SPEEDY DISPOSAL OF CORRUPTION AND VIGILANCE CASES

by

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Tamil Nadu is my home State and I am always delighted to be back here. Today, in particular, I find myself embraced by intense nostalgia to be back at a place where I began my career. I feel elated and immensely happy in addressing you, the members of judiciary who are the foundational edifice of the machinery of criminal justice in our country.

India's stellar performance in rankings on growth indicators and its innovative approaches to poverty alleviation are often compromised due to corruption in all segments of public life. Complete eradication of corruption is achievable only when the root cause of corruption is identified and policies are made accordingly. Institutions provide the structure that give shape and content to any strategy to combat corruption. The following key institutions play an important role in reducing corruption levels, which are: the disciplinary committees investigating agencies, enforcement agencies and judiciary. Their improved performance plays a pivotal role in curbing corruption.

The legal structure of society forms an important pillar in the fight against corruption. If corruption is to be cured, the need for a strong legal framework against the same is almost axiomatic. Judiciary should not only guard its independence from other wings of the government but it should also ensure that it does not itself get afflicted with the scourge of corruption. We may use two strategies to combat corruption, viz., (a) systemic checks and balances on itself and (b) speedy disposal of corruption cases. Speedy disposal of anti-corruption and vigilance cases has a direct bearing in lessening the corrupt practices. It is the fear of prompt conviction, which will curb the offenders from commission of offence.

Legal Framework:

The Prevention of Corruption Act, 1988 (PC Act) was enacted with the intended purpose of consolidating and amending the law relating to the prevention of corruption. Enactment of this act is stalwart move in the direction to prevent bribery and corruption among public servants.

Major changes brought by the PC Act:

1. Enlarged definition of Public Servant

Section 21 IPC defines public servant while emphasizing on the authority employing and the authority remunerating whereas under Section 2(c) of the PC Act, emphasis is on public duty. Public duty has been defined under section 2 (b) to mean a duty in the discharge of which the state, the public or the community at large has an interest. Thus, the definition of 'public servant' has been enlarged so as to include the office-bearers of the registered co-operative societies receiving any financial aid from the Government, or from a Government Corporation/Company, the employees of universities, Public Service Commissions, Banks etc.

2. Minimum sentence prescribed

The Act prescribes minimum sentence of six months for all the offences committed under the Act. In a recent judgment authored by me, ***A.B Bhaskara Rao*** vs. ***Inspector of Police, CBI Viskhapatnam*** (2011) 10 SCC 259, an important issue was raised as to whether the courts are empowered to reduce the sentence which is lower then the threshold prescribed by statutory provision. We held as follows-

"Long delay in disposal of appeal **or** ***any other factor may not*** **be** ***a ground for reduction of sentence, particularly, when the statute prescribes minimum sentence. In other cases where no such minimum sentence*** **is** ***prescribed,*** **it is** ***open*** **to** ***the Court*** **to** ***consider the delay and its effect and the ultimate decision."***

Hence, it is a settled position that the courts have no reason to reduce the statutory minimum sentence.

3. Presumption **in** *favour of complainant*

The public servant can no longer sit tight and wait for the prosecution to conclusively prove his guilt beyond doubt and hold the dictum that until the contrary is proved everyone in the face of law is deemed innocent. The prosecution has the initial responsibility to establish the offence. However, once certain circumstances against the public servant are pointed out, it becomes his equal responsibility to explain his conduct satisfactorily and prove his innocence or else he may be presumed to be guilty. In short, if the prosecution proves the specific actions of the public servant implying presumption of misconduct under the Act, it is the duty of the public servant to explain his actions satisfactorily.

4. Determination of Quantum of Fine

Section 16 mandates that while fixing the amount of fine as part of penalty for committing an offence under this Act, the court shall take into consideration the value of the properties which are proceeds of crime and in case of disproportionate assets, pecuniary resources or property for which the accused is unable to account satisfactorily. This is a noticeable amendment brought out by the PC Act, 1988, which puts the special duty on the courts.

