

NATIONAL JUDICIAL ACADEMY



ANNUAL NATIONAL CONFERENCE ON ECONOMIC CRIMES (P-989)

03th - 04th September, 2016

Rapporteur: Mr. Srikar Jonnalagadda

3rd. Year, B.A, LL.B,

Pendekanti Law College, Osmania University, Hyderabad, Telangana, India.

Minutes of Training course for Justices of High Courts.

A two day Program No.989 was organized for Justices of High Courts by The National Judicial Academy, Bhopal.

Participants:-

S.No	Name	Designation	High Court
1	Hon'ble Mr. Justice Shashi Kant	Judge	Allahabad
2	Hon'ble Mr. Justice Serves Kumar Gunta	Judge	Uttarakhand
3	Hon'ble Mr. Justice H.G. Ramesh	Judge	Karnataka
4	Hon'ble Mr. Justice C. Praveen Kumar	Judge	A.P
5	Hon'ble Mrs. Justice Anu Sivaraman	Judge	Kerala
6	Hon'ble Mr. Justice Huluvadi G. Ramesh	Judge	Madras
7	Hon'ble Mr. Justice Sandeep Sharma	Judge	Himachal Pradesh
8	Hon'ble Mr. Justice M.M.S. Bedi	Judge	Punjab & Haryana
9	Hon'ble Mr. Justice Pankaj Naqvi	Judge	Allahabad
10	Hon'ble Mr. Justice Ashwani Kumar	Judge	Allahabad
11	Hon'ble Ms. Justice Sabina	Judge	Rajasthan
12	Hon'ble Mr. Justice B.Mohanty	Judge	Orissa
13	Hon'ble Mr. Justice Manojit Bhuyan	Judge	Gauhati
14	Hon'ble Mr. Justice M.S.K. Jaiswal	Judge	A.P
15	Hon'ble Mr. Justice C.V. Sirpurkar	Judge	Madhya Pradesh
16	Hon'ble Mr. Justice Anil Kumar Srivastava- II	Judge	Allahabad
17	Hon'ble Mr. Justice B.N. Karia	Judge	Gujarat

RESOURCE PERSONS OF THE CONFERENCE

A two day annual national conference on Economic Crimes from September 03 & September 4, 2016 was organized by the National Judicial Academy under the leadership of Law Associate-Shruti Jane Eusebius. The objective of the course was to help the Justices of High courts to tackle the various issues that arise with regard to Economic Crimes. The entire conference was divided into 7 sessions. Eminent personalities addressed the gathering on various issues under Economic Crimes. The resource persons were:

S.no	Name	Designation
1.	Hon'ble Ms. Justice Sujata V. Manohar	Former Judge, Supreme Court Of India
2.	Hon'ble Mr. Justice P.Venkatarama Reddi	Former Judge, Supreme Court Of India
3.	Hon'ble Ms. Justice Ruma Pal	Former Judge, Supreme Court Of India
4.	Dr. T.M. Bhasin	Vigilance Commissioner, Central Vigilance Commission
5.	Mr. Rakesh Jain	Deputy Comptroller & Auditor General
6.	Dr. M. Malakondaiah	IPS, Director General ,Anti-Corruption Bureau, A.P
7.	Mr. Dhiraj Mathur	Price Waterhouse Coopers, Pvt. Ltd.
8.	Mr. Devopam Bajpai	Executive Director, Legal & Company Secretary, Hindustan Unilever Limited
9.	Ms. Sagarika Chakraborty	CEO, IIRIS
10.	Ms. Dharmista Raval	Partner, Raval & Raval Advocates
11.	Mr. R. Chandrsekharan, Secretary General	General Insurance Corporation of India

Training Agenda:-

- Enhancing the understanding on the basic knowledge about economic crimes in various sectors and industries and the implications on national growth and development
- Discussion of the judicial role in addressing the problem of Economic Crimes and the challenges in the adjudication of cases of Economic Crimes.

Key Points

- Presentation by Keynote Speakers on the Economic Crime Scenario in various Sectors/

Industries

- Discussion of Judicial Role in tackling Economic Crimes

DAY 1: 09:30 AM – 10:30 AM: SESSION 1

Economic Crimes in the Securities Market

Speaker: Ms. Dharmista Raval, Partner, Raval & Raval Advocates

Chair: Hon'ble Ms. Justice P.Venkatarama Reddi, Former Judge, Supreme Court of India

Hon'ble Ms. Justice Ruma Pal, Former Judge, Supreme Court of India

The programme commenced by the Introductory Address by Justice Goda Raghuram, Director, National Judicial Academy, India. In his address Justice Raghuram briefly dwelt on the role played by NJA in judicial education and the vision and mission of NJA for the enhancement of the justice delivery system. He expressed that this is the 989th program in this Academy since 2004. This Academy is a Hub for Enhancing Justice delivery system and that judges of all levels of the judiciary have been trained in this Academy. In the Year of 1994, by then the President of India Inaugurated the National Judicial Academy in the Presence of Hon'ble Mr. Justice Venkatachalaiah, Chief Justice of India. Justice Raghuram also stated that NJA is also conducting the training Programmes for SAARC Countries. This Academy conducted the program for the judicial officers from Sri Lanka for the Judges of the Supreme Court of Sri Lanka and also for the lower Judiciary of Sri Lanka. Justice Raghuram then set the context of the present programme and introduced the speakers. Thereafter Hon'ble Ms. Justice Ruma Pal, Hon'ble Mr. Justice P. Venkatarama Reddi, Former Judges, Supreme Court of India made a few opening remarks and introduced the theme of the session.

Thereafter the Speaker commenced the discussion of the theme by providing a broad snapshot of the Securities market in India and the significance of the securities market sector in National Growth as well as in International standing. The speaker highlight that the securities market runs on the chief motive of profit and making money. It is for this reason of money making that this sector is susceptible to economic or white collar crimes as every player in the market is looking to make money. Then speaker gave an outline of the legal framework governing the securities market is contained in the Securities Contract (Regulation) Act and the Rules, The Depositories

Act and the Companies Act. Further she talked about the Economic Crimes prevalent in the securities market

Later she discussed on Companies Act, 2013 that under section 24, New Powers of SEBI to exercise powers under sections 11, 11A, 11B and 11D of the SEBI Act in respect of,-Matters delegated to it, as well as regarding enforcement of provisions on forward dealing (S.194) and insider trading (S.195).and further discussed on SEBI ACT, 1992 and its broad features. She highlighted the role of SEBI as a regulator of the securities market, its powers and functions. The speaker dwelt on the fact that the Sebi Act provides wide powers to SEBI and it is a super regulator which has executive, legislative and judicial powers. The speaker expressed concerns over the violation of the doctrine of separation of powers in SEBI and discussed the Supreme Court judgment in Clariant International Case The speaker then highlighted the fact that law making in the securities sector has mostly been initiated as a response to a crisis. Each Crises has led to amendment in SEBI Act empowering SEBI with respect to: Investigations, Enforcement, Penalty and Jurisdiction. The Speaker discussed the following powers of SEBI –Legislative Powers as:

- Autonomy to frame Regulations
- Only SEBI Board approval required-Process
- Executive Powers
- Inspection
- Investigation
- Search and Seizure
- Attachment
- The speaker then discussed the quasi-judicial powers of SEBI –
- Power to issue directions Sec 11 : Disgorgement, Debarment,
- Administrative Order,
- Remedial measures
- Restrain/ Prohibit persons from accessing/dealing in securities market
- Suspend trading in securities on stock exchange
- Cease and Desist Order
- Post decisional hearing
- Adjudication proceedings

- Prosecution.
- Imprisonment

The speaker then threw light on the various money collection schemes and the relevant legal provisions and regulators for such schemes as –

Sl. No.	Activity	Act	Regulator	Redressal Authority
1.	Chit funds	Chit Funds Act, 1982	State Govt.	Registrar of Chits
2.	Schemes by Co-operative Societies – State / Multi State	Multistate Cooperative Societies Act, 2002- and Cooperative Societies Acts (State)	State Govt./ Central Govt.	Registrar of Co-op. Societies of State Govt. / Central Registrar of Co-op. Societies
3.	Money circulation schemes like MLM	Price Chits and Money Circulation Schemes (Banning) Act, 1978	State Govt.	State Police
4.	Deposits as defined in various State Laws - Protection of Interest of Depositors (in financial establishment) Acts	Protection of Interest of Depositors (in financial establishment) Acts	State Govt.	District Collector Deputy Collector
5.	Nidhi Companies	s.620A - Companies Act, 1956 (now s. 406)	MCA	Registrar of Companies (RoC)
6.	Deposits accepted by Companies	section 58A Companies Act, 1956(now sections 73 to 76)	MCA	RoC

She said that various economic crimes prevalent in the securities market by the investigation of SEBI in the matters pertaining to the SEBI they found the following details of Economic Crimes:

- Market Manipulation and price lagging is 63% of the economic crimes

- Issue related manipulations 7%
- Miscellaneous 20%
- Insider training 9%
- Takeovers 1%

