CHAPTER-4

JUDICIARY: SYSTEM OF COURTS LAW

(JUSTICE DELIVERY SYSTEM)

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The Indian Constitution has created a democratic republic and trinity instrumentalities to enforce its paramount provisions without fear or favour. Affection or ill- will. The executive echelons, when they exceed their power as inscribed and circumscribed in the suprema lex, when they exceed their power as correction by the higher judiciary. The legislature has vast law making powers and is functionally competent to perform and inquest into the administration, but, when it transgresses its constitutional bounds, the court can quash its action by writs, or commands fresh operation by means of appropriate directions.

The corrupt practices indulged in by the public men and bureaucrats have already been criminalized. The pitfalls in the Indian Penal Code in the matter of offences dealing with bribery and accepting of illegal gratifications by public servants have been sought to be remedied by passing a specific legislation, the Prevention of Corruption Act. State legislature has also taken steps to supplement the corruption control efforts. Even the National Police Commission has acknowledged partially, corruption and failure to register cognizable offences. A major chunk of the cases, which go without prosecution, are corruption cases. The only agency now sought to intervene in the field of Judiciary. In fact the higher judiciary by way of its judicial activism has tried to fill in the gaps created by the executive including the prosecuting and investigating agencies and competent higher sanctioning authorities. It has even tried to fill up some of the lacunae created by the legislature because of its passive or lethargic response to the problem of corruption.[1]

The Three organs of the state, provided under the constitution, namely the Legislature, the Executive and Judiciary, to run the affairs of the country are complementary to each other. The Constitution makers had envisaged a clear distribution of powers and functions for these three organs. The enactment of laws is

[1] G. Sadasivan Nair, "Judicial Activism NO Panacea for Prevention of Corruption", Cochin University Law Review (1997), p. 375.

the exclusive domain of the legislature at the state level as well as the Union Level, while the Executive- the most important, the powerful one, is entrusted with the duly to implement the legislation. The role of the Judiciary is to administer justice in accordance with the law of the land, and to adjudicate the constitutional validity of the law enacted by the legislature.[2]

"Judicial Activism" denotes the encroachment by judiciary into the Executive and Legislative domain. Let us see the present position of the legislature and the Executive and then juxtapose the comparatively holy status the Judiciary holds. The harsh reality is that the masses in the country have been let down by the Executive and the elected representatives.[3]

"With the growing deinstitutionalization of Indian polity, the role of the elected representatives has been brought down from legislation to that of power brokers. The politicians of all shades have contributed in a big way to bring the present day impasse where corruption is the rule of the day and to be an MLA or M.P is treated as a licence to indulge in all sorts of unlawful activities."[4]

One of the main tasks of the Executive is crime detection and crime prevention. In the hawala cases, fodder scam and other corruption cases the criminals involved are high politicians and ministers who control the executive. The Police, the investigative agencies and even the prosecutors are controlled by them. In this situation, can it be expected that these corruption cases will be conducted at all the by executive? It is in these circumstances that the judicial activism took a different color and shape. The judiciary is the only organ which could not be usurped by the politicians. It is this belief among the public that gave momentum to judicial activism. The "hands off" doctrine adopted by the judiciary in the year 1980 underwent a drastic change in the nineties since the Judiciary felt that it is necessary to protect the constitutional guarantees and the democratic principles.[5]

The Vohra committee is of the firm belief that crime exists in politics and exposed the nexus between the criminal world and with the politicians which now

[2] P.S. SEEMA, "Eradication of Political Corruption- An Evaluation of the Legislative and Judicial Efforts", The Academy Law Review (1999), p. 189.
[3] Ibid.
[4] D.N. Jauhar, "Judicial Activism: A need for Parameters", Vol. 11, Legal News and Views.
[5] P.S.Seema, "Eradication of Political Corruption- An Evaluation of the Legislative and Judicial Efforts", The Academy Law Review (1999), p.189.

poses a serious threat even to our national security. Crimes and Criminal law are shaped by the criminal policy which in turn in a part of wider political party. The entire criminal policy, including the criminal law, criminal procedure, evidence, penal policy and the wide range of other activities covered in the administration of criminal justice system are administered by the power yielders to safeguard their own security and comfort. Crime detection and crime prevention are on the mercy of politicians. This ensures for them the monopolized use of state force to repress and suppress those activities which they regard as potential threat to their security and comfort.[6]

Under these circumstances, it is highly necessary that an independent organ keeps under check the other two branches of the Government. This necessitated judicial activism to take a sweeping change from its earlier position. This change is reflected in many decisions.[7]

Credibility of judiciary is directly proportional to the judicial responsibility, accountability and impartiality and objectivity on the part of Judges. All the four ingredients are integral part of a judicial system which exists for citizenry at whose service only the system of justice must work.This is a common knowledge that our judicial system is inefficient, expensive and dilatory. It is also said that lower judiciary is not free from corruption. It takes years and years for the cases to be decided. The result is that the accused often escapes punishment because a long time span has an adverse effect on the evidence in the case. The witnesses may become unavailable with the passage of time or they may not remember what happened long back time. Even if, the corrupt is punished ultimately, that does not achieve the desired objective. The impression gains ground that the corrupt go scot free. “India inherited from the British Raj a top class civil service, police and judiciary. All three have plummeted downhill since. Don’t blame just venal politicians. Blame also the police-judicial system that has become incapable of speedily convicting wrong doers. This in turn has distorted politics… we need more than an independent judiciary. We need judicial predictability and greater speed. Justice delayed is justice denied.”

[6] Id. At p. 190.
[7] Ibid.

In words of Dr. Cyrus, "Justice is a consumer product and must therefore meet the test of confidence, reliability and dependability like any other product, if it is to survive market scrutiny."

In words of Justice V.R. Krishna Iyer : "It is matter of satisfaction that in its performance judiciary suffered less from the judicature high in its esteem since 'some luminous members' on the bench are as good as the best in the commonwealth or U.S."

The Judges vested with considerable power are oath bound by the constitution to decide within the prescriptions and principles of Law, performing with exemplary good behavior but without violating jural parameters. Judicial bounds of dignity and propriety are real and noble.

But, when the 'robbed brethren' break the code of correct conduct or rob the rule of law or its efficacy, sanctity and majesty then they too must be subjected to severe discipline and punitive action in case of delinquency and aberration. Scurrilous abuse of power by many members of judiciary and its ill impact upon our citizen has lead natural reactions from "We the people in India" to whom judiciary has ultimate accountability. When a judge is corrupt, justice becomes the first victim and innocent persons are made to suffer at the hands of the contaminated system.

It is in this background of deteriorating judicial accountability, high handedness in contempt cases and gradually diminishing transparency in private and public life of judges. That conduct of judges must come under scrutiny of public through an appropriate procedure so that a judge must not remain in misconception that he is above the law. Unfortunately, while the executive and legislative arms of the government have to answer to the people once every five years, the judiciary is accountable to nobody. A former Chief Justice of India publicly lamented that doubts can be raised about the integrity of 20 percent of the top level judiciary. The numerical graph is rapidly increasing every year.

Transparency International's global corruption report 2007 which dealt with graft in judiciary in 32 countries has attributed that about Rs. 2,630 crore that Indians paid in bribes to the lower judicial officers in 2006 due to the huge backlog of cases. In 2005, there were 2.78 crore cases pending in the lower courts and 33.79 lakh in

High Court and 30,000 in the Supreme Court. This is certainly alarming delay in delivery of justice has also undermined the confidence of a vast majority of our people of justice has also undermined the confidence of a vast majority of our people in the country's legal practices and procedures.

The abuse of power is not restricted to pecuniary benefit only, but extends to assumption of inflated importance dangling the sword of contempt. For the cure of a diseased justice administration system there is no need for a new model. Instead, the parts which have been eaten up by incompetence and corruption should be addressed and reformed.

In Karunanidhi`s case[8], the supreme court had an occasion to decide whether a Chief Minister or a Minister is a public servant within the meaning of Section 21(12) of the Indian Penal Code. The appellant, M. Karunanidhi was a former Chief Minister of Tamil Nadu. The application for discharge filed before the special judge and the High Court having being rejected, the matter ultimately reached the Supreme Court and there, holding the Chief Minister as a public servant, Fazal Ali, J. observed:

"Three facts, therefore, have been proved beyond doubt, namely:

(1) That the Minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and status of his constitutional function.

(2) That the Chief Minister or a Minister gets salary for the public work done or the public duty performed by him.

(3) That the said salary is paid to the Chief Minister or the Minister from the Government funds.

The Chief Minister is in the pay of the Government and is, therefore, a public servant within the meaning of Section 21(12) of the Indian Penal Code."[9]

But, unfortunately, though the Minister was held to be a public servant and hence brought within the purview of the Prevention of Corruption Act, 1947, Karunanidhi's case ultimately resulted in withdrawal of the case. Thus, the

[8] M. Karunanidhi v. Union of India, AIR 1979 SC 898.
[9] P.S. SEEMA, "Eradication of Political Corruption- An Evaluation of the Legislature and Judicial Efforts", The Academy Law Review (1999), p.189.

Legislature and the Judiciary stand helpless where the most powerful organ of the Government namely the Executive is composed of corrupt persons and they control the police and the prosecutor.[10]

In **R.S. Nayak v A.R. Antulay**[11], the apex court had an opportunity to decide whether an MLA is a public servant under the Prevention of Corruption Act, 1947 or not? The complainant moved the Governor of Maharashtra on September 1,1981 requesting to grant sanction to prosecute the accused for various offences before the Chief Metropolitan Magistrate who held that without a valid sanction from the Governor the Offences under Sections 161 and 165 of Indian Penal Code and Section 5 of the Prevention Of Corruption Act are not maintainable. This was challenged in appeal in the High Court of Bombay.[12]

An identical complaint filed by one Shri P.B. Savanth against the accused in the High Court of Bombay, the court by an exhaustive speaking order granted rule nisi and as a sequel to this decision, the Chief Minister on the same day tendered his resignation and he ceased to hold the Office of Chief Minister with effect from January 20, 1982. On the wake of the judgment of the Supreme Court, rejecting the application for special leave, the Governor of Maharashtra granted the sanction to prosecute the accused. Then, the complainant filed a fresh complaint in the Court of Special judge, Bombay, which reached the Additional Special Judge. The accused moved an application to discharge inter ala on the ground that the charge was groundless and that even though the accused had ceased to be the Chief Minister on the date of taking cognizance of the Offences, he was sitting member of the Maharashtra Legislative Assembly and the sanction granted by the Governor would not be valid in this behalf. The Additional Special Judge upheld the contention of the accused and discharged him. The matter ultimately reached the Supreme Court.[13]

The Supreme Court while answering the question whether an M.L.A is a "public servant" referred to Santhanam Committee Report and opined that the Committee did not recommend that the proposed amendment to Section 21 of the

[10] Ibid.
[11] R.S.Nayak v. A.R. Antulay, AIR 1984 SC 684.
[12] P.S. SEEMA, "Eradication of Political Corruption- An Evaluation of the Legislature and Judicial Efforts", The Academy Law Review (1999, p. 388.
[13] P.S. SEEMA, "Eradication of Political Corruption- An Evaluation of the Legislature and Judicial Efforts", The Academy Law Review (1999, p. 388.

