rajasthan High Court on the same. Justice Mehta also talked about the difficulties the courts face while dealing with the Draft Sanction Order and how complicated they are made. Mr. Jain also agreed with Lordship's point of view and pointed out that despite having repeated directions on this aspect, it is still in practice. Justice Mehta also discussed the delay in case disposal in the limited time as provided by the PC Act.

**Mr. Vijay Kumar Singh** made presentation on the investigation procedure of ACD. Sir cited a few rulings of the Supreme Court in **K. Ponnuswamy v. State of Tamil Nadu** on the abetment of the commission of the offence under PC Act and also discussed the case of **Mansukh Vithaldas Chauhan v. State of Gujarat**

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on the bar on courts to direct the competent authority for sanction for prosecution. For sanction for prosecution, Department of Personnel, Rajasthan has released guidelines for sanctioning under the PC Act. Sir Elaborated on these guidelines and shared his personal experience in Anti Corruption cases. He pointed out the reluctant attitude of courts in issuing search warrants. He also discussed the problem of presenting false oral and documentary evidence in these cases. At the end of the presentation, Sir shared the folklore of corruption and how corruption a dangerous termite that can eat the society and make it hollow. Sir opened the panel for questions from his presentation and deliberation.

After the question and answer round, **Mrs. Nandini Vyas**, while addressing all the participants, extended vote of thanks to the resource persons, Mr. D.C. Jain and Mr. Vijay Kumar Singh, for holding the deliberation on the subject and clarifying doubts of all the participants. Mrs. Vyas also extended gratitude to Hon'ble Justice Mehta for his contribution to the webinar and encouraging all the participants for participating in the deliberation.