She further expressed that the issue is that frauds in the Primary market by stating that there is an Issue in the Process, Prospectus. She had given a key example by detailing a case citation of Sahara India Real Estate Corporation Ltd. Financials. Further she admitted that SEBI has Jurisdiction and stated that the Amount collected from public is 48 thousand Crores and discussed on the public issue that a measure used in tackling economic crimes is blacklisting whereby the offender is not permitted to trade on the stock market for 10 years. The Speaker then stated that this measure is ineffective as people reenter the stock market under different names. And said that there is one software in Gujarat that one name can be converted into 20 names and said that necessary precautions were being taken to overcome these frauds. also said that the collective investment schemes under Sec 11AA of SEBI Act, 1992 has 4 components of CIS as: Pooling, Profit motive, No control over, funds/ assets, Management in the hands of CIS provider and also said that there are certain Exemptions like Chit Funds, Nidhi Companies, NBFC, Corporates, Cooperative Societies, MF, Insurance, Pension, etc. and then detailed some cases such as Saradha, PACL where SEBI is party of that case, Subrata Bhattacharya v/s SEBI to give an understanding of economic crimes that are perpetrated in the securities market. Further she detailed the frauds in the secondary market in the below table –

Traded Based Manipulation	Information Based Manipulation
Synchronized Trading	False Corporate announcements
Circular Trading	Recommending to public and taking reverse positions
Price manipulation	Front Running
Self Trades	Mis-selling
Dabba Trading	Insider trading
Financing	
Booking loses	

She said that trade based manipulation are artificial which are benami transactions and also expressed that Investors gets sucked in artificial markets. The speaker then discussed on SEBI (Prohibition of

Fraudulent and unfair trade practices regulations, 2003, that Reg 2-4 defines and prohibits FUTP and Reg 5-12 provides for investigation & enforcement. And further discussed on the elements of FUTP that people deal securities in a fraudulent manner and they use/employment of manipulative or deceptive device in connection of issue/purchase/sale of any security and said that if Any act/practice/course of business which operates as fraud/deceit upon any person in connection with any dealing of securities they Deemed fraudulent or unfair trade practices and illustrative acts are not exhaustive. She discussed the SEBI (Insider Trading) Regulations, 1992 and dwelt on the main elements of insider trading.

The Speaker detailed a case study of the Supreme Court decision in Rakesh Agarwal vs. SEBI. In this case, the appellant being the Managing Director of ABS and having been involved in the negotiations had access to unpublished price sensitive information. And by dealing in the shares of ABS through his brother-in-law while the information regarding the acquisition of 51% stake by acquirer was not public, the appellant had acted in violation of Regulation 3 and 4 of the Insider Trading Regulations.

The speaker then discussed SEBI's powers to issue the direction and also detailed the remedial and enforcement actions against the offenders/wrong doers under Sec.11 of the SEBI Act. Section 11 speaks about the power to regulate the market by such measures and to issue directions to restrain persons or intermediaries from accessing or dealing in securities; suspend the trading of the security, impound and retain the proceeds or securities , suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position; not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction: she said that direct the person concerned to dispose of any such securities acquired in contravention of the regulations. She also stated that certain Action can be taken pending investigation and inquiry and of Hearing – Pre or post and to deliver Natural Justice – no prejudice caused. And then discussed on the adjudication measures of SEBI and presented a brief snapshot of the adjudicatory actions taken by SEBI as:

- Cases Pending at the beginning of period were 1,381
- Cases added during the period were 249
- Cases disposed of during the year were 425#
- Cases Pending at the end of the period were 1,205*
- She also stated some break-up of pending cases at the end of the period as :
- Cases older than 2 years were 691
- Cases older than 1 but less than 2 years were 298

- Cases less than 1 year were 216
- Total cases were 1,205*

She stated a note that involved 3843 entities as compared to 3,579 entities last year and involves 893 entities as compared to 1,211 entities last year. She said that SEBI has Power to levy fines and impose penalty minimum Rs.1 Lac and for FUTP Minimum of Rs10 lac fines upto 25 Crores or 3 times the gain and further stated that any contravention of any provision, rule or regulation or noncompliance of Summons is a criminal offence such offence is punishable with: Imprisonment of up to ten years; or, Fine of up to Rs. 25 crores; or, Both when failure to comply with Adjudication Officer's orders then such entity will be penalized either with: Imprisonment of at least one month, and up to ten years; or, Fine of up to another Rs. 25 crores; or both, Sessions Court alone may try offences, Designated Special Courts

The Speaker the explained the details of prosecution by the following table:

Year	No. of cases in which prosecution has been launched	No. of persons/entities against whom prosecution has been launched
1	2	3
Up to 2003-04	891	4,332
2004-05	86	432
2005-06	30	101
2006-07	23	152
2007-08	40	185
2008-09	29	114
2009-10	30	109
2010-11	17	67
2011-12	29	60
2012-13	75	150
2013-14	269	652
2014-15	67	157
2015-16	46	268
Total	1,632	6,779

She further discussed on consent and compounding that the Settlement by monetary payment

including disgorgement and Alleged offender neither denies nor admits commission of alleged offence. The Consent terms proposed are examined by a High Powered Advisory Committee comprising external experts and headed by retired Judge of High Court. And Recommended consent terms approved by panel of Whole Time Members of SEBI. There can be an Order by SEBI / SAT/ Court. The speaker furnished details of consent and compounding in the below table

The speaker said that Sebi had taken the initiative by suspending of 2 entities in the year 2015-16, Warning was issued for 496 entities in the year 2015-16, Prohibitive directions issued under sec.11 of SEBI Act, 1992 for 1,726 entities in the year 2015-16, Cancellation of Prohibitions issued was for 8 entities, Administrative warning given for 454 entities, Deficiency observations issues was for 9 entities, Advice letter issues for 32 entities, The total actions was taken on 2,727 entities, and stated that during 2015-16, Proceedings under section 11 of the SEBI Act, 1992 were initiated against 1,726 entities, adjudication proceedings were initiated against 1,257 entities and administrative warnings were given to 454 entities. And then explained the status of appeals which lying in the state administrative tribunals were as:

Status of Appeal	2014-15	2015-16
1	2	3
Appeals pending at the beginning of	66	381
Appeals filed during	520	591
Appeals dismissed	103	261
Appeals remanded	36	108
Appeals allowed	18	33
SEBI orders upheld with modifications	16	5
Appeals withdrawn	32	142
Appeals pending at the end of	381	423

Note: Appeals include statutory and non-statutory appeals.

She then explained the features of the state depositors and protection act that 20 States/ UTs passed

the Acts, another 6 awaiting Presidential Assent and the Constitutional validity upheld by Supreme Court. And there was a failure of Financial Establishment to refund deposits/ interest can lead to: Attachment of property, Attachment of any other properties of promoters/ directors, etc. Arrest of the accused, Distribution of proceeds to depositors, Attachment of properties of mala fide transferees. And said that the District Collectors empowered to receive complaints/ initiate action and Deputy Collector (is the Competent Authority) to exercise control over money/ properties attached and the Designated Court to hear claims, etc.

The speaker lastly briefed the areas of concerns by stating that the Civil Courts jurisdiction is barred yet orders by District Court and the Statutory Alternate Remedy of approaching the Securities Appellate Tribunal available yet stay orders by the High Courts. The Interim orders of SEBI set aside without prohibiting the applicant from raising further money. She asked to constitute Special Courts.

Questions raised:-

Q. Do we have a Separate bench for SEBI ?

The Speaker replied that no Bench is constituted till now for SEBI, the cases will be admitted in the Securities Administrative Tribunals.

SESSION 2

Procurement Fraud

Speaker: Mr. Rakesh Jain, Deputy CAG

Chair: Hon'ble Ms. Justice P.Venkatarama Reddi, Former Judge, Supreme Court of India