5. Freezing of Ill-gotten Properties during Trial

Though there is a separate law, that is Criminal Law (Amendment) Ordinance, 1944, which deals with freezing, seizure and confiscation of properties illegally obtained, Section 5 of the PC Act also empowers the Special Judge to exercise all the powers and functions under the said law during trial.

Offences and Penalties under the PC Act

Various acts of omissions and commissions defined as offences under the PC Act can be broadly divided into the following categories:

(i) Bribery of Public Servants: *(secs.* 7, 10, 11 & 12 *of the Act)*

Section 7 punishes a public servant or a person expecting to be a public servant, who accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act. The important point to note here is that even the mere demand of bribe or agreeing to accept a bribe is an offence under this law. Actual exchange of a bribe is not an essential requirement to be prosecuted under this law. A willing bribe giver is also punishable under Section 12 of the PC Act. Further, those public servants who do not take a bribe directly, but through middlemen or touts, and those who take valuable things from a person with whom they have or are likely to have official dealings, are also punishable as per Sections 10 and 11 respectively. All these offences are punishable with a minimum imprisonment of six months which is extendable up to five years alongwith fine.

(ii) ***Embezzlement, Misappropriation of Property by Public Servants:*** *(sec. 13(l)(c) of the Act)*

Section 13(1)(c) punishes public servants who dishonestly or fraudulently misappropriates or converts to their own use any property entrusted to them as a public servant which is punishable with a minimum imprisonment of one year, extendable up to seven years along with fine.

(iii) ***Trading*** **in** ***Influence:*** *(secs.* 8 & 9 *of the Act)*

Sections 8 and 9 punish middlemen or touts who accepts or obtains or agrees to accept or attempt to obtain, gratification as a motive or reward for inducing by corrupt or illegal means, or by exercise of personal influence, any public servant, to do or forbear to do any official act respectively. These offences are punishable with a minimum imprisonment of six months, extendable up to five years, along with a fine.

(iv) Abuse of position by Public Servants: *(sec.* 13 (1) *(d) of the Act)*

Section 13 (1) (d) punishes public servants who abuse their official position to obtain for himself or herself or for any other person, any valuable thing or pecuniary advantage (quid pro quo is not an essential requirement). This offence is punishable with a minimum

imprisonment of one year extendable up to seven years, and also with a fine.

(v) Illicit Enrichment of Public Servants: *(sec. 13(1)(e) of the Act)*

Section 13(1)(e) punishes public servants, or any person on their behalf, who are in possession, or who have been in possession of pecuniary resources or property disproportionate to their known sources of income, at any time during the period of their office. Known sources of income have further been explained as income received from a lawful source only. It is a very important provision, particularly for booking public servants in senior positions because often there are not many complaints against them related to bribe seeking or abuse of official position. This offence is also punishable with a minimum imprisonment of one year, extendable up to seven years, and also with a fine.

(vi) Habitual bribe seekers *(sec.* 13 *(l)(a)& (b) of the Act)*

Section 13 (l)(a) & (b) punishes persons who habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration or any valuable thing without due consideration. They are punished with minimum imprisonment of one year, extendable up to seven years, and also with a fine.

(vii) Habitual middlemen *(sec.* 14 *of the Act)*

Section 14 punishes habitual middlemen or touts, or who pay bribes under section 8, 9, or 12 with a minimum imprisonment of two years, extendable up to seven years, and also with a fine.

(viii) Attempt* at *Certain Offences by Public Servants: *(sec.* 15 *of the Act)*

Section 15 punishes an attempt at committing offences pertaining to criminal misappropriation of property or abuse of official position by a public servant with imprisonment for up to three years and also with a fine.

These are the broad categories of offences, which are exclusively within the jurisdiction of the special judge who are appointed under section 3 of the PC Act.

