

NATIONAL JUDICIAL ACADEMY



ANNUAL NATIONAL SEMINAR ON WORKING OF THE CBI COURTS AND PREVENTION OF CORRUPTION COURTS (P-1007)

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Program Report

Submitted by-

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Intern, January 01-25, 2017
National Judicial Academy

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RESOURCE PERSONS OF THE SEMINAR

No.	Name	Designation
1	Ho'ble Mr. Justice Manmohan Sarin	Former Chief Justice, J&K High Court
2	Ho'ble Dr. Justice S. Muralidhar	Judge, Delhi High Court
3	Ho'ble Justice Joymalya Bagchi	Judge, Calcutta Court
4	Mr. Vakul Sharma	Advocate
5	Dr. Harold D'Costa	CEO, Intelligent Quotient Security System
6	Ms. Sonia Mathur	Advocate, Delhi High Court
7	Mr. P.V.K. Ramana Prasad	Chief Legal Advisor, Anti Corruption Bureau, Hyderabad
8	Mr. Rajiv Awasthi	Advocate
9	Mr. Debashish Nayak	Director, Asian School of Cyber Laws

PARTICIPANTS OF THE SEMINAR

	Name	Designation	High Court
1	Mr. S.K. Sharma	Spl. Judge (CBI) Court no.II, Bhubaneswar	Orissa
2	Md. Syed Matloob Hussain	District Judge cum Spl. Judge CBI, Dhanbad	Jharkhand
3	Mrs. A. Gayathri Devi	I Addl. Spl. Judge for CBI Cases, Visakahapatnam	Andhra Pradesh
4	Mr. P.J. Modak	District Judge-7 & Addl. Sessions Judge, Amravati	Bombay
5	Mr. B.V.L. Chakravarthy	III Addl. Spl. Judge for CBI Cases, Hyderabad	Andhra Pradesh
6	Mr. Yogesh Chandra Gupta	Spl. Judge, SC/ST (P.A.) Act, Dewas	Madhya Pradesh
7	Mr. E. Kharumnuid	District & Sessions Judge, East Khasi Hills, Distt. Shillong	Meghalaya
8	Mr. G. Debnath	District Judge, West Tripura, Agartala	Tripura
9	Mr. N. Muralidharan	II Addl. District Judge, (CBI Cases), Coimbatore	Madras
10	Mr. S. Baskaran	XIV Addl Judge (CBI Cases), City Civil Court, Chennai	Madras
11	Mr. Shivinder Singh Mann	Addl. District & Sessions Judge, Spl. Judge, CBI Court, Patiala	Punjab & Haryana
12	Mr. Anuj Kumar Sangal	II Addl. District & Sessions Judge, Deharadun	Uttarakhand
13	Mr. Harjeet Singh	Addl. District & Sessions Judge, Spl. Judge, CBI Court, Patiala	Punjab & Haryana
14	Mr. Jagdeep Singh	Addl. District & Sessions Judge, Spl. Judge, CBI Court, Panchkula	Punjab & Haryana
15	Mr. S.R. Jagtap	DJI & ASJ, Khed Rajgurunagar	Bombay
16	Mr. Binod Kumar Chetri	Addl. CBI Court No. 2, Assam, Chandmari, Guwahati	Gauhati
17	Mr. Rajesh Chaudhary	Spl. Judge, Anti Corruption, CBI Court no.1, Ghaziabad	Allahabad
18	Mr. Vikas Dhull	Spl. Judge, PC Act (CBI), South-West, Dwarka Courts, Delhi	Delhi
19	Mr. S. Ganesan	II ADJ (CBI Cases), Madurai	Madras
20	Mr. M. Manojkumar Singh	District & Sessions Judge, West Imphal	Manipur
21	Mr. Ataur Rahman	Judge, CBI Court no.2, City Sessions Court, Calcutta	Calcutta
22	Mr. Chinmoy Chattopadhyay	Judge, CBI Court no.1, City Sessions Court, Calcutta	Calcutta
23	Mr. Gopal Kumar Dalmia	Judge, CBI Court, Siliguri, Darjeeling	Calcutta
24	Mr. Barinder Thakur	ADJ, CBI Court, Shimla	Himachal Pradesh