Hon'ble Ms. Justice Ruma Pal, Former Judge, Supreme Court of India

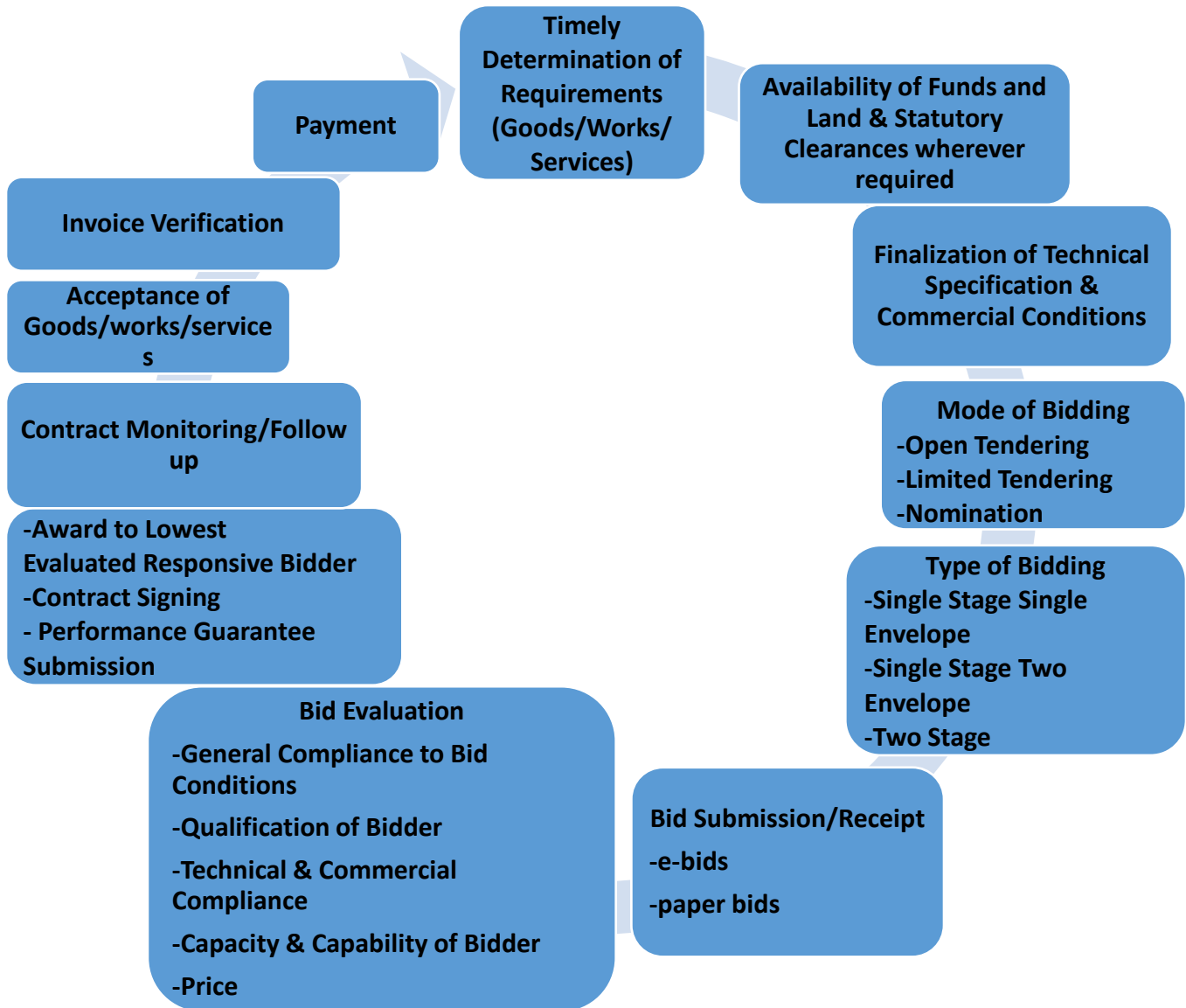
The session was commenced with the opening remarks by the Chair. The Speaker commenced the discussions by giving a brief outline of the presentation. He set the context of the discussion by providing a clear understanding of the concept of procurement in International Law as well as the law in India. The speaker then elucidated on the concept of fraud in the area of procurement. He also discussed with the procurement functions of the United Nations stating that Procurement

functions include all actions necessary for the acquisition, by purchase or lease, of property, including products and real property, and of services, including works.

The speaker then said that “Procurement” or “public procurement” means acquisition by purchase, lease, license or otherwise of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a procuring entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term “procure” or “procured” shall be construed accordingly. He then discussed the Public Procurement Bill 2012 and the scope of procurement as defined in that Bill.

He said that, fraud consists of some deceitful practice or willful device, resort to with intent to deprive another of his right or some manner to do him an injury. And admitted a fact that fraud in an act or omission that intentionally misleads or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation. And said that government is accountable for every such act done in favor of the public and said that this accountability is to be maintained when it comes to transparency in administration, and explained fraud is a type of illegal act involving the obtaining of something of value through willful misrepresentation. Whether an act is, in fact, fraud is a determination to be made through the judicial or other adjudicative system. He further discussed the procurement of fraud that of forging documents, preparing false entries in enterprise systems or making false statements to obtain a financial or other benefit to which a person is not entitled. And Approving/Inflating contracts prices & invoices that are above contractual /market prices. The Biased supply market research, development of specification favoring a particular product or supplier, favors at the time of bid preparation, receiving of bids, evaluation phase and contract management plan. He said that IT systems are being misused by or under theft or by the unauthorized access.

He explained the Procurement Cycle with the aid of the following chart -



He discussed with the executive instructions and discussed the following Rules and Guidelines that govern Public Procurement as: General Financial Rules (GFR), 2005, state GFRs., Delegation of Financial Powers Rules (DFPR), 1978, Guidelines issued by the Central Vigilance Commission (CVC), Directorate General of Supplies and Disposal (DGS&D), and on procurement issued by individual Ministries / Departments, PSUs etc., Manuals on the procurement of goods, services and works issued by the Department of Expenditure, Ministry of Finance., Legislation on procurement enacted by individual states - Tamil Nadu and

Karnataka, and explained the over view of fundamental principles as: Open tendering, Effective Advertisement, Non-discriminatory tender conditions & Technical specifications, Public tender opening, Award to most advantageous bidder.

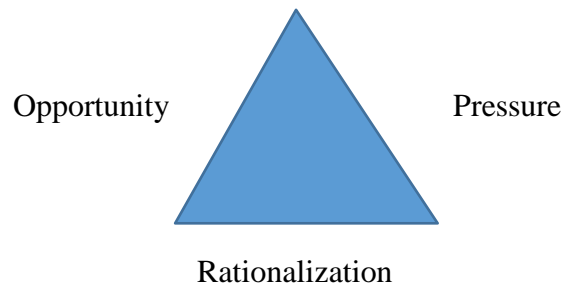
He said that the Government organizations are not allowed to work in secrecy in dealing with contracts, barring rare exceptions. The reasons for administrative decisions must be recorded and based on facts or opinions of knowledgeable persons based on facts and to tender the Process of Public Auction is the basic requirement for the award of any contract. He expressed that these weaknesses are prevailing in the existing system of procurement that there is an absence of a dedicated Policy making Department, Legal framework, and Standard Documents, and there is a scope for Nomination basis, there are very Limited number of Suppliers / List of Registered Vendors, two Envelope System, Delay in Tender Processing and Award Decision, and Works contract and Negotiation.

He said that for all development projects, the executing agencies shall carry out procurement planning (statutory clearances, land acquisition & availability), logistics, contract packaging, scheduling and firming up of funds before sanction. And said that the schedule of rates should be reviewed and revised and contractors shall have a record of past performance data.

The speaker further stated that there is a legislation to regulate public procurement by all Ministries and Departments of the Central Government, Central Public Sector Enterprises, Autonomous and Statutory bodies controlled by the Central Government and other procuring entities and ensuring transparency, fair and equitable treatment of bidders, promoting competition and enhancing efficiency and economy in the procurement process by maintaining Integrity and public confidence in public procurement process and said that there are five necessary Chapters of procurement which are the basics of procurement that Preliminary, Principles & Methods of Procurement, Institutional Mechanism, Offences penalty& debarment, Miscellaneous. And opined that there were certain exemptions from the law in certain circumstances that Key transparency and accountability norms incorporated from international best practices and expeditious and streamlines grievance redressal procedure.

The speaker then discussed with Fraud Triangle as explained by Dr. Donald R .Cressey. The

Fraud triangle has three points to be discussed, the first one speaks about the motive or pressure it explains the need for committing fraud and the second one speaks about rationalisation it explains the mind-set of the fraudster that justifies them to commit the fraud or to do fraudulent actions, the last one speaks about opportunity it explains the situation that enables fraud to occur.



He stated that there are some of the best practices in the power Grid Corporation of India, when he was working in that sector as: Implementation of Integrity Pact, Independent External Monitor, Single stage two Envelope Bidding procedure, Performance based evaluation of the vendors, e-procurement from January 2012, e-reverse Auction, Conductor Inventory, Independent Quality Assurance and Inspection Wing.

He further stated that as per approved scale, Rs.10.5 crore were required for feed/fodder for three years. As against this, Rs.279.34 crore were drawn from six treasuries during 1993-1996 for purchase of feed and fodder. And said that Yellow maize and groundnut cake constituted 10 per cent and 15 per cent of the composite feed whereas it accounted for 90 per cent of the total purchase. Seven major suppliers accounted for over 80 per cent of the purchases. The expenditure on these items during three years were Rs.164.22 crore and Rs.86.54 crore respectively which amounted to excess purchase by 147 times and 55 times of the requirement. The Regional Purchase Committee met six months after the issue of tender in October 1992 while the suppliers were given only seven days to respond to the notice inviting tender. Rates decided in 1993 continued till 1996 as the Committee did not meet after 1993. though quality and usefulness of feed and fodder was to be tested by chemical analysis, very few samples were sent to the designated institute in Ranchi for this purpose. Payment for the supplies was made without the test reports in violation of departmental guidelines. He said that the Vehicles types which were mentioned in the transport bills for Rs.1.24 crore for transportation of feed and fodder to remote

blocks included mopeds, scooters, motorcycle, trekkers, police van, and bus, oil tankers and auto rickshaw.

He admitted some facts and some cases which are pertaining to the medical industry stating the irregularities in the medicines such as serious irregularities were noticed in processing of rates and selection of vendors for medicines by the Central Purchase Committee (CPC). The CPC met six months after the receipt of tenders while only ten days' time was given to bidders for response. Rates approved in 1991 continued till 1995. Excessively high rates quoted by local firms were approved by the CPC though reputed firms quoted lower rates. The firm, 'Inter Pharma' was approved though there was a vigilance case against them for serious irregularities on supply of equipment during 1985-88. And stated that Rs.151.50 crore were paid for purchase of medicines in the six districts in 3 years. The districts hospitals and dispensaries confirmed that negligible amount of medicine was actually supplied to them and that no indents of medicines were asked from them. Tonics and food supplements which were normally not supposed to be distributed by hospitals and dispensaries accounted for 17 per cent of the total purchases by stating that during 1993-94 to 1995-96, huge quantity of equipment/materials for artificial insemination were purchased for Rs.24.28 crore in six districts while number of artificial insemination came down drastically during these years most of the artificial insemination units became defunct due to paucity of funds and while only 19 lakh insemination were done in three years whereas lubricant and sheaths for artificial insemination purchased by the department could cater to inseminate 84.80 lakh cattle's and 22.80 lakh cattle's respectively.