Preliminary Investigation:

When a complaint is received or information is available which may, after verification, indicates serious misconduct on the part of a public servant but is not adequate to justify registration of a regular case under the provisions of Section 154 Cr.P.C., a preliminary enquiry may be registered after obtaining approval of the Competent Authority. Sometimes the High Courts and the Supreme Court also entrust matters to CBI for enquiry and submission of report. In such situations also which may be rare, a 'Preliminary Enquiry' may be registered after obtaining orders from the Head Office. When the verification of complaint and source information *prima facie* reveals commission of a cognizable offence, a Regular Case is to be registered as is enjoined by law. The Preliminary Enquiry would result either in registration of a Regular Case or Departmental Action, or being referred to

the department through a self-contained note for such action, or being closed for want of proof. As soon as sufficient material disclosing the commission of a cognizable offence is available during the course of preliminary enquiry and it is felt that the outcome of investigation is likely to culminate in prosecution, a Regular Case should be registered at the earliest.

Previous Sanction for Prosecution:

Section 19 of the Act mandates that the investigating agency, after completing an investigation of a case for offences under sections 7, 10, 11, 13 and 15 of this Act to obtain prior approval of the concerned authority, before launching prosecution in a court of law. No court can take cognizance of the offences unless such a sanction accompanies the report of the investigating agency filed in the court of law.

Hence, after completing investigation, the investigating agency forwards its investigation report, containing detailed findings of the investigation, to the competent authority to provide sanction for launching prosecution against the accused public servant. The investigation report is filed in a court of law along with such sanction to enable the court to initiate prosecution. This has been done with a view to save public servants from frivolous prosecution or from prosecution for acts done in good faith while discharging an official function. But the same protection has become a delaying tactics in the hands of the accused.

In ***Subramanium Swamy v. Manmohan Singh & Anr.,*** (2012) 3 SCC 65, the Supreme Court endorsed the following directions laid down in ***Vineet Narain Case:-***

> ***"Time-limit of three months for grant of sanction for prosecution must*** **be** ***strictly adhered to. However, additional time of one month may*** **be** ***allowed where consultation*** **is** ***required with the Attorney General fAG)*** **or** ***any other law officer in the AG's office."***

The Supreme Court recommended restructuring of Section 19 of the P.C. Act by the Parliament incorporating following suggestions:

> ***(a) All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under section 19 of the P.C. Act must be decided within a period of three months of the receipt of the proposal by the concerned authority.***
> ***(b) At the end of the extended period of time limit, if no decision*** **is** ***taken, sanction will*** **be** ***deemed*** **to** ***have been granted*** **to** ***the proposal for prosecution, and the prosecuting agency*** **or** ***the private complainant will proceed*** **to** ***file the chargesheet/complaint in the court*** **to** ***commence prosecution within 15 days of the expiry of the aforementioned time limit.***

It is necessary to recall the settled law that even when the Supreme Court or High court directs the cases to CBI, the sanction proceeding is mandatory and the investigating agency can't bypass the same. In ***Supreme Court Bar Association*** vs. ***UOI*** (1998) 4 SCC 409, the Constitution Bench after reviewing the case laws, reiterated the view taken

earlier In ***Prem Chand Garg*** vs. ***Excise Commissioner, U.P*** **(1963)** ***Supp(l) SCR*** **885,** as well as the observations made in ***Union Carbide Corpn*** vs. ***UOI*** (1991) 4 SCC 584 and ***A.R. Antulay*** vs. ***R.S Nayak*** *(1988)* 2 SCC 602 holding that *"however wide and plenary the language of Article 142, the direction given by the court should not be inconsistent with or repugnant* to *or in violation of specific provisions of any statute. Therefore, the Courts cannot bypass the clause of sanction even while directing the CBI to register the case. "*

Delay in disposal of cases:

Despite these timely amendments and strict interpretation rendered by courts to the provisions of the Act, corruption tends to breed like cancer in our society. One of the primary factors is the delay caused in disposal of corruption cases. Delays in trial allow the guilty to get away as they are not awarded the punishment, which they deserve. It amounts to double jeopardy for the innocent officers who suffer frivolous and malicious cases.