Indian Penal Code should comprehend an M.L.A. Though, there was proposal to include ministers and a deputy minister in the category of public servant, no attempt was made to bring in an M.L.A within the conspectus of clauses in Section 21 so as to make him a public servant. Desai, J. Held:

"The expression 'Government and Legislature', two separate entities, are sought to be included in the expression 'state'…the expression 'Government' in Clause 12(a) of Section 21 and in other words, M.L.A. is not remunerated by fees paid by the Government, i.e., the executive."[14]

It is apparent that the apex court unnecessarily focused too much on the term 'Government'. While, it is held that the MLAs are not remunerated by the executive, it means that they are paid by the legislation. In assuming that the legislature had the power of the purse in relation to the salaries, among other items, charged on the consolidated funds, they altogether overlooked what the constitution of India intends to mean by 'fund'. To say that although the legislators received pay and allowances, they are not in the pay of the government because the legislature cannot be comprehended in the expression 'government' is to say in effect that only the 'government' raises the consolidated fund on which the "legislature" operates the power of the purse. The purse is created by joint effort; and the power is yielded jointly.[15]

In **P.V. Narasimha Rao v. State**[16], a constitution Bench of the Supreme Court has considered the question, amongst others, whether a member of the Parliament is a public servant under section 2(c) of the Prevention of Corruption Act, 1947. The Bench consisted of five Judges, Justice Bharucha, J. (for himself and Justice Rajendra Babu, J.) delivered judgement in which inter alia it is held "There is, therefore, no doubt in our mind that a Member of Parliament or of a Legislature Assembly holds an office and that he is required and authorized thereby to carry out a public duty. In a word, a Member of Parliament or of a Legislative Assembly is a public servant for the purposes of the said Act."[17] It is also held therein: "we have as aforesaid reached the conclusion that Members of Parliament and of the State Legislature are public

[14] Ibid.
[15] Id. At p.389.
[16] P.V. Narsimha Rao v. State, (1998)4 SCC (Cri) 1108.
[17] P.S. SEEMA, "Eradication of Political Corruption- An Evaluation of the Legislature and Judicial Efforts", The Academy Law Review (1999, p. 189.

servants liable to be prosecuted for offences under the said Act but they cannot be prosecuted for offences under Sections 7,10, 11 and 13 thereto. We entertain the hope that Parliament will address itself to the task of removing this lacuna with due expedition."[18]

Ray, J. in his judgement concurred with the finding of Justice Agarwal, that a Member of Parliament is a public servant and that the court can take cognizance of offences mentioned in Section 19(1) in the absence of sanction but before filing a charge sheet in respect of an offence publishable under Sections 7,10,11,13 and 15 of the Act against a Member of Parliament, the prosecuting agency should obtain permission of the Chairman of the Rajya Sabha and Speaker of the Lok Sabha, as the case may be.[19]

In **L.K. Advani v. Central Bureau of Investigation**[20], it is held by the Delhi High Court that a Member of Parliament is a public servant, under section 2(c)(viii) of the Act.

In **Habibulla Khan v. State of Orissa**[21], the Orissa High Court has held that a M.L.A would come within the definition of public servant under section 2(c) of the Act. He is not the type of public servant for whose prosecution under the Act, previous sanction as required by Section 19 is necessary.

The question whether the expression 'every Judge' used in the third category of section 21 of IPC includes Judges of High Court and the Supreme Court was considered by the Supreme Court in K. Veeraswamy v. Union Of India[22], and the Supreme Court held as follows.[23]

(a) The expression "every Judge" used in the third category of Section 21 means all Judges of all courts. As explained in a common term the Act should not be narrowly construed. It must receive comprehensive meaning in absence of positive indication to the contrary in the Act. A judge of the superior court

[18].Ibid;
[19] A.S. Ramachandra Rao, "Commentary on Prevention of Corruption Act", (2004), p. 38.
[20] L.K. Advani v. Central Bureau of Investigation, 1997 Cr.Lj 2559: (1997) 4 Crimes 1(Del).
[21] Habibulla Khan v. State of Orissa, 1993 Cr.LJ 3604.
[22] K. Veeraswamy v. Union of India, (1991) 3 SCC 655: 1991 SCC(Crl) 734.
[23] P.V. Ramakrishna, "A treatise on Anti-Corruption Laws in India", 2005, 11th Ed., p. 83.

cannot, therefore, be excluded from the definition of public servant provided the second requirement under clause (c) of the Section 6(1) is satisfied.

(b) Section 2 of the Prevention of Corruption Act denotes a public servant as defined in Section 21 of the IPC. A Judge of the High Court or of the Supreme Court comes within the definition of public servant. Though, there is no master and servant relationship or employer and employee relationship between a Judge of High Court and the President of India in whom the executive power of the Union is vested under Article 53,but the third clause of Section 21 IPC includes every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions.

(c) The expression 'public servant' used in the Prevention of Corruption Act, 1947 is undoubtedly wide enough to denote every Judge, including Judges of the High Court and the Supreme Court.

(d) In our country, the Judges of higher Judiciary are safe and secure. They are high dignitaries and constitutional functionaries. They are liable to be removed for proved misbehavior or incapacity. The executive is competent to appoint the Judges but not empowered to remove them. The power to remove them is vested in Parliament under Article 124(4) and (5). By virtue of Article 218 the provisions of clauses (4) and (5) of Article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court.

(e) However, Parliament could not have been intended to be the sanctioning authority under clause (c) of Section 6(1). The expression 'the authority competent to remove' used in clause (c) of Section 6(1) is to be construed to mean also an authority without whose order or affirmation the public servant cannot be remove. Clause (4) of Article 124 is in negative terms. The order of the President is sine qua non for removal of a Judge. The President alone could make that order.

(f) It is not necessary that the authority competent to give sanction for prosecution or the authority competent to remove the public servant should be vertically superior in the hierarchy in which the office of the public servant exists. There

is no such requirement under Section 6. The power to give sanction for prosecution can be conferred on any authority. Such authority may be of the Department in which the public servant is working or an outside authority. All that is required is that the authority must be in a position to appreciate the material collected against the public servant to Judge whether the prosecution contemplated is frivolous as speculative. The observations to the contrary made in Antulay case were not intended to lay down the law. Judgement are not to be read as statutes.

(g) A Judge of the Supreme Court or the High Court as a constitutional functionary can only be removed by mandatory procedure provided under Article 124 and in no other manner.

(h) The President has the power to appoint as well as to remove a Judge from his office on the ground of proved misbehavior or incapacity as provided in Article 125. The President, therefore, is deemed to be the authority to grant sanction for prosecution of a Judge under the provisions of Section 6(1)(c) in respect of the offences provided in Section 5(1)(e) of the Prevention of Corruption Act.[24]

In Ajay **Hasia v. Khalid Mujid Sehravardi**[25], the Court was concerned with the Regional Engineering College, Srinagar, Jammu and Kashmir.

A typical case of an educational institution in whatever manner established and receiving financial assistance from the Central or State Government or Local or other authority is the Regional Engineering College, Srinagar in the State of Jammu & Kashmir. The Supreme Court has held that this society is an instrumentality of the State and the Central Government and it is an authority within the meaning of Article 12.

In **B.S. Minhas v. Indian Statistical Institute**[26], the institution concerned was the Indian Statistical Institute (ISI) established under the Indian Statistical Institute Act, 1959. The Supreme Court held that the Institute came within purview of Article 12 of the Constitution, being an authority within the meaning of that Article. The

[24] P.V. Ramakrishna, "A Treatise on Anti-Corruption Laws in India", (2005), 11th Ed., p. 85.
[25] Ajay Hasia v. Khalid Mujib Sehravardi, AIR 1981 SC 487: (1981) 1 SCC 722.
[26] B.S. Minhas v. Indian Statistical Institute, AIR 1984 SC 363: 1984 SCC 26.

Institute is registered under the Societies Registration Act, 1860 and governed by the Indian Statistical Institute Act, 1959.

In **Rambhan v. State of Maharashtra**[27], the court held that a village Kotwal in the State, has no doubt, no powers, but several duties to perform. The period of employment of Kotwal is no doubt a purely temporary employment for one year. He is appointed by the collector and is paid from the Government treasury. The duties, he is called upon to perform, include inter-alia accompanying Government remittance to sub-treasure, calling villagers to the Chawadi for paying Government dues, carrying village dafter to and from Taluka Kacheri, keeping a watch on Government money and office records at the village and on property attached for the recovery of government dues, carrying government tappal to and from the Taluka office and taking Government officers on tour, where no transport facilities are available, reporting birth and deaths to village officers, accompanying the Police Patel, and the Police at the time of night rounds, doing night patrol to find out arrivals and departures, publishing Government orders in the village by beat of drums, bringing impounded cattle to the Kacheri for auction, assisting the Vaccinator in collecting children for vaccination etc.[28]

In the Doma v. State of Maharashtra[29], the Court held that the duties of the Kotwal certainly relate to bringing the offenders to justice, to protect the public health, safety and convenience. The post of Kotwal, therefore, would fall under clauses 8 or 12(a) of Section 21 of the IPC and it must be held that the Kotwal is a public servant within the meaning of Section 21 of IPC.

Section 13 of 1988 Act, which is the succession of Section 5 of the 1947 Act defines "Criminal misconduct" by a public servant. 'Known source of Income' is explained as an explanation to section 13(1)(e).[30]

In **M. Krishna Reddy v. State, Deptuy Supdt. Of Police**[31], Hyderabad, the Supreme Court held that the expression 'known sources of income' must have reference to sources known to the prosecution on a thorough investigation of the case.

[27] Rambhan v. State of Maharashtra, 1979 Mah LJ 603 at p. 606.
[28] Ibid.; see also P.V. Ramakrishna, "A Treatise on Anti-Corruption Laws in India", (2005), 11th Ed., p. 88.
[29] Doma v. State of Maharashtra, 1981 Cr.LJ 653 (Bombay).
[30] Section 13(1)(e) of 1988 Act.
[31] M. Krishna Reddy v. State, Dy. Supdt. of Police, (1992) 4 SCC 45.

Justice S. Ratnavel Pandian observed, only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused."[32]

In a case of **State of Madhya Pradesh v. Awadh Kishore Gupta**[33], court gave its view that "the term 'income' by itself, is elastic and has a wide connotation. Through income is receipt in the hand of its recipient, every receipt would not partake the character of income whatever the public servant gets from his service, will be primary item of his income. Other incomes conceivably are income qua the public servant,will be in the regular receipt from (a) his property, or (b) his investment."[34]

In **L.K. Advani v. Central Bureau of Investigation**[35], though an M.P. was held to be a public servant within the meaning of Section 2(c)(viii) of the Prevention of Corruption Act, 1988, the entries in the Jain Diaries disclosing acceptance of payment of illegal gratification by the petitioners were held not admissible in evidence, the said diaries being not books of accounts within the ambit of Section 34 of the Evidence Act, coupled with the non-mentioning of dates of alleged payments. Thus, to make the entries relevant and admissible in evidence under Section 34, it must be shown that : (a) the said entries are books of accounts; (b) the said books of accounts are being regularly kept in the course of business; (c) the said entries alone be not sufficient enough to charge any person with liability. It was also held that in the absence of evidence except the alleged entries in the diaries to prove prima facie, the factum of conspiracy and when evidence was also not showing that the said entries were made in furtherance of common intention of conspirators, the provision of Section 10 of the Evidence Act was also not attracted.[36] Holding the case as a case of no evidence and quashing the charges against Shri L.K. Advani and V.C. Shukla, the Delhi High Court.

This kind of interpretation favours the accused and it may be quite natural to be pronounced by the apex court of a country which follows the accusatorial system. But, in the case of corruption especially the political corruption, it is done in high

[32] Id. At 47.
[33] State of Madhya Pradesh v. Awadh Kishore Gupta, (2004) 1 SCC 691; See also Biswa Bhushan Naik v. State, 1952 Cr.LJ 1533.
[34] Ibid; see also L.K. Advani v. Central Bureau of Investigation, 1997 Cr.LJ 2559: (1997) 4 Crimes 1(Del), p. 420.
[35] Id. At para 69 at 2574.
[36] Id. At p. 2577.

secrecy and it is very difficult to procure evidence and so the presumption of having received illegal gratification contained in section 20 of the 1988 Act should be made effective. The activist and functional import of the law should be taken to have sufficiently shifted the burden of proving innocence to the accused, once the prosecution has placed some prima facie evidence. This is the only effective approach to control rampant corruption among influential public men. Interference by the High Court with the charges framed by the trial court even before the trial will hamper the control of atleast reduction of such corruption. In the case of Shri Advani, one may doubt political harassment, he being from the opposition, but Shri Shukla was prosecuted by the government headed by his own party. Atleast, a trial was not unnecessary.[37]

An important finding was made by the supreme Court in **P.Sirajuddin v. State of Madras**[38] that preliminary enquiry was necessary before lodging a FIR. In this case Sirajuddin was a Chief Engineer of Highways and Rural Works. When he was about to retire, there were certain allegations against him and after a preliminary enquiry a full-fledged investigation was ordered. The Supreme Court observed.