He further stated that the allotment figures in DDO had no relation to budget provisions for Animal Husbandry Department. Many fictitious allotment figures of heavy amounts were quoted by the DDOs in the bills. Every month new allotment figures were routinely quoted in South Bihar districts. The Treasury Officers overlooked the absurdness of such figures of heavy allotments and helped in perpetration of fraudulent drawl of bills on the basis of fake allotments. And some vouchers for contingency payments had serious deficiencies. Bills (formats were different) were passed by Treasury Officers for payment without the signature of the DDO, supported by large number of sub-vouchers (not defaced/cancelled). And then expressed his experience in the finance section/ Department that the Excess expenditure of Animal Husbandry Department increased from 21 per cent of its total budget provisions in 1987-88 to 229 per cent in 1994-95.and

Over 80 per cent of the total drawl of Animal Husbandry Department during 1993-94 to 1995-96 was made from the treasuries in Ranchi, Chaibasa, Dumka, Jamshedpur, Gumla and Patna districts. Rs.473.52 crore was drawn towards purchase of feed/fodder (Rs.279.34 crore), medicine (Rs.151.50 crore), artificial insemination equipment's/materials (Rs.24.28 crore) and others (Rs.18.40 crore). And this department was aware about the excess drawls in the Animal Husbandry Department at various stages, but took no action to investigate the excess drawls. And said that during 1993-94, the Finance Department banned payment for three schemes of Animal Husbandry Department. Finance Department issued clarifications to the Doranda and Ranchi Treasury Officers to make payment of bills of all items relating to the animals of Animal Husbandry Department up to 16 per cent of Annual Budget Provision even while the ban imposed by them continued.

The speaker then stated that on 18.2.94, the Chief Secretaries observed heavy withdrawals from the treasuries and instructed the Finance Commissioner to enquire on test basis within two days, two or three major treasuries to ascertain the cause of heavy drawl. He said it was held that there was no evidence to show that such an inquiry of drawls from Treasuries was made and the Reserve Bank of India, Nagpur sends monthly statement to Finance Department showing the disbursements through each treasury which were not analysed in Finance Department to ascertain the reasons of heavy cash outgo from certain treasuries. And said that Preference was given to cooperative societies although the accountability structure was not robust. And the funds were released to constructions agencies without obtaining detailed estimates and utilization certificates. And the Quality control of NRHM works were not ensured. While the Weak procurement system of Medical Supplies within SHS Prevails. And the Purchases were not made on competitive basis, higher rates on quotation basis, cross verification of invoices through tax authorities' shows that they were fictitious and even registers were not maintained for the purchases.

He lastly stated that all the ACSR Lapwing conductors supplied were to be replaced including which were already strung. In order to continue the supply of existing orders under following conditions such as: Correct deficiency in plants ,Strengthen in-process checks, routine tests etc., Surprise verification of product quality by Power Grid staff, Testing of samples to be increased.

He called for a ban of award of any conductor package for 3 years.

SESSION 3

Economic Crimes in the Entertainment Industry

Speaker: Ms. Sagarika Chakraborty

Chair: Hon'ble Ms. Justice P.Venkatarama Reddi, Former Judge, Supreme Court of India

Hon'ble Ms. Justice Ruma Pal, Former Judge, Supreme Court of India

She commenced this session with the Complexities of problem and explained the complexities are with Corruption, Money laundering Act and she had explained a case of Dawood and Abu Saleem. She stated the entertainment industry as one of the most growing economy in India. And said that Indian television media has 600 plus channels, which has 1000 million Pay-Television house-holds and have more than 1000 films produced annually and 4th largest economy in terms of PPT*. And also said that India is in one of the top three countries globally to have the youngest task force under the age of 30. And the entertainment industry is growing the consumer interest and she had given a note on growing consumer interest that in 2014 entertainment industry's collections amounts to INR 1026 billion and the CAGR is 11.9%, whereas in the year 2019 estimates it might amount to INR 1964 billion and the CAGR 13.9%. And the speaker said that while the development takes place the consumption patterns will be changed and even the middle income-households were increased by stepping in to the entertainment sector. She said that entertainment industry's content is very easily available.

The speaker further stated the entertainment industry as the viable growth industry and said that in 2014, the overall Media and Entertainment industry grew by 0.7% over the previous year and the Indian television industry in 2014, represented a year- on-year growth of around 13.8% and the Digital advertisement proved to be the fastest growing segment with annual growth rate of 44.5% and lastly in the focus of FDI in the I&B sector (including print media) stood at USD 4058.58 million during the period April 2000 - June 2015. And said that the entertainment industry has been changing its faces by admitting facts that the entertainment industry as easy and timely availability of information is the biggest game changer and also said that it is

combined with consumer demand.

The speaker further stated the entertainment industry into 6 various sectors the first point is the publishing industry explains of struggling to remain afloat against the dominance of digital media and the second sector is radio sector explains that losing out the game between source and end user reach owing to other available channels. The third sector is television explaining its uncertainty over issues pertaining to digitization still remains and the fourth sector is digital sector it says that despite easy availability of funds, by lowering of box office. The last topic is sports sector it says that the catering to popularity becoming than the games. And stated the entertainment industry as the underlying risks. As the Society at large There will be an impact on young minds on coverage and the overboard of sensitization leading to negative impact. And by the Legislative and Judiciary they need to review and need that Creation of unrest over interpretation of law owing to changing times. And by the economy Black Money, Illegitimate funding, Loss to exchequer.

She said that the entertainment industry is the easy source of fund and said that in some cases it leads to the risks mapping to terrorists. The illegal channels will be promoted through the funding from different Hawala transactions. This industry has the effective way of money laundering but not only to layer, place but also to integrate. These illegal funds will raise to the illegitimate terror activities. the opportunity mapping is an overview and also as preparations of crime as Terrorist organizations See it as an excellent source of funding Criminal organizations as a it is a lucrative business proposition due to high profits involved Business organizations as a Lack of stringent regulatory norms and high margins involved makes it a profitable proposition Individuals as an Easy access to technology, lack of stringent penalties and high margins act as drivers. She then discussed with a case study as regular screening and pirate intercepted with special software for hidden files on device as night vision glass is used in military forces and special screening for pirates, used by the employees of the theatre. on the judicial aspects and much to be desired, by admitting some facts for which courts are missing in its prosecutions as viewpoints which courts are missing, that Few precedents of entertainment industry being scrutinized for terror links and Few cases are ordered for investigation to unearth the bigger ring beyond piracy/ surface crime and the problem to enforce that adequate laws exist but where are the results ineffective penalties or implementation.

She expressed that there is a regulatory gap as there is no effective regulator in the media industry and furthermore, the lack of coordination between Government and Judiciary complicates the problem. And as a trend there is some improvement in the economic crimes front in the media industry in the sense that the Number of fence sitters were decreasing and People more bothered about “experience” (lack of quality) and Piracy cannot deter the fate of a movie, in case the social uprising is played well (Uda Punjab) Number of fence sitters decreasing subsequently People more bothered about “experience” (lack of quality) but Piracy cannot deter the fate of a movie, in case the social uprising is played well (Uda Punjab) even Piracy still contributes to revenue losses – however additional revenue is being assured through other initiatives and in the music industry as the Number of fence sitters increasing and therefore People are not bothered about “experience” – doesn’t make much of a difference (seldom lack of quality) and the Revenue losses cannot be made up for in the same scale. And said that media industry stakeholders’ were the main complicity in the commission of economic crimes.

She discussed with a case in Mumbai that the single man have had multiple actions such as she discovered to be the right hand of Dawood Ibrahim’s brother in India and Source of Funds for films traced back to loans taken for subsidiaries in real estate & diamond industry which claimed to have gone bad. He attempted murder of 2 movie directors over issues pertaining to movie financing was the key person promoting the Ibrahim family’s DVD piracy business in Dubai by supplying from India. And stated that economic crimes has an impact of the society at large as it impacts young minds. It also impacts the economy as it is a most popular means for money laundering and for illegitimate funding which causes a loss to the exchequer. She stated that the Government initiatives need proper implementation & interpretation and need for a specific law and specific provision needs to be thought of considering the quanta of money & jobs involved the timely review needed – in the ever increasing pace of IT changes, delay in review defeats the purpose behind the legislations. With regard to the judicial role in dealing with economic crime in the media industry the speaker stated that few precedents of entertainment industry being scrutinized for terror links, few cases ordered for investigation to unearth the bigger ring – beyond piracy / surface crime.

She lastly, opined that furthermore adequate laws exist but there are no visible results. The question arises is whether this is due to the ineffectiveness of penalties under law or lack of implementation of the law.

SESSION 4

Economic Crimes in the Insurance Sector

Speaker: Mr. R. Chandrasekaran, Secretary General- General Insurance Corporation.

Chair: Hon'ble Ms. Justice P.Venkatarama Reddi, Former Judge, Supreme Court of India
Hon'ble Ms. Justice Ruma Pal, Former Judge, Supreme Court of India

The speaker started the session by discussing some of the initiatives taken by the GIC for making the insurance sector more accountable and transparent in nature. He discussed some of the databases created to investigate into the matter of the insurance crimes. And stated that general insurance corporation has a complete capital of 48 thousand crores. And the combined ratio of the same is the expenses of Salary Claims, and more than 100% of the income is going to claim through salaries and expenses which stands in 1.40 thousand crores.