In ***V.S. Achuthanandan*** vs. ***R. Balakrishna Pillai & Ors*** (2011) 3 SCC 317, I had the occasion to highlight the grim reality of corruption cases involving public servants which normally take longer time to reach its finality. In the case on hand, the contract related to the year 1982 and the State Government initiated prosecution only in 1991. The trial prolonged for nearly nine years and the Special Court passed an order convicting the accused only in 1999. The appeal was decided by High Court in 2003 and finally by Supreme Court in 2011. It was further observed:

> ***"Though the issue was handled by a Special Court constituted for the sole purpose of finding out the truth*** **or** ***otherwise of the prosecution case, the fact remains*** **it** ***had taken nearly two decades*** **to** ***reach its finality. We are of the view that when a matter of this nature*** **is** ***entrusted*** **to** ***a Special Court*** **or** ***a regular Court,*** **it is** ***but proper on the part of the court concerned*** **to** ***give priority*** **to** ***the same and conclude the trial within a reasonable time. The High*** **Court,** ***having overall control and supervisory jurisdiction under Article*** **227** ***of the Constitution of India*** **is** ***expected*** **to** ***monitor and even call for a quarterly report from the court concerned for speedy disposal. Inasmuch as the accused*** **is** ***entitled*** **to** ***speedy justice,*** **it is** ***the duty of all in charge of dispensation of justice*** **to** ***see that the issue reaches its end as early as possible".***

The trend is continuing even today. The National Crime Records Bureau Statistics 2011 on disposal of anti-corruption cases in Tamil Nadu, points to increase in registration of cases under Prevention of Corruption Act. It further shows rise in total number of cases pending trial from 577 in 2010 to 720 in 2011. Disappointingly, the trial was completed in only 73 cases resulting in low conviction rate of 24.8%. The number of cases pending investigation at the end of the year were 305. Only 33.7% of the cases where investigation was completed were then charge sheeted.

Root Causes of delay:

1. Inadequate number of special courts and special judges.
2. Lack of assistance by Investigating Officer to the prosecutor.
3. Less number of Prosecutors.
4. Delay in execution of warrants by police officers.
5. Unnecessary adjournments taken by prosecution and the defence.
6. Lack of proper witness protection measures and the Court failing to act promptly in cases of complaints of harassment/ inducement of witnesses.
7. Ineffective case management measures.
8. Trials are often held up on account of pendency of quash proceedings in the High Courts after the charges are framed.

One glance at the above reasons for delay evidently reveals that the delay in disposal of cases owes both to pre trial and during trial proceedings. Hence, only an organized approach at every stage of the case can holistically address the problem of delay in disposal of cases.

Strategies for Speedy Disposal:

1. Adequate number of special courts

It is important to acknowledge that the scenario of delay in disposal of corruption and vigilance cases continues despite the provision for appointment of special judges provided in the Act. It is mostly on account of disproportionate number of special courts to number of cases pending and secondly, the special judges are entrusted with cases other than corruption. To enhance efficient case disposal, adequate strength of judges along with requisite support staff should be sanctioned and they should be entrusted exclusively with corruption cases to witness noticeable reduction in the backlog of corruption cases.

2. Quality Investigation required

In ***King Emperor vs. Khwaja Nazir Ahmad,*** *(1944* LR 71) the Privy Council said, "*the functions of the judiciary and the police are complementary and not overlapping".* It is true that the working of both institutions police and judiciary is harmonizing in nature because it is the report of investigation, which is the base for the initiating a trial. Therefore, primarily the investigation team, which puts forth a prima facie case and thereafter the court, adjudicates on the case. As a consequence, quality investigation would unquestionably aid in the speedy disposal of anti-corruption and vigilance cases.

3. Pivotal role of Investigating Officer

Section 17 of the Act categorically states the persons who are authorized to investigate offences. The cadre of officers like Inspector of Police in case of the Delhi Special Police Establishment (CBI), Assistant Commissioner of Police in the metropolitan areas as notified, and lastly, deputy superintendent of police or a police officer of equivalent rank are authorized to investigate the offence under the act.

The pivotal role of Investigating Officer is to render all possible assistance and facilitate the Prosecutor. The Investigating Officer should realise that his duty does not end when the investigation has been completed but he is also obligated to assist the Prosecutor during the conduct of the cases in the Courts. On commencement of trial proceedings, the I.O should ensure that the summons are procured well in advance and served in time.

One of the problems which is often faced In cases of prosecution is that the witnesses are won over by the accused. This is done either through threats or allurements. To avert such a situation, the investigating officer must maintain contact with witnesses throughout, and make sure that they give their testimony truthfully.