"In our view the procedure adopted against the appellant before laying the First Information Report, though not in terms forbidden by law, was so unprecedented and outrageous as to shock ones sense of justice and fair play. No doubt when allegations of dishonesty of a person of appellant rank were brought to the notice of the Chief Minister, it was his duty to direct an inquiry into the matter. The Chief Minister in our view pursued the right course. The High Court was not pressed by the allegation of the appellant that the Chief Minister was moved to take an initiative at the instance of a person who was going to benefit by the retirement of the appellant and who was said to be a relation of the Chief Minister. The High Court rightly held that the relationship between the said person and the Chief Minister, if any, was so distant that he could not have possibly influenced him and we are of the same view".[39]

[37] P.S. SEEMA, "Eradication of Political Corruption- An Evaluation of the Legislature and Judicial Efforts", The Academy Law Review (1999), p. 395.
[38] P. Sirajuddin v. State of Madras, AIR 1971 SC 520: (1970) 1 SCC 595: 1971 Cr.LJ 523.
[39] L.K. Advani v. Central Bureau of Investigation, 1997 Cr.LJ 2559: (1997), p. 501.

In **Shashikant v. CBI**[40], the Supreme Court held that the CBI is empowered to conduct a preliminary inquiry according to the procedure laid down in the CBI Manual and particularly on the receipt of an anonymous complaint preliminary enquiry can be conducted without registering the FIR.

In **State of Madhya Pradesh v. Ram Singh**[41], it was held that admittedly in the instant case, even in the absence of the authority of the Superintendent of Police, the investigating officer was in law authorized to investigate the offence falling under Section 13 of the Prevention of Corruption Act, 1988 with the exception of one under sub-section 1(c) thereof. After registration of the FIR, the Superintendent of Police is shown to be aware and conscious of the allegations against them and pending investigation, the reasons for entrustment of investigation to the Inspector can be discerned from the order itself. The appellant State is, therefore, justified in submitting that the SP has applied his mind and passed the order authorizing the investigation by an Inspector under the peculiar circumstances of the case.[42]

In **Union Of India v. Mahesh Chandra Sharma**[43], the court held that, if an officer below rank of a Deputy Superintendent seeks permission to investigate, the Magistrate should not give the permission "unless" it is proved to his satisfaction that the Deputy Superintendent is unable to take up and conduct the investigation. But, it has been emphasized that there is no warrant for the proposition that he can give permission to any officer of lower rank only. If, it is proved to his satisfaction that the Deputy Superintendent of Police is unable to undertake the investigation.[44]

In M.B Tharda v. State of Gujarat[45], the High Court has expressed the opinion:

"……. That the Magistrate when he considers the question of granting permission to investigate has to be satisfied that a prima facie case exists and there are circumstances which would justify him to grant permission to an officer below the

[40] Shashikant v. CBI, 2006(8) Supreme 564.
[41] State of Madhya Pradesh v. Ram Singh, (2000) 5 SCC 88: 2000 SCC (Cri) 866 : 2000 Cr. LJ 1401.
[42] Ibid. see also Nani Gopal Mitra v. State of Bihar, AIR 1970 SC 1636 and L.K. Advani v. Central Bureau of Investigation, 1997 Cr.LJ 2559: (1997), p. 497.
[43] Union of India v. Mahesh Chandra Sharma, AIR 1957 MB 43: 1957 MPLJ 206.
[44] Ibid; See also Hira Lal v. State of Haryana, AIR 1971 SC 356 and L.K. Advani v. Central Bureau of Investigation, 1997 Cr.LJ 2559: (1997), p. 498.
[45] M.B. Tharda v. State of Gujarat, AIR 1969 GUJ 362: 1969 Cr.LJ 1503: 1969 GUJ LR 1027.

designated rank. The provisions of this section enable either an officer of designated rank to investigate the offence or an officer below the designated rank to investigate provided he obtains prior permission of the Magistrate to do so."

In **State of Andhra Pradesh v. P.V. Narayana**[46], the Supreme Court has cautioned that the grant of permission to investigate under section 17 is not a mere mechanical act and the Magistrate ought to satisfy himself as a to why Deputy Superintendents of Police are not available for doing investigation themselves. It would be against the spirit of the section to grant automatic permission to an officer below the rank of a Deputy Superintendent of Police.[47]

The **Supreme Court in Muni Lal v. Delhi Administration**[48] has held that it is not necessary that every one of the steps in the investigation has to be done by the Deputy Superintendent of Police in person or that he cannot take the assistance of his deputies, or that he is bound to go through each and every one of the steps in every case. That being the case, where certain statement of witnesses had been recorded by a Sub-Inspector of police but according to the Deputy Superintendent of Police, they were written down by the Sub-Inspector on his dictation and under his supervision.[49]

In **State of U.P. v. Kanhaiya Lal**[50], the Court held that the investigation conducted by an officer below the rank of a Deputy Superintendent of Police would be vitiated only, if, it could be shown that the irregularity had prejudiced the accused and had resulted in a miscarriage of justice. Merely because there was some irregularity in the investigation, or that the investigating officer had some animus against the accused, or that the investigation was being supervised by a person, who was interested, cannot by itself lead to an inference that the accused has necessarily been denied a fair trial. Before an accused can in such circumstances claim that he has been prejudiced, he has to indicate precisely the manner in which a fair trial has been prejudiced.[51]

[46] State of Andhra Pradesh v. P.V. Narayana, AIR 1971 SC 811.
[47] Gulab Singh v. State, AIR 1962 Bom. 263 : (1962) Cr.LJ 598.
[48] Muni Lal v. Delhi Administration, 1971 SC 1525: 1971 2 SCC 48 : 1971 Cr.LJ 1153.
[49] Ibid. See also Moogappa v. State of Mysore, AIR 1961 Mys 44.
[50] State of U.P. v. Kanhaiya Lal, 1976 Cr.LJ 1230 (All)
[51] Ibid; see also K,B. Mulla v. State of Karnataka, 1977 Cr.LJ 925 (Kar)

The Court in **Debendra Singh v, State of Assam**[52], held that the trap was laid and seizure was made by officer not authorized to investigate. However, investigation was taken over next day by officer properly authorized. No objection was taken in the trial court, nor any prejudice was caused to the accused. The trial was not vitiated.[53]

The Ismail Ibrahim Sayed v. State[54], the court held that where an investigation into offence was carried out by an Inspector was challenged on technical point before trial judge, who ordered re-investigation by a Deputy Superintendent of Police and accordingly Deputy Superintendent of Police made a fresh panchanama after examining the panch witnesses, it was held that a seizure once made cannot be redone because the seized property is already in possession of the police, and that the subsequent investigation by Deputy Superintendent of Police, amounted to farce only.[55]

The Supreme Court in R.P. Kapoor v. State of Punjab[56], summarized some categories of cases where inherent power can and should be exercised to quash the proceedings[57],

(a) "Where the allegations in the First Information Report or complaint taken at its face value and accepted in their entirety, do not constitute the offence alleged;

(b) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."[58]

The Supreme Court in State of **Haryana v. Bhajan Lal**[59], the scope of exercise of power under Section 482 of the Code of Criminal Procedure and categories of cases where the High Court may exercise its powers under it relating to cognizable offences to prevent abuse of powers of any court and to secure the ends of

[52] Debendra Singh v, State of Assam, 1983 Cr.LJ NOC 159 (Goa).
[53] Ibid; see also Nanak Chand v. State of H.P., 1974 Cr.LJ 660(SC).
[54] Ismail Ibrahim Sayed v. State, 1975 Cr.LJ 1335 (Goa).
[55] P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p.1149.
[56] R.P. Kapoor v. State of Punjab, AIR 1960 SC 866.
[57] Ibid; see also Adarsh Kumar Batra v. State of Punjab, 1999 Cr.LJ 118.
[58] Ibid;
[59] State of Haryana v. Bhajan Lal, 1992 Cr.LJ 527(SC).

justice, were laid down. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases.

In **State of Tamil Nadu v. j. Jayalalitha**[60], a charge sheet was filed against the former Chief Minister of Tamil Nadu Ms. J. Jayalalitha and ten others for offences under Section 120-B read with Section 409 IPC and Section 13(2) of the Prevention of Corruption Act, 1988, on the allegation that all accused and certain foreign coal suppliers had entered into criminal conspiracy to import coal for Tamil Nadu Electricity Board at a lower price and thereby obtain huge pecuniary advantages to themselves by causing heavy and wrongful loss to the State to the tune to about 6.5 crores of rupees. The allegation was that a decision was taken to import two million metric tones of coal from foreign countries for three Thermal Power Stations in Tamil Nadu and that such a decision was taken pursuant to a criminal conspiracy hatched by the accused for obtaining huge pecuniary advantage. Tenders were invited from foreign suppliers. The company based at Singapore made an offer to supply six lakh MTs of coal at the rate of 35.24 US dollars, however, the same was rejected. But, the Electricity Board, later on, fixed the coal at 40.20 US dollars per metric tone and three Indonesian bidders were promoted to supply coal at that price. Subsequently, the Singapore Company was asked to supply coal at the increased price of Rs. 40.20 US dollars per metric tone. A perusal of the relevant file showed that the concerned Secretary to the Government raised a strong objection against the proposal to import coal at such a high price. It was also found that some crucial sheets in the current file, which contained the objections of the Secretary, were removed and such sheets were later added after obtaining approval from the Chief Minister. The Special Judge after considering the records of the case felt that the materials were insufficient to frame a charge against Ms. J. Jailalitha and against another accused who was her Former Cabinet Colleague and discharged them and framed charges against the remaining nine accused.

The State of Tamil Nadu Challenged the order of discharge by the Special Judge before the High Court of Madras in revision, but the High Court did not interfere with the order. The State Government preferred an appeal to the Supreme Court against the order of the High Court. The Supreme Court observed that at the

[60] Tamil Nadu v. J. Jayalalitha, 2000(3) Supreme 768: (2000) 5 SCC 440: AIR 2000 SC 1589.

stage of framing charges, the exercise should be confined to the consideration of the police report and the documents to decide whether the allegations against the accused are groundless or whether there are grounds for presuming that the accused has committed the offences. A perusal of the current file did not disclose that the objections raised by the departmental secretary were not in the file when the Chief Minister scrutinized it and she came to know of the prompt warnings of the secretary and despite the,, she accorded green signal to import the coal and until the respondent affords satisfactory explanation, the court can presume that she was aware of the serious consequences of the deal and the state exchequer and at the stage of framing of the charges, the court can presume that there are reasonable grounds to believe that she was involved in the conspiracy. The Supreme Court further held that it is not the stage for weighing the pros and cons of all the implications of the materials not for shifting the materials presented by the prosecution. For the reasons stated above, the Supreme Court set aside the orders of the trial court and the High Court, and allowed the appeal filed by the State.[61]

The Supreme Court in **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj v. State of Andhra Pradesh**[62] has held as follows:

"Power of the police to conduct further investigation, after laying final report is recognized under Section 173 (8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this court in Ram Lal Narang v. State (Delhi Admn.), AIR 1979 SC 1791. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation."[63]

In **P.A. Vijayan v. State of Karnataka**[64], the accused, an Excise Inspector, was charged for offence under section 13(1)(e) of the Prevention of Corruption Act on the allegation that he had amassed wealth disproportionate to his known sources of

[61] P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed, P. 1019.
[62] Sri Bhagwan Samardha Vallabha Venkata Vishwandadha Maharaj v. State of Andhra Pradesh, AIR 1999 SC 2332.
[63] Ibid.
[64] P.A. Vijayan v. State of Karnataka, 2002 Cr.LJ 535 (Karn).

income but there was delay of about six years five months in submission of charge sheet and no material was placed before the court showing that delay on part of Investigating Officer was on account of collection of any bulky evidence in support of charge against the accused the criminal proceedings were quashed by the High Court on account of the abnormal delay in filing of the charge-sheet.[65]

In **Ajit Pramod Kumar Jogi v. Union of India**[66], a criminal case was registered by the Anticorruption Bureau against the Ex-Chief Minister of the State of Chhatisgarh and others for commission of offences under section 7, 12, 13 (1) (d), 13 (2) and 15 of the Prevention of Corruption Act, 1988 and under Section 120-B read with Section 34 of IPC, on the allegations that Shri Ajit Jogi while functioning as acting Chief Minister entered into a criminal conspiracy with his son and a Member of Parliament to split the newly elected MLAs of Bhartiya Janata Party by giving them a bribe of Rs. 45 lakhs. Thereafter, the investigation was transferred to CBI and a consent notification was issued by Government of Chhattisgarh. Thereupon, a petition was filed before the High Court requesting to quash the First Information Report on the ground that it did not disclose prima facie the offences mentioned in the FIR. After hearing elaborate arguments on both sides and discussing several decisions on this aspect the High Court found that the FIR prima facie disclosed reasons to suspect the commission of cognizable offences by the accused and dismissed the petition.[67]

In the Premananda Panda v. State of Orissa[68], the accused who was facing prosecution for an offence under Section 13(1)(e) of the Prevention of Corruption Act, filed an application under Section 483 of Cr.P.C. to quash the order of the Special Judge directing attachment of the fixed deposits to the tune of Rs. 36,00,000 and making it as 1st charge in favour of the Income Tax Department for realization of the earlier tax dues. He filled the application on the ground that the Income Tax Department had already assessed his assets and an appeal is pending before the Income Tax Appellate Tribunal challenging the assessments and as such the fixed deposit cannot be attached. The High Court did not accept his contention and held as follows:

[65] Ibid.
[66] Ajit Pramod Kumar Jogi v. Union of India, 2004 (2) Crimes 69 (Chhattisgarh).
[67] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed, p. 1031.
[68] Premananda Panda v. State of Orissa, 2004 Cr.LJ 3642 (Orissa).