The speaker then said that general insurance company had formed a team comprising the officers of 3 lakh associates, 10,700 officers and 2 crores of rupees had been handed over by the investigation team. And said that the GIC has 243-686 share value the business from Maharashtra to Bombay producing 45 % of the business and 17 states had been put together to the insurance sector. He had given an example that If a person goes on a trip if that insurance has no insurance policy that employee and the insurer is not entitled to claim the insurance which the same insurer has no right to claim the insurance from the same these people are contractually related to the insurance company, Health insurance has many Frauds.

The speaker further said that the mere fraud and deprecations in the motor damages is that if the damaged vehicle goes to the showroom for painting and denting by the warranty services the insurance company will depreciate the value of the insurance, earlier the value of the car wasn't get depreciated, these are the minute changes in the insurances policies .and said that the general insurance corporation is stepping to investigation to the matters pertaining to the frauds in the insurance, people who applied for second claim for the same account, and for the ORC travelers and presently had the access to visa status and also have an access to all the insurance companies presently it has an access to 250 visa office and 26 insurance companies. And said that earlier General insurance companies had security protocol, they had given the user identities and also

passwords to search and inquire into the insurance policy and also the passport information.

He said that earlier no case was admitted pertaining to fraud on travel policy and now, General insurance company proposed to introduce access with AADHAAR and Driving License. This would make transparency in administration and accountability to various data bases. Secondly they are in a plan that whether they can claim directly to the claimant. And thirdly, to Constitute a Special investigation team. And further discussed that 15 days ago General insurance company created data base portal to enter the suspected cases data within the counsel of the general insurance company and insurance and company members and this referred data bases required to do analytic data as and when numbered and he said that they will be having a GO code to investigate the matter that the GO code will be given longitude and latitude information from hospital for the material insurance and further Initiative has been taken to suspect and investigate the cases he said that if given more time to invest into investigating fraudulent documentation. He also discussed on the Un-Insured claims in the insurance sector that: 40% partly full Found 8 crore Insured 20% were insured on road seem may uninsured came on roads 38% busses were not insured 46% lorries were not insured 36% Private car and jeep uninsured vehicles.

He said that 1000 Crore Assurance was given to the insurance companies and the persons who are being Uninsured under section 6(v)(m) are not cleared. And said that the government if India had given a clearance that the General Insurance corporation can have the access to link all the Driving license, Registration copy of the vehicle , visa , passport , voter id to the database, the general insurance corporation is trying to link the insuree details along with the driving license, voter id, pan card, health care, passport, bank statements, visa etc. in order to get the speedy information to investigate in to the matter, the protocol of the investigation site had been created

The speaker stated that the Mobile App had been launched for the first time in Hyderabad with QR Code. To access the information much speedier and to make the entry of the information much each to the insuree.

The speaker lastly, stated that the committee of the general insurance corporation had updated the procedure for the claim and for the case being admitted in the court and said that the copy of the

FIR is made mandatory and with the FIR copy the copy of insurance is required, and also made that every vehicle should carry the hardcopy of the insurance in the vehicle, and said that Every candidate has got policy but not every candidate had attain the policy in the car the insurance companies had been informed the policy holders to keep a hard copy in the vehicle. And lastly said that the insurance companies has got 7000 claims as of now.

Questions raised

Q. Whether insurance company can be arbitrated?

A. Yes, it can be arbitrated said Secretary General

DAY 2

SESSION 5

Bribery and Corruption

Speakers: Dr. T.M. Bhasin, Vigilance Commissioner, Central Vigilance Commission,

Dr. M. Malakondaiah, IPS, Director General, Anti-Corruption Bureau, A.P

Chair: Hon'ble Ms. Justice Sujata V. Manohar, Former Judge, Supreme Court of India

Hon'ble Ms. Justice P.Venkatarama Reddi, Former Judge, Supreme Court Of India

Hon'ble Ms. Justice Ruma Pal, Former Judge, Supreme Court Of India

The session was commenced with the opening remarks by Hon'ble Justice Sujata V. Manohar. Thereafter Dr. TM Bhasin commenced the discussion with a presentation on the theme. Mr. Bhasin first discussed the concept and meaning of corruption as World Bank definitions as use of public office for private gains, UNDP definition as misuse of entrusted power for private gain, mathematical construct : Corruption = Discretion + Mystification – Accountability, corruption rises with increase in discretion / mystification or decrease in accountability and vice a versa. And said that the discretion means power to take decisions, which may differ under the same circumstances by different interpretations and mystification connotes, lack of transparency

Dr. Bhasin discussed the underlying causes of corruption and opined that corrupt actions differ

across societies. Some actions are considered corrupt in one place are often taken as right in another- socio-cultural situation. Dr. Bhasin then discussed the international perception about corruption in India. Dr. Bhasin then dwelt on the various types of corruption. Corruption can be classified as grand, petty and political, depending on the amount of money lost and the sector where it occurs. Grand corruption consists of acts committed at high level of government that distort policies or the functions of the State enabling leaders to benefit at the expense of public good. Petty corruption is everyday abuse of entrusted powers by low /middle level public servants in their interaction with ordinary citizens who often are trying to access basic services in places like hospitals, schools, driving licence, passport issue, police, local bodies and other such agencies. Political corruption- manipulations of policies, institutions and rules of procedures in allocation of resources and financing by political decision makers - abuse of position powers, status etc.

The speaker opined that corruption has become a part of public debate within countries and in international discourse. The speaker dwelt on the moral and economic dimensions of corruption and bribery. In the context of humans corruption is dishonest or fraudulent actions or conduct. But in the context of public officials it is misuse of office and involves acts of omission and commission.

In cases of Corruption, official actions of all public servants are covered. The crucial factor in these cases is the personal gain to the public servant. Malfeasance or bad intention is required to be established to term the action as a corrupt action. Personal gain can be in many forms like common economic gain like money, property etc, or career advancement or some other gain.

Dr Bhasin then discussed the institutional machinery in India to tackle corruption –

- Central Vigilance Commission – Apex anti-corruption statutory body
- Central Bureau of Investigation – Premier investigating agency of GoI
- Department of Personnel and Training – Nodal department for anti-corruption policies
- Lokayuktas / Vigilance Commission in States (22 States and 1 UT –Delhi have Lokayuktas)
- Anti–Corruption Bureaus in States – Investigating agencies
- Chief Vigilance Officers – Extended arm of CVC in Ministries/Departments/CPSUs/Public Sector
- Banks/Other organisations of GoI

The Speaker then discussed the law that deals with corruption –

- Prevention of Corruption Act, 1988 – Comprehensive special law relating to prevention of corruption and connected matters.
- Delhi Special Police Establishment Act, 1946 –constitution of Special Police Force i.e., CBI
- Central Vigilance Commission Act, 2003
- The Whistle Blowers Protection Act, 2011
- The Lokpal and Lokayuktas Act, 2013
- The Right to Information Act, 2005

Dr. Bhasin also discussed the United Nations Convention Against Corruption(UNCAC). India signed UNCAC in December, 2005 and ratified in May,2011. The UNCAC is a universal legal instrument to deal with corruption globally. It has 71 Articles. The UNCAC calls on signatories to criminalise various offences including bribery of foreign government officials. India is broadly compliant with the various provisions of UNCAC except Articles 12 & 16. Article-12 deals with Bribery in Private Sector and Article 16 seeks to penalise offer and acceptance of an undue advantage by Foreign Public Officials (FPOs) and officials of Public International Organisations (OPIOs). In pursuance of the UNCAC, India has introduced legislations for compliance to these mandatory articles. And further discussed the statutes that are pending approval as:

- Prevention of Corruption Act (Amendment) Bill, 2013 – comprehensive amendments to cover supply side of corruption- Private Sector. Also re-defining offences of corruption with stiffer penalties
- Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations, 2015 - criminalising bribery of foreign officials (presently not covered)
- Public Procurement Bill, 2012 (lapsed, being revived presently) - to regulate and ensure transparency & accountability in procurement by the GoI and its entities

He stated that in June 1962 – debate in Parliament on issue of corruption – first major corruption scandal after independence – Mundhra Case. And LIC invested in shares of several firms

amounting to Rs. 1.26 crores in June, 1957 on direction of Government. Justice M C Chagla—Commission of Enquiry—public enquiry—Jan.1958. And thereafter Justice Vivian Bose—presided Board of Enquiry - May, 1958. The Committee under Shri K. Santhanam, MP constituted – popularly known as Santhanam Committee. Therefore the recommendations made in 1963 – major causes of corruption identified as – Administrative delays; Governments taking upon themselves more than what they could manage by way of regulatory functions (license, quota, permit raj); Scope for personal discretions in the exercise of powers vested in different categories of Government servants; and Cumbersome procedures in dealing with various matters which were of importance to citizens in their day-to- day affairs.

He said that CBI established on 1st April, 1963 – Delhi Special Police Establishment (DSPE), agency for investigation of corruption in War and Supply Department of GoI and Railways merged with CBI. Santhanam Committee observed that lack of a dynamic integration between the vigilance units in the various Ministries and conceptualized an apex body for exercising superintendence and control over the vigilance administration. By then Shri Lal Bahadur Shastri, the then Home Minister, while laying the scheme of the Central Vigilance Commission on the table of Parliament observed that the Commission was to be a fearless champion to the man of integrity and source of terror to the corrupt officers. In order to achieve this target, punitive, detective as well as preventive measures will have to be adopted. The Central Vigilance Commission (CVC) was accordingly set up by the Government of India in pursuance of the recommendations of the Committee through a Government Resolution on 11.02.1964, as an apex independent body for prevention of corruption which would not be subordinate to any Ministry/Department with the same measure of independence and autonomy as the Union Public Service Commission (UPSC).