4. Responsibility of Public Prosecutor

The prosecutor should prepare his groundwork before the commencement of trial. Statements should be thoroughly gone into and a rough outline should be arrived at so as to help in summoning crucial witnesses at the apt time. The entire facts of the case should be assimilated before the stage of arguments. Before stepping into the arguments battle the armour of the prosecutor should be full with the latest decisions rendered by the High Courts and the Supreme Court that are not only relevant and support the case but also aid in getting over any defects on the side of prosecution. An appraisal of entire evidence should be made at the time of preparation of arguments. All the relevant evidence that would support the prosecution should be culled out from the depositions of witnesses.

In a landmark pronouncement in ***Siddharth Vashisht @ Manu Sharma V. State*** **(2010) 6 SCC 1,** which I was party to, the role of a public prosecutor and his duties of disclosure have received a wide and in-depth consideration of this Court (SC). It was held that though the primary duty of a Public Prosecutor is to ensure that an accused is punished, his duties extend to ensuring fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the Court for a just determination of the truth so that due justice prevails. In addition, there should be adequate number of public prosecutors to handle the huge number of cases.

5. Coordination between IO and the Prosecutor

Conducting prosecution is a joint responsibility of the police and prosecutors. Prosecutors are not only responsible for advocating on behalf of the state at trial, they shall also guide the investigating officers during investigation of the cases. The prosecutors lead the evidence in the court of law, whereas the police officers assist them in briefing the witnesses and prepare them for arguments on points raised by the other side. Hence, coordination between the police and public prosecutor plays pivotal role in efficacy of the trial.

6. Quality of witnesses must be seen not quantity

One of the causes for delay is owing to the long list of witnesses to be examined. Thus even before the commencement of trial, necessary witnesses should be shortlisted. Statements should be evaluated and witnesses speaking relevant facts should alone be summoned. Mostly, witnesses speaking on the same points should be avoided to the exception of those

circumstances that would require corroboration. This shall spare the time of the court to a large extent.

7. Need for ear-marked police personnel for Court duties

The most conspicuous reason for the delays in the progress of trial is non-execution of warrants by the Police. Unserved summons and non-bailable warrants (NBWs) have a telling effect on the Criminal Justice scenario. Police inaction, indifference or inabilities are the contributory factors to the grim situation of pendency of large number of unexecuted NBWs. The cases get adjourned from time to time because of non-appearance of one or more of the accused. Police plead their inability to apprehend the accused (against whom NBW s and Proclamation orders have been issued) for good and bad reasons. Hence, it is a prerequisite to have adequate number of police personnel for facilitating faster disposal of cases.

8. Day-to-Day Trial

One of the major problems facing anti-corruption and vigilance cases is adjournments, which prolongs the pendency of each case. It is noteworthy that section 4(4) of the PC Act says that a special judge shall, as far as practicable, hold the trial of an offence on day-today basis. An "Zero-adjournment policy" must be adhered by these special courts.

Though, unnecessary adjournments must be avoided but the same must not stand as hindrance for a fair trial. In ***V.K. Sasikala vs. State Repr. by Superintendent of Police (2012) 9 SCC 771,*** the appellant accused sought for certified copies or in the alternative for inspection of certain unmarked and unexhibited documents in a trial pending under Section 13 of the Prevention of Corruption Act. Court observed

> ***"Seizure of*** **a** ***large number of documents in the course of investigation of*** **a** ***criminal case*** **is a** ***common feature. Though*** **it is** ***only such reports which support the prosecution case that are required to be forwarded*** **to** ***the Court under Section*** **173 (5)** ***in every situation where some of the seized papers and documents*** **do** ***not support the prosecution case and, on the contrary, supports the accused,*** **it is** ***the duty of the Court*** **to** ***make available such documents*** **to** ***the accused."***

Hence, there is a clear distinction needs to be drawn by the court whether the act is a delaying tactics or integral to ensure fair trial to the accused.