"The order of attachment shall continue until reconsideration of the matter by the court below in accordance with law and on due consideration of contention of the petitioner vis-à-vis the Income Tax Department, in as much as Section 226(4) of the Income tax authorize and empowers the court to make such an order. Nonetheless, such order cannot be passed as a matter of routine. The relevant facts which are required to be considered is, inter alia, the liability of the petitioner and the extent of addition of the properties standing in the name of other relative which have been attached. If, such properties have been noted in the charge-sheet calculating it towards the disproportionate assets of the accused, then that has to be accordingly accepted and not otherwise. Similarly, if, the assessment made by the Income Tax Department is solely on the basis of the investigation made by the Vigilance Department, then there may be order for attachment but without creating a charge unless the charge against the petitioner is proved. All such facts and circumstances are relevant to be considered while considering an application under Section 226(4) of the Income Tax Act. That having not been done by learned Vigilance Judge, therefore, while maintaining the order of attachment, this court directs the court below, to fresh consideration of the application by providing opportunity of hearing to all the parties."[69]

In **Alexander v. CBI**[70], a retired Director General of Police, Kerala was prosecuted for being in possession of assets disproportionate to his known sources of income. The discharge petition was filed by him before the trial court requesting to consider twelve documents relating to the income of his wife from her inherited properties which amounted to Rs. 78,43,720.50 which were attached to the charge-sheet but the Court dismissed the same. Thereupon, he filed a petition in the High Court should be careful and consider whether the documents and evidence collected by Investigating Officer, prima facie, constitute an offence. Separate income of wife and children derived from properties given by in laws of an officer cannot be taken as income of the officer concerned without considering those documents and trial court failed to consider the effect of twelve documents relied upon by prosecution in the police report. The High Court directed the Special Court to reconsider the application

[69] Ibid.
[70] Alexander v. CBI, 2006(2) Crimes 636(Ker).

for discharge under Section 227 Cr.P.C. afresh and only, if, he cannot be discharged, charges need be framed.[71]

In the **State of Rajasthan v. Dr. Raj Kumar Aggarwal and Another**[72], the Supreme Court held that the fact that the accused is about to retire and has suffered agony of investigation for many years cannot be a ground to quash the FIR. The Court further held that it is risky to encourage the practice of filing affidavits by the witnesses at the stage of investigation or during the court proceedings in serious offences, such as offences under the Prevention of Corruption Act. If, such practice is sanctioned by this court, it would be easy for any influential accused to procure affidavits at the stage of investigation or during court proceedings and get the FIR and the proceedings quashed.[73]

In **Prakash Singh Badal v. State of Punjab**[74], the appellant Shri Sukhbir Singh Badal had taken the stand that he being a Member of Parliament, he is Public servant and cannot be charged with offences under Sections 8 and 9 of the Act. The Contention was that Sections 8, 9, 12, 14 and 24 of the Act are applicable to private persons and not to public servants. The Supreme Court held that the opening word of Sections 8 and 9 is "whoever". The expression is very wide and would also cover public servants accepting gratification as a motive or reward for inducing any public servant by corrupt or illegal means. Restricting the operation of the expression by curtailing the ambit of Sections 8 and 9 and confining to private persons would not reflect the actual legislative intention.[75]

The practice of laying traps employing spies and trap witnesses for detection of offences has been recognized in this country since a very long time. His Lordship Ramaswami J., traced the historical genesis of this practice in In Rie Ambujam Ammal[76]. The extracts are given below:

"So far as this country is concerned the employment of spies, agents provocateurs and trap witnesses is in accordance with the best traditions of Hindu and Muslim state craft. I have dealth elsewhere at length with this aspect of administration

[71] Id.
[72] State of Rajasthan v. Dr. Raj Kumar Aggarwal and Another, AIR 2013 SC 847.
[73] Ibid.
[74] Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1: IV(2006) CCR 335(SC).
[75] P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed, p. 686.
[76] Re Ambujam Ammal, AIR 1954 Mad.326.

of justice in Pre-British India. It is enough to point out here that our historical literature is replete with reference to the employment of such agents. Both the epics of Ramayana and Mahabharata give extension directions for the employment of such agents in the detection of offences and the promotion of justice."[77]

As a regards the weight to be given to the evidence of a spy or trap witness, his Lordship observed:

"Owing to the increasing nature of the special enactments, and the impossibility of procuring evidence in any other way, and the paramount necessity of putting down offences of this kind, the use of trap-witnesses has become wide spread and indispensable, and courts have got to do their duty by not brushing that evidence aside as 'ipso facto' tainted and worthless but submit it to close scrutiny, separate the truth from the falsehood, and base its conviction upon reliable testimony."[78]

In **Rao Shiv Bahadur Singh v. State**[79], it was held that it may be, that "the detection of corruption may sometimes call for the laying of traps, but there is no jurisdiction of the police authorities to bring about the taking of a bribe by supplying the bribe money to the giver, where he had neither got it nor has the capacity to find it for himself. Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of frail endurance and provoked into breaking of law; and more particularly by those who are the guardians and keepers of law. However regrettable the necessity of employing agents and provocateurs may be, it is one thing to tempt a suspected offender to over action when he is doing and all he can do commit a crime and has every intention of carrying through his nefarious purpose from start to finish and quite another to egg him on to do that which it has been finally and firmly decidedshall not be done. The very best of men have moments of weakness and temptation, and even the worst, have times when they repent of an evil thought and are given an inner strength to set satan behind the,; and if they do, whether it is because of caution or because of their better instincts, or because some other has shown them the wickedness of wrong doing, it behaves society and the state, to protect them and help them in their good resolve and not to place further temptation in their way and start refresh a train good resolve and not to

[77] Ibid.
[78] Ibid.
[79] Rao Shiv Bahadur Singh v. State, AIR 1954 SC 322: 1954 Cr.LJ 910.

place further temptation in their way and start afresh a train of criminal thought which had been finally set aside."[80]

In **Ram Krishan v. State of Delhi**[81], the Supreme court held that "laying of traps may be justified on the ground that it would be difficult to detect the crime if intending offenders are not furnished opportunities for display of their inclinations and activities. Such traps would, however, be severely condemned, if, the police authorities themselves supply the money to be given as a bribe. All the same, offences committed in the course of traps would not be less grave and would not call for lenient or nominal sentences."[82]

In **State v. Meenaketan Patnaik**[83], the Court held that, "if, the Police Officer receives information that an offence has been committed or is about to be committed and engages spies to witness the commission, he acts as a mere detective, that may be necessary in the interests of justice to enable him to secure evidence. This can be justified only on the ground that he is engaged in the detection of crime. But, if, he suggests or induces the commission of a crime and instigates other offenders while in the act, he is no better than an agent provocateur. His conduct is not only reprehensible but criminal. His object is not detection but "omission of a crime so that he may prefer a charge for the offence committed at his instigation. By inviting or inducing another to commit an offence, he becomes an accomplice, for he participates in the commission of criminal act. Officers sworn to maintain law cannot shed their character as such and break of law, however, laudable the motive may be. The end certainly does not justify the means. The path to crime may be paved with good intentions, it is nonetheless a crime. To encourage resort to doubtful means because the end is justified would be defeat the purpose of law, rather than promote it."[84]

In **State of Madhya Pradesh v. Navneet Lal Kamdar**[85], the trial court discharged all the accused on the ground that the Collector has no power to investigate the offence

[80] Ibid; see also Narayan v. State, AIR 1955 MP 51 and P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed, p. 656.
[81] Ram Krishna v. State of Delhi, AIR 1956 SC 476: 1956 Cr.LJ 837, see also Ramjanam Singh v. State of Bihar, AIR 1956 SC 643: 1956 Cr.LJ 1254.
[82] Ibid.
[83] State v. Meenaketan Patnaik, AIR 1952 Orissa 267: 1952 Cr.LJ 1393.
[84] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 656.
[85] State of Madhya Pradesh v. Navneet Lal Kamdar, 2005 Cr.LJ 1328 (MP).

under law and sanction order issued by the Commissioner, Indore Division for prosecution of the accused was invalid, as he had issued the sanction mechanically, merely on the letter of Collector and not on the request of the police.

On a Revision Petition filed by the State, the High Court held that there is no prohibition in the Code of Criminal Procedure that a person who gets information of the commission of an offence cannot make an enquiry to find out truthfulness of the information before informing the police. The High Court further held that though the Collector was the appointing authority, since he was a witness to the incident, he forwarded the case to the Commissioner for issuing the sanction. In the result, the High Court allowed the Revision Petition.[86]

In **Rao Shiv Bahadur Singh v. State of Vindhya Pradesh**[87], the Supreme Court made the following observations as regards the propriety of the police supplying bribe money to bring about the taking of a bribe by a public servant:

"It may be that the detection of corruption may sometimes call for the laying of traps, but there is no justification for the police authorities to bring about the taking of a bribe by supplying the bribe money to the giver where he has neither got it nor has capacity to find it for himself. It is the duty of the police authorities to prevent crimes being committed. It is no part of their business to provide the instruments of the offence."[88]

In **Ramanlal Mohanlal Pandya v. State of Bombay**[89], it was observed:

"It does not seem to be the law that if the money given as bribe is provided by a particular officer of the police then the evidence of all the witnesses becomes evidence of accomplices and must be looked at with suspicion."

Their lordships further observed:

"This is not a case where the police or anybody else has done any act in order to oblige any particular person but it is one of those cases where a complaint was made to the police that the appellant was demanding a bribe from the complainant. The

[86] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 658.
[87] Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1954 SC 322.
[88] Ibid.
[89] Ramamlal Mohanlal Pandya v. State of Bombay, AIR 1960 SC 961: 1960 Cr.LJ 1380.

police, no doubt, provided the money and are witnesses to the passing of money but it is not a case where the police has instigated anyone to offer a bribe to the appellant."[90]

In **Ram Krishan v. State of Delhi**[91], the Supreme Court held:

"The detection of crime may become difficult, if intending offenders, especially in case of corruption, are not furnished opportunities for the display of their inclinations and activities. Where matters go further and the police authorities themselves supply the money to be given as bribe, severe punishment and condemnation of the method is merited."[92]

In **Gulam Mahmood v. State of Gujarat**[93], the Supreme Court held that in a trial under Section 5(1)(d) read with Section 5(2), though the bribe giver is a competent witness to speak of the facts which are alleged to be constituting the offence, but as a rule of caution, it would be unsafe to convict the accused relying on his testimony alone. Where the bribe giver had been paying bribe to the accused voluntarily on several occasions, in such a case the nature of his evidence would be that of an accomplice, and without corroboration thereof by material particulars, the same cannot form the basis of a finding that the accused had demanded the money. This being a crucial aspect to constitute the offence under Section 5(1)(d) the evidence of bribe giver cannot be relied upon without corroboration.[94]

In **Ram Singh v. Col. Ram Singh**[95], the Supreme Court has observed:

"A tape recorded statement is admissible in evidence subject to the following conditions.[96]

(1) The voice of the speaker must be identified by the maker of the record or other persons recognizing his voice. Where the maker is unable to identify the voice, strict proof will be required to determine whether or not, it was the voice of the alleged speaker.