The speaker Said that the CVC is one man Commission called Central Vigilance Commissioner. The speaker then discussed Hon'ble Supreme Court of India in **Vineet Narain and others Vs Union of India and others** (popularly known as Jain Hawala Case) - gave the following directions on 18.12.1997 :-The Central Vigilance Commission shall be given statutory status. The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for over viewing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. Court said that the CBI shall report

to the CVC about cases taken up by it for investigation; progress of the investigation; cases in which charge sheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities especially those in which sanction has been delayed or refused. These directions were implemented through the enactment of the Central Vigilance Commission Act, 2003. Supreme Court, in April, 2011 in case of Centre for PIL Vs. Union of India, observed : “...the Central Vigilance Commission has since its inception been considered as an integrity institution and conferred with due autonomy and insulation from external influences.”

The speaker discussed the structure of CVC and opined that at present under the CVC Act, 2003, the Central Vigilance Commission is a three member body consisting of the Central Vigilance Commissioner (Chairperson) and two Vigilance Commissioners as its Members – a multi-member body. The appointments of the Central Vigilance Commissioner and the Vigilance Commissioners are made by the President of India by warrant under her/his hand and seal on the recommendations of a Committee consisting of:-

- (i) the Prime Minister- Chairperson
- (ii) the Minister of Home Affairs - Member
- (iii) the Leader of the Opposition in the - Member House of the People

He described the jurisdiction of the CVC that To inquire or cause inquiries to be conducted into offences alleged to have been committed under PC Act, 1988 by certain categories of public servants of the Central Govt., Corporations, established or under any Central Act, Govt. Companies, Societies and local authorities owned or controlled by the Central Govt. and he said that under Section 8(2) of CVC Act, 2003 CVC can investigate into any matter pertaining to corruption. The below listed cadres can investigate into the matter of corruption:

- Members of All-India Services serving in connection with the affairs of the Union and Group ‘A’ officers of Central Govt.
- CPSUs – Schedule ‘A’ and ‘B’ – Chief Executive and Executives on the Board and other officers of E-8 and above.
- CPSUs – Schedule ‘C’ and ‘D’ - Chief Executive and Executives on the Board and other officers of E-7 and above

- Public Sector Banks - Scale V and above
- Reserve Bank of India – NABARD and SIDBI – officers in grade ‘D’ and above
- General Insurance Companies - Managers and above
- Life Insurance Corporation – Senior Divisional Manager and above
- Societies and other local authorities - officers drawing salary of Rs.8700/- per month and above on Central DA pattern and as may be revised for time to time.
- (approx. around 1.75 lakhs public servants of GoI) Directorate of Inquiry – Lokpal references shall also include members of Group ‘B’, ‘C’ & ‘D’ –public servants of Central Government.

Thereafter he stated the powers and functions of CVC under section 8 of CVC Act, 2003:

- Superintendence over functions of DSPE(CBI) in so far as it relates to investigation of offences under PC Act.
- Directions to the DSPE (CBI) for the purpose of discharging responsibility entrusted under sub-section (1) of Section (4) of DSPE Act.
- To inquire or cause an inquiry or investigation into complaints of corruption in respect of officials belonging to categories specified in sub-section (2) of Section (8) of CVC Act.
- Review the progress of investigations conducted by DSPE under PC Act.
- Review progress of applications pending for sanction for prosecution with Competent Authorities under PC Act.
- Tender advice to the Central Govt., corporations, companies, societies and local authorities on such matters as may be referred to the Commission.

He said that the CVC conducts such inquiry directly into select matters the report of any inquiry undertaken by any agency on a reference made by the Commission shall be forwarded. (Section 17 of CVC Act, 2003). Then the Commission shall on receipt of such report and after taking into consideration any other factors relevant, advice the Central Govt./Organizations as to the further course of action. It has Power to call for reports, returns and statements - to exercise general supervision over vigilance and anti-corruption work in the Govt. and its organizations (Section 18 of the CVC Act, 2003). The Central Govt. shall, in making any rules or regulations governing the vigilance or disciplinary matters relating to persons appointed to public services and posts in

connection with the affairs of the Union or to members of the All India Services, consult the Commission. (Section 19 of the CVC Act, 2003). CVC – Chairperson and VC’s – Members of the Committees for making recommendation of appointment of Director of Enforcement Directorate. The Committee also recommends officers for appointment to the post of SP and above (in CBI), Dy. Director and above (in ED) and extension or curtailment of tenure of such officers in CBI and Directorate of Enforcement. (Section 25 & 26 of CVC Act, 2003)

Further the speaker discussed the complaints handling and being handled by the CVC by stating that when a Complaint handling policy laid down then the anonymous / pseudonymous complaints filed. And Only specific complaints involving corruption matters taken cognizance. And said that it Receives complaints - more than 29,838 in 2015 – through post, e-mail, website and on toll free telephone. And Complaints of vigilance nature/allegations of corruption sent for investigation and report to the CVO/CBI after verification/confirmation from complainant. Only 5 % sent for Inquiry / Investigation & Report to CVO / CBI annually – adopts a selective approach. And the Complaints involving administrative & general matters – sent to CVOs for necessary action at their end. Sent through CVC portal to CVOs of Ministries / Departments / Organizations electronically since Jan, 2012

The speaker further stated that CVC advises the administrative /disciplinary authorities in Vigilance / Corruption cases / matters involving the specified categories of public servants.

Consultation process as: Advises in two stages -

- Initiation of disciplinary proceedings or otherwise -- 1st stage advice
- On Report of Inquiry Officer -- 2nd Stage advice.
- Disciplinary Matters: Advise of the Commission is sought on the nature of penal/disciplinary proceedings (first stage advice). In case of major penalty proceedings advised at first stage, after completion of inquiry, advice is obtained on the nature of penalty to be imposed/ dropping of charges (second stage advice). To Sanction for Prosecution Matters: Tenders advice in cases of prosecution for Presidential appointees (matters in which sanction is to be accorded in the name of the President). It Resolves cases of difference of opinion between CBI and Departments in sanction for prosecution requests / cases in respect of non-Presidential appointees (matters in which an authority

other than the President is to accord sanction)

He further said that there is a CDI Unit of CVC and the Commission nominates its Commissioners for Departmental Inquiries as IO to conduct inquiry proceedings in limited cases of senior officers. CDIs are appointed by the Disciplinary Authorities (DA) of the organizations to conduct inquiry on behalf of DA and then CDIs submit inquiry reports to the Disciplinary Authorities concerned after conducting oral inquiry.

He further detailed on the approach to tackle corruption as Punitive Action explains Process of the Criminal and Regular Disciplinary action the stronger laws and their implementation. Making corruption a high risk and low reward activity by punishing the guilty swiftly. And secondly Preventive Action explains identifying vulnerabilities and effecting changes in procedures/systems/processes to reduce opportunity for corruption in organizations. Creation of awareness and bridging knowledge gaps of personnel.

The speaker emphasized that recent initiatives taken by the CVC such as: CVC specified authority under PMLA to receive information of suspicious transactions of public servants. Institute of Chartered Accountants of India (ICAI) requested to place details of CAs on website and share with Banks – Preventive measure for fraudulent certificates / documents submitted by loan seekers. The System and procedures for processing vigilance clearance for senior appointments in Government/Financial Institutions/CPSUs streamlined and digital signatures introduced for expeditious processing. And said that CVC as a whistle Blower Mechanism and the discussed with a SC judgment in Satyendra Dubey's case. Public Interest Disclosure and Protection of Informers Resolution (PIDPIR), 2004. And CVC is a Designated Agency to receive and act on whistle blowers' disclosures. The CVOs of Ministries/Departments also made Designated Authorities in August, 2013. And the Whistle Blowers Protection Act, 2011 enacted in May, 2014 - not yet come into force. When Bribery is usually conducted in secrecy the Whistle Blowers can play a central role in uncovering corruption. However, must be protected from retaliation for matters reported in good faith on incident of bribery.

He further detailed the Corruption Cases explains in the following table:

- CBI registered 717 cases under PC Act in 2015.
- CBI completed investigations in 768 cases in 2015.
- Bank fraud cases in 2015 – 171 cases involving Rs.20,646 crores.
- As on 31.12.2015, 599 cases were under investigation.
- Special Courts disposed of from trial 739 cases in 2015.
- Conviction rate of CBI – 65.1%.

He discussed the PC Act Cases pending under trial in the following table.

Length of Pendency	As on 30.06.2016
Less than and upto 3 years	1888
More than 3 years and upto 5 years	1012
More than 5 years and upto 10 years	2048
More than 10 years and upto 20 years	1335
More than 20 years	0239
Total	6522

The speaker said that the Investigation of corruption cases and frauds becoming increasingly complex and technology driven in financial crimes / frauds, cybercrimes and tracing laundering of proceeds of crime. And it requires high degree of skill set and expertise of investigators. Combating such financial and transnational crimes requires domain expertise, knowledge of advanced financial instruments, investigation / asset recovery procedures in multiple jurisdictions, competence in digital forensics, forensic accounting and data analytics, etc. The Investigating agencies, like CBI have inadequate manpower and alarming number of vacant posts which are executive ranks which are 1149 posts, Law Officers of which 173 posts and Technical Officers of 94 posts remained vacant as on 31.12.2015. And the PC Act, 1988 provides for day to day trial. Pendency of PC Act cases in 132 Courts across the country is high, over 6,500 cases.