9. No stay of proceedings

Section 19 (3) (c) of PC Act specifically states that no court shall stay the proceedings under the Act on any other ground except on the ground of irregularity in sanction which has resulted in a failure of justice. Despite this provision when public servants are sought to be prosecuted under the said act, the parties file revisions under section 397 Cr.P.C or by filing petitions under section 482 Cr.P.C for stay of trial thereby managing to delay the trial. This has an adverse effect on combating corruption amongst public servants. It has

therefore become necessary to reiterate the law which was decided in ***Satya Narayan Sharma vs. State of Rajasthan*** in the following words:-

> ***" .... Thus in cases under the Prevention of Corruption Act there can be no stay of trials. We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted. However, even if petition under Section 482 Criminal Procedure Code is entertained there can be no stay of trials under the said Act. It is then for the party to convince the concerned Court to expedite the hearing of that petition. However merely because the concerned Court is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily".***

10. Power to Grant Pardon to an Approver

As per section 5, Special Judges can grant pardon to any person who has been involved in the commission of an offence under this Act with a view to obtaining his or her evidence, on the condition of him or her making a full and true disclosure of all the facts and circumstances related to commission of that offence and persons involved in the same, including him or herself. Thus, special judge may exercise this power at any time after the case is received for trial and before its final adjudication.

11. To try cases summarily

Section 6 empowers the special judge to try certain cases summarily. Therefore, the special judge can decide to dispose of the case summarily where the nature of the case is such that a sentence of imprisonment for term exceeding one year may be passed. According to subsection (2) of section 6, there shall be no appeal by a convicted person in any case tried summarily under the section in which the special judge passes a sentence of imprisonment not exceeding one month and of fine not exceeding Rs.2000 whether or not any order under section 452 of the Cr..P.C. is made in addition to such sentence. Hence, appropriate use of power to try summarily is one of the ways to reduce the pendency.

12. Training in latest technologies

Use of multimedia gadgets should be deployed so as to derive the utmost benefit from science and technology. The sophistication and complexity of these corruption offences is a real challenge to the prosecutor. Therefore the judges should be updated with modern techniques to handle complex issues. Information Technology Act, 2000 is a boon in this direction.

Final Remarks:

It is trite that expeditious investigation of offences and trial is a facet of rule of law and a component of Article 21 of the Constitution. The society at large has legitimate interest that the persons accused of serious crimes should be proceeded against with promptness and expedition and the process should not get tainted by undesirable or extra-legal practices.

Further, viewed from the point of view of the accused, speedy trial is a fundamental right under Article 21. Thus, fast track of anti-corruption cases is the need of the hour.

Summary of Recommendations:

- Adequate number of special courts must be established for speedy disposal of cases.
- Quality investigation is a prerequisite In speedy disposal of anti-corruption and vigilance cases.
- The Investigating Officer's duty is confined not only to investigation of the case completely but also to assist the Prosecutor during the conduct of the cases in the Courts.
- Though the primary duty of a Public Prosecutor is to ensure that an accused is punished, his duties extend to ensuring fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the Court for a just determination of the truth so that due justice prevails.
- Coordination between the police and public prosecutor plays pivotal role in efficacy of the trial.
- Before the commencement of trial, witnesses likely to be dispensed with should be shortlisted.
- It is a prerequisite to have adequate number of police officials for facilitating faster disposal of cases.
- 'Zero-adjournment policy' must be adhered by these special courts.
- The Special Court/Judge shall endeavour to dispose of the trial of the case; within a period of one year from the date of its institutions or transfer.
- The special judges should be entrusted only with the anti corruption related cases.
- The high court using its supervisory powers should give timely directions to these special courts for speedy disposal of old cases on priority basis and also keep constant vigilance at the working of these courts.
- These special judges should also be given adequate incentives for larger disposal of cases.
- The proceedings must not be stayed under any circumstance except as provided in section 19(3) (a) & (c) .
- Special judge should utilize the provision of granting pardon in appropriate cases
- Appropriate cases must be disposed of summarily.
- Last but not the least the special judge should be up to date with the modern technologies as sophistication and complexity of these corruption crimes is a *real* challenge.

If these strategies can be implemented then the public trust in the criminal justice system would be revived and justice will be done.

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