25	Mr. Pradeep Sattendranath Balikai	XXXIII Addl. City Civil & Sessions Judge, Bengaluru City	Karnataka
26	Mr. G. Basavaraj	XLVI ADJ, Bengaluru City	Karnataka
27	Mrs. Kavita B Agrawal	District Judge-1 & Addl. Sessions Judge, Jalgaon	Bombay
28	Mr. Pankaj Kumar Jain	Spl. Judge of Spl. Court for trial of CBI Cases, Raipur	Chhattisgarh
29	Mr. Anju Bajaj Chandna	Spl. Judge PC Act (CBI), New Delhi, Patiala House Court, New Delhi	Delhi
30	Mr. Sanjay Kumar	Spl. Judge, Anti Corruption, CBI Court no.3, Lucknow	Allahabad
31	Mr. Sunil Kumar Yadav	Spl. Judge, Anti Corruption, CBI Court no.1, Lucknow	Allahabad
32	Mr. Dinesh Kumar Gupta	Spl. Judge, CBI no.1, Jaipur Metropolitan, Jaipur	Rajasthan
33	Mr. Nahar Singh Meena	Spl. Judge, CBI no.1, Jaipur	Rajasthan
34	Mr. Raveendra Kumar Bhadrasen	II ADJ, Bhopal	Madhya Pradesh
35	Mr. Jaiprakash Singh	I ADJ, Indore	Madhya Pradesh

DAY 1: 14 January 2017

SESSION 1

Arrest & Investigation in Corruption Offences: Role of Special Court

Speakers- Mr. P.V.K. Ramana Prasad

Chair- Dr. Justice S. Muralidhar and Justice Joymalya Bagchi

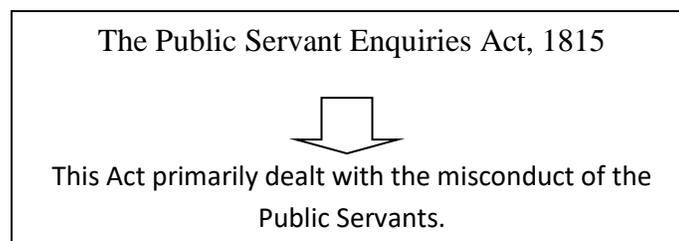
The Seminar began by an address by Justice Raghuram, Director of National Judicial Academy stating how the Academy strives to continue imparting Judicial training since 2004 up to its 1007th Program dealing with a wide arena of laws including holding programs with SAARC Countries and not only for the Courts of Law but also for various Tribunals. Before proceeding with the Session, Justice Raghuram also said that there is nothing genetic about judging but it is an acquired skill.

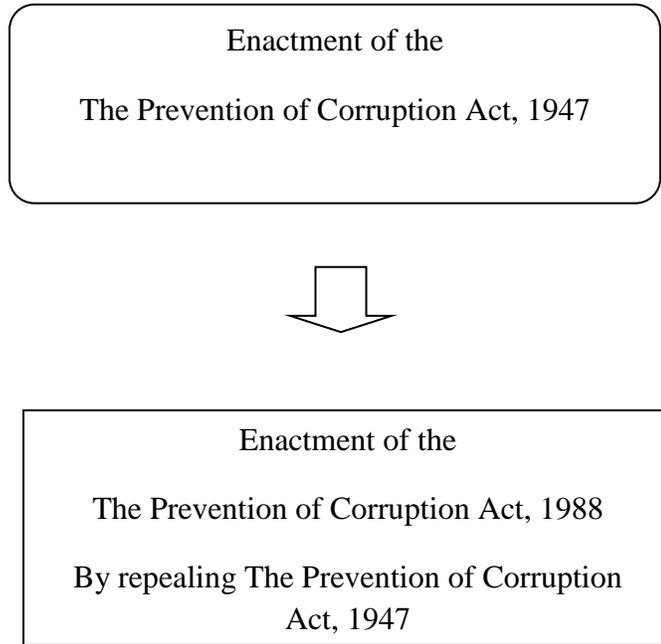
Views of Mr. P.V.K. Ramana Prasad

Mr. P.V.K. Ramana Prasad began addressing the Gathering by saying that historically we have found it difficult to eradicate corruption. An attempt has been made to control corruption by enacting several Legislations and Statutes. To highlight the concern of rampant corrupt practices among public servants he informed the gathering that about two thousand cases of corruption are pending with various Courts across the Country with respect to Designated Authorities.