And Situation improved since 2009 when on orders of Hon'ble Supreme Court, 92 additional Special Courts were created. There is a Quick and timely trial would have high deterrence to anti-corruption efforts.

Speaker: Dr. M. Malakondaiah, IPS, Director General, Anti-Corruption Bureau, A.P

The Speaker stated that before the advent of English, India and China together accounted for 50% of World GDP as per the study done by Angus Medison During the freedom movement, Legal luminaries entered the freedom movement and later on some of them participated in the constituent assembly debates and are responsible for drafting one of the enduring constitutions. And Granville Austin in his book "Indian Constitution: A corner stone of a Nation" amply brings this fact out. The State should command the heights of the economy and it is one of the directive principles of State policy. However, the forces of globalization and financial situation forced the then Governments to liberalize economy and allowed private participation in a big way. He said that The control Licence Raj was given way after 1991 and subsequently the economic growth also improved. However, the percentage of manufacturing in GDP is 15% in India as against 34% in China. He further stated that the Government of India's programme Make in India plans to attract foreign and domestic investments in the manufacturing sector in order to create jobs to the youth. And though our country is endowed with demographic dividends, it will not be useful unless the youth are provided with sufficient skills. He admitted that it is estimated that about 13 million youth join the work forces every year. And wherever there is a monopoly of power without proper checks and balances, it results into corruption. And when Corruption affects quality of governance, Rule of Law and threatens the foundations of democracy. The Government is making efforts to bring in greater transparency and accountability in the agencies of the Government. It is a well-known fact that in the early phases of East India Company's rule the servants of the company and were notorious for corruption and abuse their powers in order to enrich themselves in the process. In 1784, an Act was passed prohibiting the receiving of gifts is punishable as

extortion. He shared that Sri N.Vittal, Ex-CVC opined that the license permit Raj was substituted by Neta, Babu, Lala, Dada in 1990s. Corruption is a low risk and high profit business and hampers the Nation in its economic development. And he briefly stated that the Corruption also results in systematically looting of the States sources and massive corruption in the form of abuse of power by Government officers, politicians through bribery and criminal misconduct. The corruption in Government of India and State Governments vary as State Governments touch the lives of citizens more frequently than the Government of India. and said that the nature of corruption also varies. Under the Prevention of Corruption Act, trap cases, DA cases, misconduct cases and Regular Enquiries, Surprise checks are registered. In majority of the trap cases, lower rung public servants, who come into contact with the citizens are booked. Whereas in the DA cases, mostly middle and higher level officers are booked. In Disproportionate Assets cases, the enforcing agencies generally collect information and book cases whereas in trap cases, generally demand, acceptance and pending official favour are looked into. Sometimes, it is observed that pending official favour might not be there and fair investigation would lead to lessening the gravity of the offence. The enforcing agencies also need to protect the honest public servants where complainants sometimes frame public servants misusing enforcement agencies.

He further said that in such cases, investigation should be fair and proper, so that the provisions of the Act are not misused. And when economy grows economic crimes also increase and technology is value neutral. The technology is used by both the enforcement agencies as well as accused. In order to effectively control corruption, agencies need to identify areas where scope for corruption is more such as in revenue earning departments, procurement, development departments and enforcement departments. Then he lastly, said that in some areas of office administration, seats dealing with service matters, procurement and stores are also prone for corruption. Periodical review of postings and transfer and job rotation would reduce corruption besides strengthening internal controls such as periodical inspections and provision of incentives for good work.

In the Questions & Answers Session, one of the participants raised about presumptions in Sec.20 of the P.C.Act. it was clarified that presumptions are provided in some of the special enactments.

Session 6

Economic Crimes in the FMCG Industry

Speaker: Mr. Dev Bajpai, Executive Director, Legal & Company Secretary, Hindustan Unilever.

Chair: Hon'ble Ms. Justice Sujata V. Manohar, Former Judge, Supreme Court of India
Hon'ble Ms. Justice P.Venkatarama Reddi, Former Judge, Supreme Court Of India
Hon'ble Ms. Justice Ruma Pal, Former Judge, Supreme Court Of India

The speaker commenced the discussion by giving a brief overview of the FMCG industry in India. And stated that with the FMCG industry is over 3 Lakh crore in size and is the Fourth largest industry. Parts of Industry are unorganized which Includes sectors like Personal Care, Home Care, Foods & Refreshments, Household Accessories etc. and Product segments include toilet soaps, detergents, shampoos, toothpaste, shaving products, packaged food products like jams, juices etc. which are Low penetration. Per capita consumption low. Straddles the pyramid big opportunity to premiumize. Innovation including packaging innovation is key in FMCG Industry. He said that Entry barriers are low and comparatively low engagement with technology and Progression to services from products. And said Many categories (Personal Care & Home Care) impacted by raw material costs

He said that there were severe economic crimes even in the consumer industry as: Counterfeiting, Grey Imports & related forms of economic offences, Leakages in Supply Chain, Corruption and Bribery, Manipulation of sales system/ Distributor Management System and Revenue leakages in Advertising spends. And said that these are Locally manufactured counterfeits and Imported counterfeits that are Coming into the country also as Parallel Imports and to Pass Offs/ look alike serious consequences arise which are estimated loss to FMCG Industry ~40, 000 crore annually and Health related on account of substandard quality shall neither licensed nor tax paid and Lay consumers being misled. Grey Imports distort markets, adversely impact domestic players, Create a non-level playing field E-commerce channel also being used by counterfeiters

He said that these Regulations exist but there are rough edges and Section 115 of Trade Marks Act, 1999 and Enforcement is low. Different States accord different priority. On Cross Border counterfeiting/ grey imports, support from Customs is key and Section 30 of the Trade Marks Act,

1999. The Rights of Trade Mark owners are being diluted. The Well Known Trade Marks accord better protection to such right holders. The rules are yet to be notified after thirteen years and currently, an Adhoc approach is being followed in according registration

These Systems and processes not always as robust at packaging suppliers and the Thefts during transport. Short receipt of CLD at distributor/stockiest point. When Sale of finished product as scrap, Scrap is a major area of leakage, there will be a collusion with scrap vendors- he said

The speaker then said that there was a manipulation in selling the commodities and Fake outlets and fake salesmen and Inflation of period end sales & sales returns were bungling in trade promotions. And These Trade schemes and promotions are cut down/diverted. And now Non distribution of schemes in the market they Resort to forged documentation by Distributors and then they focus on 'What' much more than 'How' causes behaviors to change.

He said to avoid major challenge by taking precaution of avoiding third Party Operations by ensuring that the rigor and focus on compliance is always high and Educating the value chain on emerging areas to prevent crimes and Anti Bribery, Competition Law, Data Privacy. And the Cyber Crimes, Data Collection & Data Privacy, there are newer ways to connect with consumers and the Consumer is the King in a free market and there is a scope of Anti-Trust to gain traction in India.

He lastly stated that the Presence in India of over 80 years is Strong Code of Business Principles that apply across 100 plus countries where Unilever has a presence. And a 22 Code Policies govern our conduct both on and off work. With Audit Committee reviews Code awareness and governance. To tackle counterfeiting and related crimes and to Building awareness such as Schools program, Respect for IP, National IP Policy better Advocacy for enabling regulation & educating Customs through cascades and Effective field level action through a dedicated team and also to tackle bribery and corruption. Therefore the Robust third party compliance program to Ensure proportionate measures are in place to prevent bribery and Regular cascades to targeted audience.

Session 7

Aerospace and Defense Related Crimes

Speaker: Mr. Dhiraj Mathur, Price Waterhouse Coopers, Pvt. Ltd.

Chair: Hon'ble Ms. Justice Sujata V. Manohar, Former Judge, Supreme Court of India
Hon'ble Ms. Justice P.Venkatarama Reddi, Former Judge, Supreme Court Of India
Hon'ble Ms. Justice Ruma Pal, Former Judge, Supreme Court Of India

The session was commenced by the Chair Hon'ble Justice Sujata V. Manohar who introduced the speaker. The speaker then highlighted a few key points with regard to the Aerospace and Defense Sector. He opined that the Aerospace and Defense Sector was vulnerable to economic crimes. Globally, economic crime in the Aerospace and Defense sector is one of least reported in comparison to other sectors and the government is focused on making procurement transparent, but certain challenges with regard to tackling economic crimes still remain.

The speaker provided an overview of the Aerospace and Defense Sector in India and stated that India's defence capital budget has grown to INR 86k cr and we are the largest importer of armaments. Indian government typically spends around 2.0 % of GDP on defence related expenditure (~40% is capital outlay) and since 2001, on an average 40% of the budget has been allotted for the capital expenditure. However, capital budget for FY17 has been kept low at just 34.7% of total defence budget due to increase in revenue and pension allocations (due to OROP) and The nominal defence budget allocation is increasing by around 10% every year. The speaker highlighted the major players in the defense sector and the development of the supply aspect of the sector.