[90] Ibid.
[91] Ram Krishan v. State of Delhi, AIR 1956 SC 476: 1956 Cr.LJ 476.
[92] Ibid.
[93] Gulam Mahmood v. State of Gujarat, AIR 1980 SC 1558; see also Panalal Damodar Rathi v. State of Maharashtra, AIR 1979 SC 1191.
[94] P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 605.
[95] Ram Singh v. Col. Ram Singh, AIR 1986 SC 3: 1985 SCC 611.
[96] Ibid; see also Chanderkant Ratilal Mehta v. State of Maharashtra, 1993 Cr.LJ 2863 (Bom).

(2) The accuracy of the tape recorded statement must be proved by the maker of the record by satisfactory evidence direct or circumstantial.

(3) Possibility of tampering with or erasure of any part of the tape recorded statement must be totally excluded.

(4) The tape recorded statement must be relevant.

(5) The recorded cassette must be sealed and must be kept in safe official custody.

(6) The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds of disturbances."[97]

In **Ram Singh Badar Singh v. State**[98], the court held that where in case of bribery the police resort to the technique of anthracene powder and ultraviolet rays for proving that the accused had received the currency notes to which the powder had been applied, by the presence of the powder on the hands or shirt of the accused, the prosecution must lead evidence by way of expert evidence or books of science to prove the sure method of detection of anthracene powder, the nature of the test to be applied, the nature of the result to be expected and whether a layman can detect anthracene powder when such a test is applied. The prosecution must also prove that if, the test leads to a positive result, it conclusively proves the presence of anthracene powder and nothing else.[99]

In **Ambalal Motibhai Patel v. State**[100], the court held that where the investigating agency has used the technique of anthracene powder with ultra violet rays for detection of bribery in order to enable a court to draw the inference that what was found on a person was anthracene powder the prosecution must establish that the tests for the detection of anthracene powder had been properly made and had yielded positive results. The two tests required to be satisfied by the prosecution to prove the presence of anthracene powder are (1) that no powder was detected with naked eye; and (2) that when ultra violet light was focused, there was emission of light blue fluorescent light. If, evidence proved positive results for both these tests, then it would be right to infer that anthracene powder was present. It is, therefore, essential for the

[97] Ibid;
[98] Ram Singh Badar Singh v. State, AIR 1960 GUJ 7: 1960(2) CR.LJ 1207.
[99] Ibid.
[100] Ambalal Motibhai Patel v. State, AIR 1961 GUJ 1: 1961(1) Cr.LJ 50.

prosecution to prove that there was light blue emission of light under the influence of ultra violet light. It is not sufficient for the prosecution to prove that under the ultra violet light, witnesses saw stains of white powder or even that under the ultra violet light they saw some sparkling or some shimmering.[101]

This test is based on the fact that phenolphthalein is colourless in acid and neutral medium and deep purple in alkali medium. Phenolphthalein is a coal tar product and it is available in the form of a light powder. The currency notes or other articles intended for the purpose of bribe are coated with phenolphthalein powder to form a thin layer and it is hardly visible to the naked eye. When the currency note or other articles dusted with phenolphthalein powder are touched by a person his hands will invariably collect a few particles of the powder. When those hands are dipped into a solution of sodium carbonate, the solution turns to purple or pink colour.[102]

This method is being commonly used over a number of years by the Investigating Agencies for providing conclusive proof of the fact that an accused person has come in contact with the bribe amount or article of bribe in question.

In **Kartogen Kemiochforvalltning A.B. v. State through C.B.I**.[103] the petitioners M/s. A.B. Bofors, S.P. Hinduja, G.P. Hinduja and P.P. Hinduja challenged before the Delhi High Court the order of the Special Judge framing charges against them under Section 120-b, 161, 165-A, 420, 465 IPC and Section 5(2) read with 5(1) of the Prevention of Corruption Act, 1947 for having entered into criminal conspiracy with the public servants late Shri Rajiv Gandhi and Shri S.K. Bhatnagar and Shri Win Chadha, Ottavio Quattrochi and Bofors President Matin Ardbo to cheat the Government of India in regard to the supply of guns for the Indian Army.

In **State of Bihar v. Ranchi Zilla Samta Party**[104], a public interest litigation (PIL) alleging large scale diversion of public funds, fraudulent transactions and falsification of accounts to the tune of around Rs.500 crores in the Animal Husbandry Department of the State of Bihar, the High Court in exercise of powers under Article 226 of the Constitution ordered to take away the investigation from the State police and entrusted the same to Central Bureau of Investigation. The Supreme Court held

[101] Ibid.
[102] P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1490.
[103] Kartogen Kemiochforvalltning A.B. v. State through C.B.I, 1 (2004) CCR 285 (SC).
[104] State of Bihar v. Ranchi Zilla Samta Party, 1996 Cr.LJ 2168 (SC).

that the exercise of the power under Article 226 of the constitution was not to give any advantage to a political party or a group of people and it was also not to cast slur on the State Police but was done to investigate corruption in public administration, misconduct by the bureaucracy, fabrication of official records and misappropriation of public funds and as such the direction given by the High Court appeared to be just and proper, and called for no interference. The Supreme Court further held that, to alleviate the apprehensions of the State about the control of the investigation by the CBI, it should be under the overall control and supervision of the Chief Justice of Patna High Court and the CBI officers entrusted with the investigation shall inform the Chief Justice of the Patna High Court from time to time about the progress made in the investigation and may, if they need any direction in the matter of conducting the investigation, obtain them from the Chief Justice.[105]

In **Sanjiv Kumar v. Om Prakash Chautala**[106], an IAS officer of Haryana Cadre filed writ petition in the Supreme Court complaining large scale corruption and tampering of records in the appointment of about 4,000 teachers in the State of Haryana in which directions were given to CBI for investigation. During hearing of this writ petition, the petitioner complained that in order to build pressure on him, some criminal cases were registered and also departmental proceedings instituted against him and requested the court to transfer these cases also to CBI for fair investigation. Accordingly, Supreme Court entrusted five cases/matters to CBI. Subsequently, the petitioner filed a contempt petition against the State of Haryana. Consequently, three more matters were handed over to CVC for inquiry. Again, the said IAS officer filed a writ petition in Delhi High Court for constituting a Special Investigation Team or a fresh team of officers from CBI to investigate these cases. After getting the status reports from CBI and CVC, the Supreme Court was satisfied with the investigations/inquires by CBI/CVC and declined to take cognizance and initiate any contempt proceedings. However, Supreme Court gave directions that the petitioner shall not be arrested and no harassment shall be caused to him and any

[105] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1754.
[106] Sanjiv Kumar v. Om Prakash Chautala, AIR 2005 SC 2571: (2005) 5 SCC(4) Supreme 163.

action taken against the petitioner shall be brought to the notice of the competent court of jurisdiction.[107]

In **P.V. Narsimha Rao v. State**[108], it was held that "since there is not authority competent to grant sanction for the prosecution of a Member of Parliament under Section 19(1) of the Act of 1988, the Court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 12 and 15 of the Act of 1988 against an M.P. in a criminal court and the prosecution again shall obtain the permission of the Chairman of the Rajya Sabha/ Speaker of the LokSabha as the case may be,"[109]

In the case of **Anil Kumar and Others v. M.K. Aiyappa and another**, the Supreme Court laid down that the requirement of sanction under section 19 of the Prevention of Corruption Act, is mandatory. Section 19(3) does not have any effect of making it directory. When there is no previous sanction, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) of Cr.P.C.[110]

The **Supreme Court in Manzoor Ali Khan v. Union Of India and others** held that the requirement of sanction is not unconstitutional. The competent authority has to take the decision on the issue of sanction expenditiously. A fine balance has to be maintained between need to protect a public servant against malafide prosecution on one hand and the object of upholding the probity in public life on prosecuting the public servant against whom prima facie material in support of allegation of corruption exists, on the other hand.[111]

In **Ram Swarap v. State of Punjab**[112], the Court held that the sanctioning authority has an absolute discretion to grant or withhold sanction. Where the sanction does not mention the fact, nor it is proved by extraneous evidence that they were place

[107] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 231.
[108] P.V. Narsimha Rao v. State(CBI/SDE), (1998) 4 SCC 626: 1998 SCC (Cri) 1108.
[109] Ibid; see also L.K. Advani v. Central Bureau of Investigation, 1997 Cr.LJ 2559: (1997) 4 Crimes 1 (Del).
[110] Anil Kumar and Others v. M.K. Aiyappa and another, 2014 Cr.LJ 1.
[111] Manzoor Ali Khan v. Union of India, and Others, 2014 Cr.LJ 4257.
[112] Ram Swarup v. State of Punjab, 1973 Cr.LJ 764.

before the sanctioning authority, the sanction would be invalid and the trial court would not be a court of competent jurisdiction.[113]

In **Jagdip v. State of Rajasthan**[114], it was held that the grant of refusal of sanction is purely an administrative function and it is important for the subjective satisfaction of the sanctioning authority that the sanctioning should be based on sufficient material and it should be considered by the court in a realistic and reasonable manner and courts ought not to be too technical and insist on mathematical accuracy and logical precision and over emphasize nice and subtle distinction in the forms of expression.

In the **State of Maharastra through CBI v. Mahesh G. Jain**[115], the Supreme Court held that it is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and the satisfaction was arrived at upon perusal of the material placed before such authority. The adequacy of material placed before the sanctioning authority cannot be struck down by the court as it does not sit in appeal against sanction order.[116]

In the case of **CBI v. Ashok Kumar Aggarwal**, the Supreme Court held that before granting sanction, the sanctioning authority has to complete and conscious scrubbing of whole record placed before it. Sanction order should show that authority has considered all relevant facts and applied its judicial mind.[117]

In the **Subramanian Swamy v. Manmohan Singh case**, the Supreme Court held that grant or refusal of sanction is not a quasi-judicial function and the person for whose prosecution the sanction is not required to be heard by the competent authority before it takes a decision in the matter.[118]

[113] Ibid; see also State v. Hira Nand, AIR 1958 MP 2.
[114] Jagdip v. State of Rajasthan, 1954 Raj LW 478.
[115] State of Maharashtra through CBI v. Mahesh G. Jain, 2013 Cr.LJ 3092.
[116] Ibid.
[117] CBI. v. Ashok Kumar Aggarwa 2014 Cr.LJ 930.
[118] Subramanian Swamy v. Manmohan Singh, 2012 Cr.LJ 1519.

In **Lalu Prasad v. State of Bihar**[119], while affirming the legal position regarding the scope of Section 19 of the Prevention of Corruption Act, 1988 and Section 197 Cr.P.C., the Supreme Court further held that for framing of charge, the court need not give reasons but in the case of an opinion on the basis of which an order of discharge is to be passed, reasons have to be recorded by the court.

In **State (through CBI) v. Rajkumar Jain**[120], the Supreme Court held that "from a plain reading of the Section 6 (Section 19 of the Act of 1988), it is evidently clear that a court cannot take cognizance of the offences mentioned therein without sanction of the appropriate authority. In enacting the above section the Legislature thought of providing a reasonable protection to public servants in the discharge of their official functions so that they may perform their duties and obligations by vexatious and unnecessary prosecutions. Viewed in that context, the CBI was under no obligation to place the materials collected during investigation before the sanctioning authority, when they found that no case was made out against the respondent. To put it differently, if the CBI had found on investigation that a prima facie case was made out against the respondent to place him on trial and accordingly prepared a charge sheet (challan) against him, then only the question of obtaining sanction of authority under Section 6(1) of the Act would have arisen for without that the court would not be competent to take cognizance of the charge-sheet. It must, therefore, be said that both the Special Judge and the High Court were patently wrong in observing that the CBI was required to obtain sanction from the prosecuting authority before approaching the court for accepting the report under Section 172(2), Cr.P.C. for discharge of the respondent."[121]

In **J.V. Reddy v. State**[122], the court observed that a close scrutiny of Section 19 shows that no time limit has been prescribed for granting of sanction order under this section. The Supreme Court in order to fill up the lacuna fixed the time limit of three months following the judgement in Vineet Narain v. Union of India, AIR 1998 SC 889 for granting of sanction order. Said directions were to remain in force till Government framed guidelines or rules. Pursuant to the same, the Vigilance

[119] Lalu Prasad v. State of Bihar, (2007), 1 SCC 49.
[120] State(through CBI) v. Rajkumar Jain, III (1998) CCR 150(SC): AIR 1998 SC 2985.
[121] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1455.
[122] J.V. Reddy v. State, 2003 Cr.LJ 540 (AP): 2002(2) ALT (Crl.) 439.