Evolution of Corruption Laws in India

The Speaker briefly traced the evolution of Corruption Laws in India beginning with the British Colonial Regime law as follows:





There are several other significant laws in this regard-

- **Ordinance Of 1944-** This Ordinance was promulgated after World War II and dealt mainly with the attachment of the property of Public Servants procured by means of an offence involved in an offence punishable under the Prevention of Corruption Act, 1988 or under any other Scheduled Offence. The said Ordinance remains in force in India even today due to operation of Section 18 of the Indian Independence Act, 1947 which holds that the enactments enforced till date shall continue to operate.

- **Delhi Special Police Establishment Act, 1946-** This Act dealt with investigation of cases of grave and serious nature and with Corruption cases. This Act lead to the establishment of Central Bureau of Investigation in 1963. Time and again it has been suggested and recommended to establish a separate Central Bureau of Investigation Act for better administration of the Institution.

- **Criminal Law Amendment Act, 1952-** This Act provides that all cases that arise and are pending under the Prevention of Corruption Act, 1988 should be dealt with by the Courts on a day to day basis.

- **Central Vigilance Commission Act, 2003**- This Act was enacted following the directions issued by the Supreme Court in the case of *Vineet Narayan v. Union of India*.
- Other legislations include the Right to Information Act, 2005; Whistleblowers Act; Lokpal and Lokayukta Act, State Anti-Corruption Bureau, etc.

The Speaker then highlighted that the definition of the terms "Corruption" and "Bribery" which have not been provided anywhere in the Prevention of Corruption Act, 1988, or to that effect under any other legislation. However it has been defined in several International Conventions and Court Judgments. On a philosophical note, he quoted Swamy Chinmayanand who defined corruption as "eruption of unethical thought in the mind".

Role of Presiding Judge in Corruption Cases

The Speaker highlighted the role played by the Judges in Corruption cases as follows:-

- ❖ To emphasize the role and limitations of judges in corruption cases, he commented that just like a Train Driver leads the train to a particular destination i.e, a point prescribed and not beyond what has been instructed to him, similarly, a judge also has to function with the limitation of a hands tied approach, wherein the Judge also has to function within the contours and time frame of the Statute and not go beyond it.
- ❖ The Judge must see to it whether the Accused was produced before the Magistrate within 24 hours of the arrest.
- ❖ Investigating Officer/Agency cannot claim remand of the accused as of right.
- ❖ It is the duty of the Judge to see that the facts and evidences as made out to give rise to the proceedings. To demonstrate this point the Speaker also highlighted a case.

Case- It was a matter before a CBI Judge in Visakhapatnam wherein the Judge declined to give remand of the Accused Police Officer and instead released him on Bail. The evidences went on to show that no currency was recovered from him, he did not test positive for Phenolphthalein Test and moreover he was transferred and not even present in the police station where he was alleged to have received the Bribe. Hence no prima facie evidence was made out against him. Moreover it was found that a case under section 498A IPC pertaining to cruelty was pending against the complainant and that he was habitual in persecuting Public Servants.

- ❖ The Judge must see that whenever evidence is placed before the Court by the Investigating Agency it has not been manipulated anyhow.

Case- In a case, the Judge went through the Records placed as evidence and found interpolations in them. The Investigating Officer had manipulated evidence against a Wine Dealer to falsely implicate him. The case against the Investigating Officer is still pending.

Therefore the Judge can always ask for the Documents to be scanned and see to it whether and how they have been tampered.

- ❖ In Phenolphthalein Test, the light pink colour acquired by the Phenolphthalein tends to fade with time. The Accused may then seek to claim that there is no evidence of his finger prints. At time of collection of evidence the Mediator places his signature on the bottle containing the Phenolphthalein. It was highlighted that the Presiding Judge can further endorse the signature of the Mediator to counter such problems.
- ❖ The Presiding Judge must also see the Inventory List in the Seizure Report and check that the Files are in Order.
- ❖ It was highlighted that to prevent the accused from fleeing the country and avoiding the clutches of the law, especially when influential personalities are involved, the Presiding Judge may impound his passport.
- ❖ In matters of Disproportionate Assets case, it has been observed that the Presiding Officers are generally inclined to attach all the properties of the accused. However, attachment has to be renewed after lapse of one year and the Accused at times transfer the properties. Moreover the Presiding Officer must also see that timely and careful investigation is being carried out and all aspects are properly supervised. To highlight the said point, a case was cited

Case- A gap of three to four years had lapsed since the attachment of Property and the investigating officer after such long delay sought the Renewal of Attachment. However due to delay the Accused had managed to get an order for non attachment even before the Charge sheet was filed.