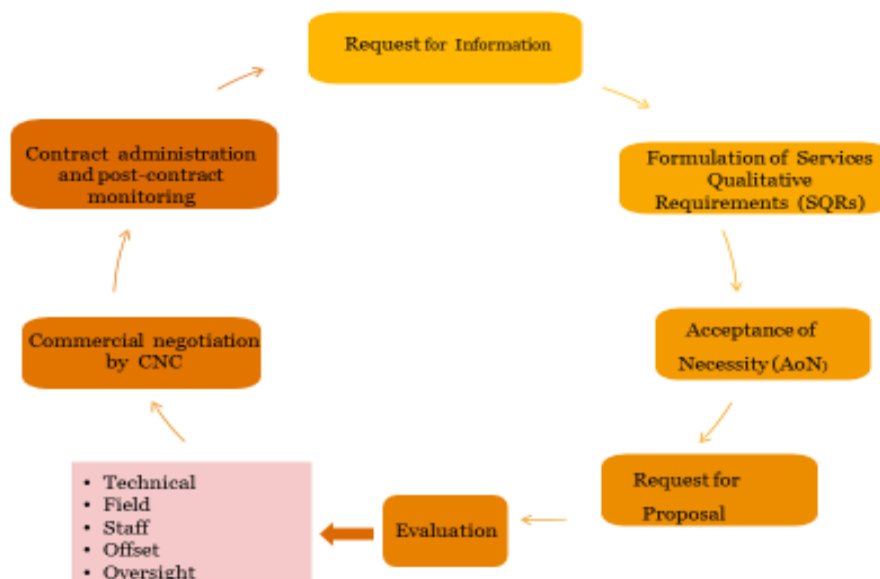
The speaker outlined the government initiatives to encourage investment in the aerospace and defense sector and to bring in transparency in the functioning of the sector as: Modernization of armed forces, Push for private participation at highest level of levelling playing field, and Make in India campaign, FDI is beyond 49% and now permitted through government approval route, Streamlining of licensing regulations, Security is Manually Issued, DPP 2016 is released with revamped Offset Policy and enhanced financial powers to service chiefs, Foreign Trade Policy 2015-20 is unveiled, Strategy for export of defence products is notified, National Policy on

Electronics includes Avionics and enhancement of MSME financing and financial empowerment of service chiefs.

The speaker said that certain initiatives had been taken with a view to increase the market attractiveness of the aerospace and defense sector as: Obsolescence of military equipment is requiring immediate upgrades, Largest importer: 70% requirement met through imports, Fastest growing civil aviation market, High defence & commercial aircraft demand, Strong domestic manufacturing capabilities, IT competitiveness, need Growing R&D and design base, Cost advantages, Vast talent pool of engineers, Well-educated talent pool, Abundant low cost skilled workforce.

The speaker then outline the procurement process in the aerospace and defense sector as:

Defence Procurement Procedure – A glimpse

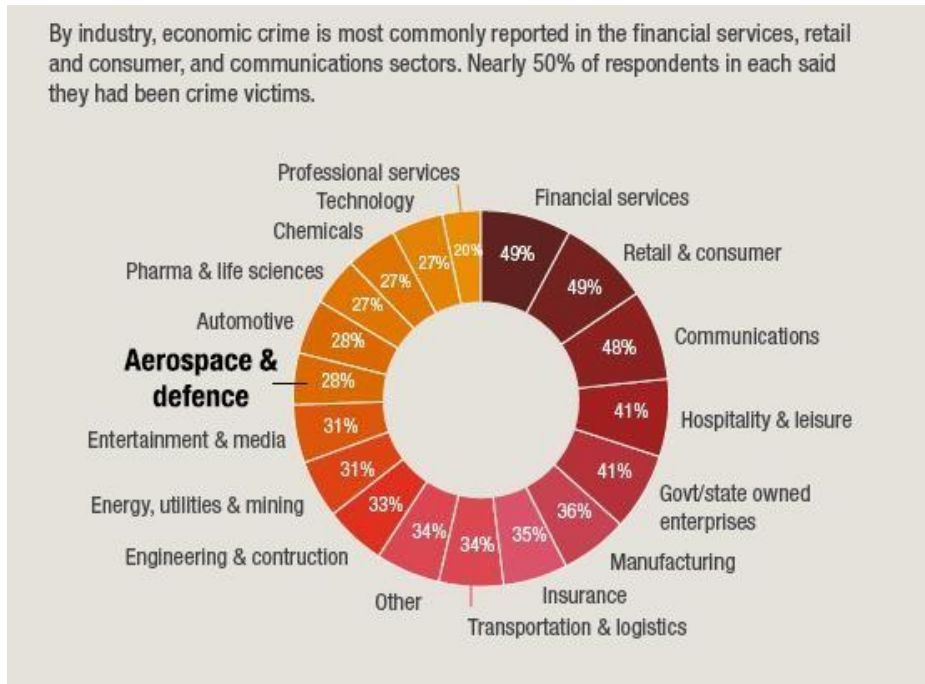


The speaker then discussed the measures that are in place to promote transparency as an Integrity Pac is signed between government department and the bidders for all procurement schemes over INR 20 crore not to accept/offer bribes during the procurement process As per Article 22 of Standard Contract document, “giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the SELLER towards any officer/employee of the BUYER or to any

other person in a position to influence any officer/employee of the BUYER for showing any favor in relation to this or any other contract, shall render the SELLER to such liability/penalty as the BUYER may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of Bank Guarantee and refund of the amount paid by the BUYER.”

Violation of the above provisions as Cancellation of the contract (all or any other contracts with the seller) and recovery of the amount of any loss arising from such cancellation.

The speaker then discussed the economic crimes prevalent in the aerospace and defense sector –



The speaker stated that one in three organizations in the aerospace and defense sector reports being hit by economic crime. The highest levels of economic crime are consistently reported by respondents in Africa (50%) and North America (41%). According to PwC’s Global Economic Crime Survey 2014, economic crime has been reported by 28% respondents in the Aerospace and Defence sector. According to Trace International, aerospace and defense industry members have accounted for approximately 12% of the world’s anticorruption enforcement actions since 1977, second only to the extractive industries like oil and mining. Transparency International (TI) describes the defence sector as one of the most secretive, and one in which it is difficult to openly discuss corruption issues. Aerospace and defence companies have unique risks due to the large

scale and value of contracts, fierce competition and the complexity of the regulatory and compliance environment. The defence market does not have perfect competition and the inherent distortions make it susceptible to economic crime. The following economic crimes have been reported in this sector

Further speaker said that there are Unauthorized receipts and expenditures as: Bribery being Government officials and Commercial vendors and suppliers, Fabrication of records, Improper cost allocations, Financial statement manipulation as: Improper revenue/expenditure booking, Fictitious transactions, Misappropriation of assets as: Theft of intellectual property, Espionage, Cyber Crime and lastly money laundering as Smuggling, Disclosure fraud, Aiding and abetting and Fraud by senior management

He stated the Increasing alignment of and cooperation in anti-corruption laws and subsequent prosecution in United States Foreign Corrupt Practices Act, 1977 Anti- bribery provisions are Prohibits offering, paying, or giving anything of value, Accounting records provision which requires companies to maintain accounts properly, Speed money allowed to be disclosed, Deferred prosecution, Non-prosecution agreement, SEC controls personal liability. And further he stated that corruption in the united kingdom and he said that it Covers corruption in public and private sector but Does not requires proof of the corrupt event and Creates a new form of corporate liability for failing to prevent bribery and provides for only one defense- that an organization had “adequate procedures” in place to prevent bribery. And the BRIC countries as china amended its criminal code to make paying bribes to foreign government officials a crime and in Russian introduced measures that impose criminal sanctions on companies and individuals who make corrupt payments to foreign public officials. The prevention of corruption in India as people have Prevention of Corruption Act, 1988, Act enacted to combat corruption in government agencies and public sector businesses in India that applies to bribe taker, giver of bribe and any middlemen the Offence punishable with imprisonment with fine. And Indian Penal Code, 1860 he said that the Offence of bribery punishable with imprisonment and fine

He opined that formulating of effective ethics and anti-corruption programmes and making them public and Explaining Ministry of Defense (MoD) regulations on the subject to all concerned and

to Standardize processes for incident investigation and remediation and Encouraging bidding companies to publish their detailed offset obligations. And Encouraging publishing of annual performance assessments of their offset obligations. He further said that to formulate robust ethics and anti-corruption programs export Controls.

He said that the onus falls on the companies involved in the Aerospace and Defense Sector to take preventive measures as: Create specialist procurement agency as multi-disciplinary specialists Encouragement/protection to honest officers and to abolish Section 13(1)(d) of the PCA, 1988 Improve and speed up prosecution, Institutionalize out of court settlements, to Focus on prosecuting individuals and Blacklisting of entire group company counterproductive and should be resorted to as the last resort and for grave and serious offenses, Conducting due diligence of third party before engaging for work with reliable partners, to Stricter corporate governance: zero tolerance policies; mandatory implementation of anti-fraud programmes and controls, and Whistleblower protection

He lastly discussed on the A&D sector in India to Create specialist procurement agency – multi-disciplinary specialists and Encouragement/protection to honest officers – abolish Section 13(1)(d) of the PCA, 1988 and to Improve and speed up prosecution and Institutionalize out of court settlements and to Focus on prosecuting individuals - Blacklisting of entire group company counterproductive and should be resorted to as the last resort and for grave and serious offenses and Conducting due diligence of third party before engaging – work with reliable partners. Thereafter to Stricter corporate governance: zero tolerance policies; mandatory implementation of anti-fraud programmes and controls and Whistleblower protection. He finally concluded the session by saying that with the help of the above practical activity has become possible only because of a team effort therefore one must try to understand the importance of a team within the organization and must try to develop such personality so that one can work with the team spirit in any organization for its overall success.

The programme concluded with the remarks of the Director, National Judicial Academy .