Commissioner has fixed his own time limit for issuing sanction order. The circulars and directions issued by the Vigilance Commissioner only amount to departmental instructions given by them. For violation of departmental instructions accused cannot complaint. If, a departmental officer fails to attend to his duty or does not perform his duty within stipulated time, he is liable for departmental action. When statute does not prescribe a time limit for sanction orders, the accused cannot take advantage of the departmental rules. He can complain against the officers for their lethargy and neglect of duty, which may lead to initiation of departmental enquiry against them and consequent punishment. When Supreme Court wanted three months time to be fixed for issuing the sanction orders, the Vigilance Commissioner fixed only one month's time. The moment, the Vigilance Commissioner fixed the time, the directions of the Supreme Court will not be in operation as necessary rules are framed for fixing the time limit by the department. In that view of the matter, the Supreme Court directive hold good only up to the time, the lacunae are filed up by the department by framing the rules. The directions given by the Vigilance Commission have to be viewed and considered in that angle. Non fixing of the time in the statute for issuing sanction orders will only lead to one conclusion. The failure to issue sanction orders within the time frame does not render the sanction orders invalid or void since, for violation of departmental instructions, the sanction order cannot be declared as void.[123]

In **M. Veeraiah Chowdary v. State of A.P**.[124], the Court held that when once the sanction order is issued by the Government under Section 19 of the Act and court has taken cognizance of the offence, it is not open to the State Government to withdraw the sanction order. Section 321 Cr.P.C. provides for withdrawal of prosecution by the Public Prosecutor with the consent of the court. Court, while creating its consent, has to ensure that the Public Prosecutor has applied his mind independently and that he is acting in good faith.[125]

In **K. Karunakaran v. State of Kerala**[126], the question, whether it is necessary to obtain sanction for prosecution in a case where the public servant is not longer holding the same post or office during the currency of which the alleged

[123] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1456.
[124] M. Veeraiah Chowdary v. State of A.P., 2003 Cr.LJ 1896(AP): 2003(1) ALD(Crl.) 421 (AP).
[125] Supra n. 264, p. 1456.
[126] P.S.SEEMA, "Eradication of Political Corruption-An Evaluation of the Legislative and Judicial Efforts", The Academy Law Review (1999), p. 189.

offence was committed, the Supreme Court referring to its earlier decision in **Parkash Singh Badal's case** (2007) held that there was no need for obtaining sanction for prosecution in such a case. As regards the contention of the accused that the complaint was filed by a political opponent and, therefore, it was vitiated by malafides, the Supreme Court again reiterating the views taken in Parkash Singh Badal's case held that even though there is an element of personnel or political rivalry, ultimately it is to be seen whether material exists to substantiate the allegation.[127]

In **BalaKrishnan Ravi Menon v. Union of India**[128], the Supreme Court held that, at the relevant time when the charge sheet is filed, the petitioner was not holding the office in which he was alleged to have committed the offences though he was holding another office and, as such, there was no question of obtaining any sanction.

In **the Chittaranjan Das v. State of Orissa**[129], the Supreme Court laid down that once a public servant ceases to be so on the date when the court takes cognizance of the offence. There is no requirement of sanction under the Act. However, in the case in which sanction sought is refused by the competent authority, while the public servant was in service, he cannot be prosecuted later on after retirement, notwithstanding the fact that no sanction for prosecution is necessary after the retirement of public servant.

In **Kartogen Kemiochforvaltning A.B. v. State through C.B.I**.[130], the Supreme Court deprecated the trend of the Investigating Agency to hold press conference and the Media publishing premature and half baked information during investigation and made the following observations:

".It is common knowledge that such trials and investigative journalism and publicity of premature, half baked or even presumptive facets of investigation either by the media itself or at the instance of Investigating Agency has almost become a daily occurrence whether by electronic media, radio or press. They chase some wrong doer, publish material about him little realizing the peril, it may cause as it involves

[127] Ibid; see also Prakash Badal's Case (2007) 1 SCC 1 and P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1462.
[128] Balakrishnan Ravi Menon v. Union of India, (2007) 1 SCC 45.
[129] A. Chittaranjan Das v. State of Orissa, 2011 Cr.LJ 4306.
[130] Kartogen Kemiochforvaltning A.B. v. State through C.B.I., 1 (2004) CCR 285 (SC).

substantial risk to the fairness of the trial. Unfortunately, we are getting used to it. Latest trend of police or CBI or Investigating Agency encouraging publicity by holding press conference and accompanying journalists and television crew during investigation of a crime needs to be stopped as it creates risk of prejudice to the accused. After hogging publicity and holding the person guilty in the eyes of public, police and CBI go into soporific slumber and take years in filing the charge-sheet and thereafter, several years are taken in the trial. It is said, and to great extent correctly, that through media publicity those who know about the incident may come forward with information, it prevents perjury by placing witnesses under public gaze and it reduces crime through the public expression of disapproval for crime, and last but not the least, it promotes the public discussion of important issues. All this is done in the interest of freedom of communication and right of information, little realizing that right to a fair trial is equally valuable. Such a right has been emphatically recognized by the European Court of Human Rights."[131]

The fairness of trial is of paramount importance, as without such protection, there would be trial by media which is no civilized society can and should tolerate. The functions of the court in the civilized society cannot be usurped by any other authority. I feel tempted to quote the words of wisdom of Chief Justice Lord Taylor as to the impact upon the victim of a press campaign.

"We would like to stress that, whilst the press are the guardians of the public interest, to pursue a campaign of vilification of someone who has been before the court, in a way which causes hate mail to be sent., which causes his family to be under the need to move house, which causes his children to be shunned by other children in the neighbourhood, is doing no public service. Furthermore, if it is intended to bring pressure to bear on the courts, then it is wholly misguided."[132]

"This is one of such cases where public servants who are no more have met somewhat similar fate being victim of trial by media. They have already been condemned and convicted in the eyes of public. Recent instance of such a trial is of Daler Mehandi whose discharge is being sought few days after humiliation and pseudo-trial through media as they have not been able to find evidence sufficient even

[131] Id at para 7,8,9.
[132] Attorney General's Reference (1995) 16 Cr.App.R(5) 785.

for filing the charge-sheet. Does such trials amount to public service is a question to be answered by the media itself? Here is a 'gun' known as 'Bofors gun' that created political explosion before it could explode in the battle field and prove its credentials. Explosion was so powerful that it engulfed the highest functionary of **India, late Mr. Rajiv Gandhi**, the then Prime Minister of the country. Another casualty was late Mr. S.K. Bhatnagar, the then Defence Secretary of Government of India. Main culprits were its manufacturer M/s. AB Bofors its chairman Martin Ardbo and agents viz. Win Chadha, Hinduja brothers and Quattrocchi, an Italian national, whose services Bofors was alleged to have availed in procuring the contract of gun in its favour."[133]

"Smoke emitted from the chimney of its land viz. Sweden where its Radio broke the news that the Bofors had procured the largest ever contract of the 'gun' in the world by bribing the 'purchased' country's political bigwigs by using the clout of its agent and middlemen and their nearness to the powers. The news set the political and public fora at fire. Investigative journalism reached its peak. There was a deafening sounds of gun-shots fired by press, public and political parties. Though guns were silenced but only like a lull before the storm by appointment of a Joint Parliamentary Committee to enquire into the matter. JPC is an Apex Parliamentary Body for inquiring into controversial matter of national importance. Though JPC tried to clear the fog vis-s-vis public servants but till date the smoke continues emitting from its smolders. So much so that the word "Bofors" derived from the name of its manufacturing company M/s. AB Bofors became of sort of 'Voodoo' for it, as it has rechristened itself as "Kartongen Kemiochforvaltning A.B."[134]

"All that happened in 1987, we are now in 2003. Its smoke is still in the air though to its good luck, the gun "gun" has proved its credentials and effectiveness very recently in the battle-fields of Kargil warfare and saved lives of many young soldiers because of its peculiar feature of "Shoot and Scoot." Unfortunately, the public servants viz. Shri Rajiv Gandhi, S.K. Bhatnagar are no more in this world."[135]

In **Tajukhan v. The State**[136], the Court held that offences of bribery or abetment of bribery rarely come to light and where such an offence is proved beyond

[133] Id. At para 13, 14.
[134] Id at para 15, 16, 17.
[135] Ibid.
[136] Tajukhan v. The State, AIR 1957 Raj 1: 1957 Cr.LJ 96.

all reasonable doubt, the perpetrators thereof must be visited with deterrent punishment. An assessee, who offers bribe to an Income-tax Officer to induce him to tax him leniently is not entitled to any lenient consideration. A sentence of six months rigorous imprisonment was held to be not unduly severe.[137]

In **Kishan Dayal v. State**[138], the Court held that a corrupt official is a menace to the society and far from helping in the proper functioning of the Government and implementing of the laws, brings the Government and the society at large into disrepute. It is through the agency of the public servants that the policy of the Legislature as well as the Government is implemented. It is, through the public servants, that crimes are detected and offenders are brought to book. It is, through strictly honest and incorruptible public servants, that the welfare of the society can be ensured. If, such public servants are open to corruption and coerce the public into paying them illegal gratification, the whole structure of the society would be upset and the policy of the Government and of the Legislature, howsoever beneficial it may be, would gravely suffer. A public servant, therefore, once he is found to be guilty of accepting or obtaining illegal gratification, deserves no soft corner or indulgence from the courts of law.[139]

In **A. Wati A.O. v, State of Manipur**[140], the court held that the fact that "appellant is a Senior I.A.S. Officer really requires a serious view of the matter to be taken, instead of soft dealing. The fact that he has a number of dependants and is going to lose his job are irrelevant considerations, in as much as in almost every case, a person found guilty would have dependents and if, he be in public servant, he would lose his job. The present being the first offence is also an irrelevant consideration. Though, the delay has some relevance but as in cases of the present nature, investigation itself takes time and then the trial is prolonged because of the type of evidence to be adduced and number of the witnesses to be examined, the fact of delay of about five years could not have been a ground to award the sentence of imprisonment till rising of the court which really makes a mockery of the whole exercise. The delay does require some reduction from the minimum prescribed, and

[137] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1046.
[138] Kishan Dayal v. State, 1958, Raj LW 596.
[139] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1046.
[140] A. Wati A.O. v. State of Manipur, AIR 1996 SC 361: 1996 Cr.LJ 403(SC): (1995) 6 SCC 488.

on the facts of the case, ends of justice would be met, if, at this length of time, pursuant to notice of enhancement issued by this court, a sentence of imprisonment for six months is awarded."[141]

In **Ram Lal Dogra v, State(C.B.I)**[142], where the accused in a trap case was convicted and sentenced to undergo rigorous imprisonment for 22 months, on appeal the High Court took into consideration the fact that the accused was 64 years old and spent ten years in jail, and lost all retireable benefits and he was also suffering from heart problem, reduced the sentence to the period already undergone.