- ❖ The Presiding Officer must also not grant the bail to accused immediately since the accused might try to tamper evidence, influence the witnesses and delay the judicial proceedings altogether.
- ❖ Another problem faced in Corruption cases is that the Investigating Agencies do not register the complaint immediately especially when influential and resourceful persons are involved. It has been held in *Selvi & Anr. v. State of Tamil Nadu* and in *Lalita Kumari v. Government of Uttar Pradesh* by the Supreme Court that a preliminary inquiry can be conducted by the Investigating Officer before taking up the investigation, and then the FIR must be registered.
- ❖ It was also pointed out that to keep supervision on investigating officer, a mobile application has also been launched giving out details of the facts and arguments presented before the Court and hence can be corrected in case of any irregularities. Also a Legal Cell has been established in Hyderabad which is headed by a police officer not below the rank of Superintendent of Police to see whether summons are served properly and all Documents placed before the Prosecuting Officer.
- ❖ It was highlighted that the corruption cases at times remain pending in Courts up to fifteen to twenty years just because the proceedings are not carried on day to day basis.
- ❖ Whenever crucial evidences and witnesses are produced before the Court, the presiding officer must not adjourn the proceedings.
- ❖ All witnesses need not be examined but Judges may give instruction to examine any of the witnesses as PW1, PW2, etc.
- ❖ When trials last for years altogether the witnesses tend to turn hostile- at times due to sheer lethargy at appearing in the court time and again, and at times due to being threatened or being offered inducements. Therefore it must be ensured that the cases are disposed of as expeditiously as possible.

The Speaker then drew the attention of the participants to a pertinent problem in cases where in the complainant dies before the investigation and the proceedings are completed. Here in the case of *Kishan Chand v. State of Rajasthan*¹ was cited wherein it was held that even in cases

¹ 1983 SCR (1) 569

where complainant is dead the evidence produced by the trap laying Officer and the Mediator is also sufficient to base conviction.

It was also pointed out that when the Complainant is out of the Country, he can be examined via a video conferencing.

In cases where the accused dies before the trial could be completed, it was held by Orissa High Court in *Gagan Bihari Das v. State Of Orissa*² that the investigation need not be closed in a routine manner even if the property was confiscated and attached.

Sanction for Prosecution

The Speaker then brought to the attention of the Gathering the aspect of Sanction to be given by the Disciplinary Authority for prosecution of the Public Servants and how a delay or refusal to grant such sanction affects and delays the trial. The following cases were cited-

- *Mansukhlal Vithaldas Chauhan vs State Of Gujarat*- It was held that the Court cannot give direction to the Secretary to grant sanction for prosecution as it would close all other alternatives to him and compel him to proceed only in one direction and to act only in one way, namely, to sanction the prosecution of the appellant. He would not be allowed to consider whether it would be feasible to prosecute the appellant; whether the complaint was false and whether the prosecution would be vexatious.
- *Subramaniam Swamy v. Manmohan Singh*- It was observed as obiter dicta by the Supreme Court that the Parliament must lay down a deadline within which the sanctioning Authority must grant sanction for prosecution and once the sanction is not provided within the given time frame, it shall be held to be deemed sanction.
- *Superintendent of Police (CBI) v. Deepak Chowdhary & Ors*³- The Supreme Court held that the Sanctioning Authority cannot go into the merits of the case while sanctioning prosecution but must only go through the prima facie evidence as to whether they indicate a fit case for prosecution.

² 2002 CriLJ 3415

³ 1995 SCC (6) 225

- *T.L.N. Chari v. State of Andhra Pradesh*- In this case it was held that High Court is only a Controlling Authority and sanction for prosecution can only be granted by the Government.
- *L. Narayana Swamy v. State Of Karnataka & Ors.*- In this case it was held by the Supreme Court that once a Public Servant has been transferred out of his post, no sanction for his prosecution is needed.