In **Laxman Panda v. Republic of India**[143], the Special Judge convicted a public servant for disproportionate assets under Section 5(1)(e) of the Prevention of Corruption Act, 1947 and sentenced to two months imprisonment with fine of Rs. 5000. In appeal, the High Court upheld the conviction for possession of properties worth Rs. 66,275 (though earning Rs. 570 per month only) but reduced the sentence till rising of court and enhanced fine to Rs. 10,000 as the case was pending for 18 years in the High Court observing that the case cannot be adjourned merely on the ground of absence of counsel for accused.[144]

In **G.V. Nair v. Government of India**[145], the Court held that breach of trust and criminal misconduct by a public servant are certainly serious offences calling for a deterrent sentence but the question of sentences is a matter of discretion and when that discretion has been exercised by the trial Judge, the High Court would rarely interfere, even if, it were of opinion that, had the case been tried by itself, it would have imposed a heavier sentence than that imposed by the trial court, and particularly so, in a case where the state has not chosen to apply for enhancement of the sentence.[146]

In **Meet Singh v. State of Punjab**[147], where only two special reasons for awarding less than the minimum sentence were given viz. (i) appellant had lost his job and (ii) he was a married man with children; it was held that the High Court exceeded

[141] Ibid; see also L.K. Advani v. Central Bureau Investigation, 1997 Cr.LJ 2559: (1997) 4 Crimes 1 (Del), p. 1047.
[142] Ram Lal Dogra v. State C.B.I., II(2002) CCR 515 (Del).
[143] Laxman Panda v. Republic of India, 2006 Cr.LJ 2088: III (2006) CCR 167 (Ori).
[144] Ibid.
[145] G.V. Nair v. Government of India, 1963(1) Cr.LJ 675 (Ker).
[146] P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1048.
[147] Meet Singh v. State of Punjab, AIR 1980 SC 1141: 1980 Cr.LJ 802.

its jurisdiction while interfering with the quantum of sentence. These two reasons would be common to ninety-nine percent of cases tried under Prevention of Corruption Act and if, they can be styled as special reasons for awarding less than the minimum sentence the proviso would be rendered wholly nugatory. The court should not be obvious to the fact that while conferring discretion in the matter of awarding adequate sentence within limits prescribed by the statute, the Legislature, finding cases of misplaced sympathy in sentencing process, fettered the court's discretion by prescribing a minimum sentence and making it obligatory to record special reasons for awarding less than the minimum.[148]

In **D. Srinivasan v. D.S.P.E**.[149], the Supreme Court while confirming the conviction of the accused u/s 120-B, 381, 411, 414 of Indian Penal Code and Section 5(2) read with 5(1)(d) of the sentence of imprisonment to the period already undergone on the ground that the occurrence took place 23 years back in the year 1969, that the accused lost the jobs and they have large family dependent on them. Further, Section 5(2) as it stood in the year 1969 lays down that the court for any special reason recorded can impose a sentence of imprisonment of less than one year.[150]

In **State (Govt. of NCT of Delhi) v. Prem Raj**[151], the accused public servant was prosecuted under sections 7 and 13(2) read with 13(1)(d) Prevention of Corruption Act and convicted and sentenced to imprisonment of 3.5 years and fine. On appeal by the accused, it was submitted that since the accused faced the ordeal of trial for 11 years and it was on the verge of retirement, it was submitted that sentence of imprisonment may be commuted and the fine amount may be increased and for the purpose, the High Court was requested to recommend to the Government under section 433 Cr. P.C. to commute the sentence. The High Court has, accordingly, recommended to the Government that the fine amount may be enhanced to Rs.15,000 and the sentence of imprisonment should be commuted.

On appeal filed by the State against the order of the High Court, the Supreme Court held that the High Court in exercise of its revision jurisdiction had no power to

[148] Ibid; see also B.C. Goswami v. Delhi Administration, AIR 1973 SC 1457.
[149] D. Srinivasan v. D.S.P.E., 1993 Cr.LJ 54(SC): AIR 1993 SC 296: 1994 Supp.(2) SCC 747.
[150] Ibid; see also Vidhyadhar Ganesh Lanjekar v. State of Maharashtra, 1994 SCC(Cr.) 56.
[151] State (Govt. of NCT of Delhi) v. Prem Raj, 2003(5) Supreme 522: 2003 SCC (Cr.) 1586.

direct the Government to commute the sentence where a minimum sentence was provided for and that the court has no power to grant pardon either under Article 161 or 172 of the Constitution or under Sections 306, 432 and 433 of Cr.P.C. and it is at the sole discretion of the appropriate Government to exercise such a power.[152]

In **D.Srinivasan v. D.S.P.E.[153],** the Court state that twenty three years have elapsed since the occurrence. All the appellants must have become very old and some of them may have died. They have undergone the ordeal of trial for a number of years and convictions have been hanging on their heads for all these years and they have also lost their jobs and they have large family dependent upon them. These circumstances do warrant that a lesser sentence should be imposed as Section 5(2) of the Prevention of Corruption Act, 1947, as it stood then, provided for. The Supreme Court Confirmed their convictions and reduced the sentence to the period already undergone and confirmed the sentences of fine with default clause.[154]

In **Sudam Hari Patil v. State of Maharashtra**[155], the Offence, for which he was convicted under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 161 IPC, was committed some ten years back and the accused has lost his job and for all these years, he has undergone the agony of criminal proceedings. He has also a large family to support. He is now in jail. For all these special reasons, while confirming the convictions, the Supreme Court reduced the sentence from one year to 6 months.[156]

In **A. Wati A.O. v. State of Manipur**[157], the appellant was convicted under Section 120-B of the Penal Code read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 by Special Judge, Manipur. He was sent sentenced to a fine of Rs.10,000 and to imprisonment till the rising of court. On appeal being preferred, the High Court dismissed the same. The Supreme Court after going through the evidence held that there were clinching materials to hold the appellant guilty under Section

[152] P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1050.
[153] Supra n. 292.
[154] Id at p. 1049.
[155] Sudam Hari Patil v. State of Maharashtra, 1994 Cr.LJ 2299(SC): 1994 SCC (Cri) 272.
[156] Ibid.
[157] Supra n. 282.

5(1)(d) of the Prevention of Corruption Act, 1947 read with Section 120 B of the Penal Code and upheld the conviction.[158]

As regards the sentence the Supreme Court held as follows:

"A perusal of the trial court's judgement shows that the sentence of imprisonment till rising of the court was awarded because of (1) the appellant being a senior IAS officer and holding of different high posts which showed that he is a very respectable person, (2) the appellant having number of dependents. (3) the certainity of appellant's losing his job and requiring him to earn a living for himself and his family members, (4) the present being first offence committed by him, and (5) the spectra of the incident hanging on his head for about half a decade. According to us, none of these factors make out a case for awarding sentence lessor than the minimum prescribed, by the aforesaid Act, the same being imprisonment for one year. The fact that the appellant is a Senior IAS officer really requires a serious view of the matter to be taken, instead of soft dealing. The fact that he has a number of dependents and is going to lose his job are irrelevant considerations in as much as in almost every case, person found guilty would have dependents and if, he being a public servant, would lose his job. The present being the first offence is also an irrelevant consideration. Though, the delay has some relevance but as in cases of the present nature, investigation itself takes time and then the trial is prolonged, because of the type of evidence to be adduced and number of the witnesses to be examined, we do no think that the fact of delay of about five years could have been a ground to award the sentence of imprisonment till rising of the court, which really makes a mockery of the whole exercise. We, however, think that the delay does require some reduction from the minimum prescribed, and on the facts of this case, ends of justice would be met, according to us, if, at this length of time, pursuant to notice of enhancement issued by this court, a sentence of imprisonment for six months is awarded."[159]

In **Ram Avadh Singh v. State (through S.P.C.B.I./S.P.E.)**[160], the appellant was convicted for an offence under Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947 on the allegation that he purchased some books and obtained some commission which he misappropriated, he was convicted and sentenced to

[158] P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1051.
[159] Supra n. 282.
[160] Ram Avadh Singh v. State (through S.P.C.B.I/S.P.E.), 2001 (3) Crimes 187 (SC).

imprisonment for one year and fine of Rs.600. The Supreme Court considered the circumstances that in fact he wanted to deposit the commission obtained by him after deducting his travelling expenses but the cashier refused to allow him to deposit on the ground that his superiors directed otherwise. In view of these circumstances the Supreme Court directed the sentence to be reduced to the period already undergone.[161]

In **State of Jammu and Kashmir v. Vinay Nanda**[162], the accused was prosecuted under Jammu and Kashmir Prevention of Corruption Act, 2006, for offences under Section 5(2) of the Act and also under Sections 409 and 468 Ranbir Penal Code and he was convicted by the trial court and sentenced to undergo imprisonment for one year on each count besides payment of fine of Rs.16,000. On appeal the High Court confirmed the conviction but took a sympathetic view and gave him benefit of the Jammu and Kashmir Probation of Offenders Act. On appeal by the State in regard to the sentence, the Supreme Court set aside the order of the High Court and held that mitigating circumstances in a case do not constitute "special reason" to take a lenient view and ordered reduction of sentence of imprisonment to six months and the fine amount to Rs.5000.[163]

The Supreme Court in **Somabhai Gopalbhai Patel v. State of Gujarat**[164], laid down that imposition of minimum sentence would meet the ends of justice in case of an accused to be 60 years old and suffering from heart disease.

In **Ram Krishan v. State of Delhi**[165], the court held that there is no warrant for the view that the offences committed in the course of traps are less grave and call only for lenient or nominal sentence.

In State through **S.P., New Delhi v. Ratan Lal Arora**[166], the Supreme Court observed as follows:

"That apart Section 7 as well as Section 13, the Act also provides for a minimum sentence of six months and one year respectively in addition to the

[161] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1054.
[162] State of Jammu and Kashmir v. Vinay Nanda, 1(2001) CCR 151 (SC).
[163] Supra n. 303.
[164] Somabhai Gopalbhai Patel v. State of Gujarat, 2015 Cr.LJ 255.
[165] Ram Krishan v. State of Delhi, AIR 1956 SC 476.
[166] State through S.P. New Delhi v. Ratan Lal Arora, 2004 Cr.LJ 2105 (SC): II(2004) CCR 241(SC): AIR 2004 SC 2364.

maximum sentences as well as imposition of fine. Section 28 of the Act further stipulates that the provisions of the Act shall be in addition to an not in derogation of any other law for the time being in force. In the case of Superintendent Central Excise, Banglore v. Bahubali, (AIR 1979 SC 1271), while dealing with Rule 126-P(2)(ii) of the Defence of India Rules which prescribed a minimum sentence and Section 43 of the Defence of India Act, 1962 almost similar to the purport enshrined in Section 28 of the Act in the context of a claim for granting relief under the Probation Act, this court observed that in cases where a specific enactment, enacted after the Probation Act, prescribes a minimum sentence of imprisonment, the provisions of Probation Act cannot be invoked, if, the special Act contains any provision to enforce the same without reference to any other Act containing a provision, in derogation of the special enactment, there is no scope for extending the benefit of the Probation Act to the accused. Unlike, the provisions contained in Section 5(2) proviso of the old Act providing for imposition of a sentence lesser than the minimum sentence of one year therein for any 'special reasons' to be recorded in writing, the Act did not carry any such power to enable the court concerned to show any leniency below the minimum sentence stipulated. Consequently, the learned Single Judge in the High Court committed a grave error of law in extending the benefit of probation even under the Code. At the same time, we may observe that though the reasons assigned by the High Court to extend the benefits of probation may not be relevant, proper or special reasons for going below the minimum sentence prescribed which in any event is wholly impermissible, as held supra, we take them into account to confine the sentence of imprisonment to the minimum of six months under Section 7 and minimum of one year under Section 13(2) of the Act, both the sentences to run concurrently. So far as the levy of fine in addition made by the learned Trial Judge with a default clause on two separate count are concerned, they shall remain unaffected and are hereby confirmed."[167]

In **Imam-Ur-Rahman v. State of Punjab**[168], where the accused was convicted in a trap case for demanding and accepting bribe, on appeal by the accused, the High Court confirmed the conviction but reduced the sentence on the ground that

[167] Ibid.
[168] Imam-Ur-Rahman v. State of Punjab, 2004(1) Crimes 137 (P&H).

18 years has pass and since the offence was committed and that he was a young person who had joined service a few years ago.[169]

In **Boddeplly Lakshmi Narayana v. Survari Sanyasi Apparao**[170], the court held that the sentence of imprisonment till the rising of the court is unknown to law. Such sentence is incapable of execution as provided by Sections 383 and 385 of Cr.P.C. and does not, therefore, amount to the suffering of imprisonment within the meaning of code. The Subordinate Courts ought to take note of this fact. If, they intend to give to give one day's imprisonment as being sufficient in the interest of justice having regard to the merits of the case, it is their plan duty to issue a warrant to the jail to confine the accused for one day and it is only when the accused suffers that one day's imprisonment in jail that he would have served the sentence. If, the court does not wish to send the person to jail, it must all the same commit the person to be kept in confinement in some other place provided for the purpose but where no such place other than the jail is provided by the Government, it is plain duty of the court to commit the accused to the nearest jail to undergo his sentence, even if, it be for one day.[171]

In **Nil Madhab Patnaik v. State**[172], the Court held that a Judge should not give a finding in the alternative in a criminal case. To hold that the accused is guilty of an offence under Section 161 Indian Penal Code or that he is at least guilty of abetment is not at all permissible. Though charges may be framed in the alternative, the finding should be definite. He should convict either under Section 161 Indian Penal Code or under Section 161 read with 109 Indian Penal Code.[173]

In **State of Tamil Nadu v. Kaliaperumal**[174], the Supreme Court held that the provisions of Probation of Offenders Act, 1958 and Section 360 Cr.P.C. do not apply to offences under the Prevention of Corruption Act, 1988.

In **State v. A. Parthiban**[175], a trap case, the accused was convicted for the offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988. In

[169] Ibid.
[170] Boddeplly Lakshmi Narayana v. Survari Sanyasi Apparao, AIR 1959 AP 530: 1959 Cr.LJ 1141.
[171] Ibid.
[172] Nil Madhab Patnaik v. State, AIR 1955 Pat. 317: 1955 Cr.LJ 1089.
[173] Ibid.
[174] State of Tamil Nadu v. Kaliaperumal (2005) 12 SCC 473: (2006) 1 SCC (Cr.) 615.

appeal, the High Court held that conviction under Section 13(1)(d) of the Prevention of Corruption Act, was not maintainable as for a single act it would not be proper to convict the accused under both the sections but confirmed the conviction under Section 7 of the P.C. Act. The High Court also applied Section 360 Cr.P.C. and directed the accused to be released on probation.

On appeal by the State, the Supreme Court held that whether there was a demand or not, the accused is guilty. If, bribe was accepted and if, there was a demand and acceptance, the accused is guilty under both the sections. In this case, the accused is guilty under both the sections. The Supreme Court further held that Section 360 of Cr.P.C. cannot be applied to the Prevention of Corruption Act, 1947 cases in view of the mandate contained in Section 18 of the Probation of Offenders Act, 1958 negating the argument that it refers only to Section 5(2) of the P.C. Act, 1947 and not to Section 13 of the P.C. Act, 1988 as not tenable in view of Section 8 of General Clauses Act and set aside the order of the High Court.[176]

In **Shri Rama Krishna Dalmia v. S.R. Tendolkar**[177], it was held that "Article 14 does not forbid reasonable classification for the purposes of legislation but if, it appears that the impugned legislation is based on a reasonable classification founded on intelligible differentia and that the said differentia have a rational relation to the object sought to be achieved by it, its validity cannot be successfully challenged under Article 14."[178]

In **C.I.Emden v. State of U.P**.[179], it was held that "there can be no doubt that the basis adopted by the legislature in classifying one class of public servants who are brought within the mischief of Section 4(1) is on perfectly rational basis. It is based on an intelligible differentia and there can be no difficulty in distinguishing the class of persons covered by the impugned section from other classes of persons who are accused of committing other offences. Legislature presumably realized that experience in courts showed how difficult it is to bring home to the accused persons on the charge of bribery. Evidence which is and can be generally adduced in such

[175] State v. A. Parthiban, AIR 2007 SC 51: 2006 Cr.LJ 4772(SC):IV(2006) CCR 244(SC).
[176] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 680.
[177] Shri Rama Krishna Dalmia v. S.R. Tendolkar, AIR 1958 SC 538.
[178] Ibid.
[179] C.I. Emden v. State of U.P., AIR 1960 SC 548.

cases in support of the charge is apt to be treated as trained and so it is not very easy to establish the charge of bribery beyond a reasonable doubt. Legislature felt that the evil of corruption amongst public servants 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."[180]

In **State of Bihar v. J.A.C. Saldana**[181], though was decided in 1980, an era of judicial activism, the apex court took a hands off position. D.A.Desai J. opined:

"There is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. The Executive, which is charged with added duty to keep vigilance over law and order situation, is obliged to prevent crime and if, an offence is allege to have been committed, it is its bounded duty into the offence and bring the offender to book. Once it investigates, and finds, an offence have been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court to take cognizance of the offence, under Section 190 of the Code of Criminal Procedure, its duty comes to an end.[182]It is clear from this that the judiciary was reluctant to play any role in the matters of investigation, though it had started supervising the prison administration. A critical analysis of this step taken by the judiciary reveals that, unless and until, the investigating officer submits report to take cognizance of the offence, the court will not be bothered to see that the culprits are booked. The police and other investigating agencies being the part of the Executive, can never be expected to 'investigate into the offence and bring the offender to book' when the offender himself is the Prime Minister, Chief Minister, other Ministers or

[180] Ibid; see also P.V.Ramakrishna, "A Treatise on Anti-corruption Laws in India", (2005), 11th Ed., p. 1535.
[181] State of Bihar v. J.A.C. Saldana, AIR (1980) SC 326.
[182] Ibid.

powerful politicians. If, at all, investigation is conducted, it would be against the politicians in the opposition."[183]

"The **Hawala Scandal** surfaced in October 1993 when a Public Interest Petition was filed in the Supreme Court, in which it was disclosed that in the course of investigations of hawala transactions, the Central Bureau of Investigation had raided the premises of the businessmen S.K. Jain and had seized two diaries and two note books containing accounts from April 1988 to March 1991 and showing payments amounting to approximately Rs.65 crores. It was pointed out that though the CBI had been in possession of this explosive information for more than two years, it had been sitting over it and not pursuing the investigation any further.

The action against the politicians mentioned in the diary came dramatically in Jan. 16, 1996 when the CBI told the Supreme Court that it had filed charge-sheets against seven politicians; out of the seven politicians six belonged to the opposition. In view of the fact that the diary mentioned the names of many politicians, largely from the Congress Party, and known to be corrupt, the picking up of these seven, for criminal action clearly indicates a political hand in the selection. None other than the Prime Minister could have dared to direct the CBI to do this. Moreover, the CBI is now directly under the charge of the Prime Minister who has obviously sought to turn a difficult situation to his political advantage by using this case to tarnish the image of main political opponents."[184]

These kinds of incidents give a vivid picture of the investigation of cases against politicians being conducted in our country. The compelling factor which made the judiciary to interfere even with the investigation is very clear from this. The number of political corruption cases involving top political leaders came to be known very frequently after 1995, obviously due to the activist Judiciary. Even though, so far this activism could not achieve anything material, and bring the offenders to book, the very fact that at least investigation is being conducted and the people of the country could know what their representatives are doing, is itself a good result.[185]

[183] P.S. SEEMA, "Eradication of Political Corruption-An Evaluation of the Legislative and Judicial Efforts", The Academy Law Review (1999), p. 191.
[184] Frontline, February 9, 1996, p. 119.
[185] Supra n. 325.

The Judiciary was given an opportunity to be activistic in the investigation of political corruption cases especially the Jain Hawala case by the Vineet Narain, editor of 'Kalchakra' video magazine and Rajinder Puri, Cartoonist. If, they had not launched the Public Interest Litigation in the Supreme Court on October 15, 1993, the Jain Diaries would have been dumped by the CBI as inconsequential scribbling by a businessman.[186]

The history of post independence cases reveals that Ministers and powerful politicians invariably enjoy an immunity from prosecution, even when the acts of corruption are amply documented in the press or are established by commissions of enquiry. What stands out is that in the Jain Hawala case also, the recipients of the illegal payment could have enjoyed this immunity but for three unexpected developments. The first is leakage of sensitive information from the investigative agencies pertaining to the Jain Dairies and interrogations and what was sought to be covered up. The Second is the raising of the issue of cover up and obstruction of justice by a public spirited journalist. The third development is unprecedented activism shown by the apex court in monitoring, criticizing and guiding the CBI in its investigation.[187]

The **Vineet Narain** case which is otherwise called the hawala cases is still in progress. The Apex court makes orders and directions. In Vineet Narain v. Union of India[188], the Supreme Court headed by Hon'ble Justice J.S. Verma, S.P. Bharucha and S.C. Sen really shattered the concept of separation of powers. The court took in this case a view reflecting a sea change from its decision in J.A.C. Saldana regarding power of investigation.

In Vineet Narain's case the allegations were that "Government Agencies like the CBI and the Revenue Authorities have failed to properly investigate matters arising out of the seizure of the so called 'Jain Diaries' in certain terrorists disclosed a nexus between several important politicians, bureaucrats and criminals who are all recipients of money from unlawful sources given for unlawful consideration."[189]

[186] Ibid.
[187] Supra n. 325 at p. 193.
[188] Vineet Narayan v. Union of India, (1996) 2 SCC 199.
[189] Supra n. 325 at p. 193."

The Court ordered:"Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously."[190]

In case of persons against whom a prima facie is made out and a charge sheet is filed in a competent court, However, if, in respect of any such person the final report after full investigation is that no prima facie case is made out to proceed further, so that the case must be closed against him, that report must be promptly submitted to the court for its satisfaction that the authorities concerned have not failed to perform their legal obligations and have reasonably come to such conclusion.[191]

The court also directed that since the matter involves great public interest, the investigation report should be furnished within reasonable time.

What could be more activistic than this order of the Judiciary, which takes away all the powers of investigation from the hands of the Executive? This seems all the more significant when compared with holding of this court in J.A.C. Saldana that the investigation is the exclusive domain of the Executive.[192]

In another proceeding of the same case[193], the same bench directed the authorities concerned to provide each of the officer's adequate security and such other assistance as may be necessary. The Revenue Secretary and the CBI were to identify these officers to the authorities concerned.

In short, the whole proceedings are conducted under the control of the apex court. Actually as far back as in 1970, the Supreme Court had left a door opened for activistic judge to take innovative steps, in S.N. Sharma v. Bipin Kumar Tiwari.[194] In this case the Court observed:

"though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226; if the High Court could be

[190] Ibid.
[191] Id. At p. 194.
[192] Ibid.
[193] Vineet Narain v. Union of India, 1996(1) SCALE (S.C.) 42.
[194] S.n. Sharma v. Bipin Kumar Tiwari, (1970) 3 SCR 946.

convinced that the power of investigation has been exercised by a Police Officer malafide the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers."[195]

The same can form the foundation even for the present activism shown by the higher judiciary. It is remarkable to note that the Supreme Court has been consistently criticizing the CBI for its fighting shy of taking any concrete measure against the politicians involved. The observation made by Justice J.S. Verma who headed the Bench hearing the Public Interest Litigation was that the CBI "had failed to go after the big fish and had caught only the fly."[196]

In **Rajiv Ranjan Singh 'Lalan' VIII v. Union of India**[197](Fodder Scam Case), a three judges Bench of the Supreme Court observed in a Public Interest Litigation writ petition filed by two Members of Parliament, that PIL is meant for the benefit of those whose social backwardness is the reason for no access to the Court but not meant to advance the political gain of some persons and to settle their scores under the guise of PIL to fight a legal battle.

The Supreme Court also observed that in the matter of Economic Scams be it security transactions or Fodder Scams or Taj Corridor, economic interest of the country is at stake and as these cases involve highly complicated questions, the posting of a Judge plays a vital role and the choice of the candidate has to be exercised on some standard.

Two cases viz; **State of Bihar v. Ranchi Zilla Samta Party**[198] and **Union of India v. Sushil Kumar Modi**[199] deserve special attention in this aspect. Writ petitions were filed in the Patna High Court alleging 'fodder scam' in the Animal Husbandry Department in the State of Bihar and the court by an order directed the investigation to be entrusted to the CBI, and by another order, directed that all reports by the officers entrusted with the investigation and supervision of the cases, be submitted directly to the Court without being sent to the Director.

[195] Ibid.
[196] Venkitesh Ramakrishanan, "Corruption of large explosive turn in Jai Hawala Case", Frontline, February, 9, 1996, p. 5.
[197] Rajiv Rajan Singh 'Lalan' VIII v. Union of India, (2006) 6 SCC 613.
[198] Bihar v. Ranchi Zilla Samta Party, (1996) 3 SCC 682.
[199] Union of India v. Sushil Kumar Modi, 1996 6 SCC 500.

Aggrieved by this order of the High Court, civil appeals were filed in Supreme Court by special leave, and in **State of Bihar v. Ranchi Zilla Samta Party**[200], the Court observed:

"We are also of the opinion that, to alleviate the apprehension of the state about the control of the investigation by the CBI, it should be under the overall control and supervision of the Chief Justice of the Patna High Court. The CBI officers entrusted with the investigation shall, apart from the criminal court concerned, informed the Chief Justice of the Patna High Court from time to time of the progress made in the investigation and, may, if, they need any directions in the matter of conducting the investigation, obtain them from him.

The learned Chief Justice may either post the matter for directions before a Bench presided over by him or constitute any other appropriate Bench. After the investigation is over, and reports are finalized, as indicated by the Division Bench of the High Court in the impugned judgement, expeditious follow-up action shall be taken. The High Court and the State Government shall co-operate in assigning adequate number of Special Judges to deal with the cases expeditiously so that no evidence may be lost."[201]

[200] Id.
[201] Id. At 684-685.