It was also pointed out by the Speaker that it is not the duty of the Sanctioning Authority to put up a parallel inquiry to that of the Investigating Authority, however if during the proceedings new evidences are produced, the Sanctioning Authority may hold a parallel enquiry. Moreover the Sanctioning Authority must always apply its mind before granting or refusing sanction.

At this juncture Justice Muralidhar asked a question as to what will happen in a case where a Public Servant is involved in a bribery case along with several co-conspirators and no sanction is granted by the Government, then will the case as a whole have to be dropped?

The Speaker answered that in such cases it will have to be seen that a case has been made out under IPC for which all the accused shall be prosecuted and in such a case no sanction is required either.

Abetment for commission of crime punishable under Prevention Of Corruption Act, 1988

The Speaker also highlighted the case of *P. Nallammal v. State Rep. by Inspector of Police*, wherein it was held in view of section 107 of IPC, that a person who abets the commission of an offence punishable under Prevention of Corruption Act, 1988 shall be liable for the offence of abetment as an Abettor. However an Auditor as held in *PonnuSwamy case* cannot be held liable for abetment as he acts on the information given to him by the accused and lacks requisite mens rea.

At this juncture, Justice S. Muralidhar raised the following questions-

- What is the Definition of "Gratification"?
- What is the basis of selection of Police Officers to the Anti-Corruption Bureau?

The Speaker Mr. P.V.K. Ramana Prasad answered that gratification ordinarily means-satisfaction of desire of body or of the mind. It is not necessary therefore that it must be pecuniary in nature.

The Speaker also informed the gathering that the Procedural Guidelines for appointment of police officers to the Anti-Corruption Bureau are very detailed and comprehensive and therefore cannot be contravened and derogated from. He informed that the past Records of the Officers is looked into before appointment and those having doubtful integrity are not appointed to the Anti-Corruption Bureau. Moreover the Director General of the Anti-Corruption Bureau is answerable to the State Government and hence his powers are fettered.

However mere incompetency is never a ground for dismissal or refusal for appointment in view of the case of *Union of India & Ors v. J. Ahmed*⁴, wherein a District Collector had failed in controlling riots in the District to which he was appointed and thereupon he was dismissed from his service. It was held by the Hon'ble Supreme Court that mere incompetency or lack of leadership is no ground for dismissal.

Views of Justice Joymalya Bagchi

Justice Joymalya Bagchi began to express his views by placing his opinion that Gratification also results when the Police Officer abuses authority, entrusted to him by law, for an irrelevant purpose.

He also pointed out that under the Prevention of Money Laundering Act, 2002 and Prevention of Corruption Act, 1988, it is the Central Government that authorizes attachment of proceeds of crime and therefore the State Agencies may find themselves in a tough spot for seizure and protection of property when the Government delays or refuses to authorize such attachment. In such cases therefore the State Agency must resort to section 452 of the Code of Criminal Procedure, 1973 for obtaining a Court order for disposal of property. Only difficulty in such cases may arise is with respect to definition of stolen property under section 410 IPC which does not include property obtained through corruption and hence criminal misconduct/misappropriation will have to be proved with respect to such property.

⁴ 1979 SCR (3) 504

The Speaker also highlighted that the Courts never "impound" a Passport but seize and invalidate it by asking the Accused to deposit it with the Court or the Investigating Agency, thus making it impossible for him to leave the Country.

The Speaker also drew the attention of the Gathering to the fact that in the earlier decades generally no arrest was made during the stage of investigation and even till conclusion of the Trial and even the Accused would attend the whole proceedings and not escape. The arrest would only be made at the end of investigation if the need is felt and that is the logical sequence. But perhaps with the rise in the number of corruption cases, the Courts now have to resort to arrest before the investigation even begins. He was of the view that the Accused thus having no fear of further loss of liberty tends to be not very cooperative. He therefore opined that Court must try to avoid such approach as far as practicable and make the Accused a friend of the Court by making no loss of his liberty which would help in better eliciting evidences.

SESSION 2

Trial of Public Servants in Corruption Offences

Speakers- Mr. P.V.K. Ramana Prasad and Mr. Rajiv Awasthi

Chair- Dr. Justice S. Muralidhar and Justice Joymalya Bagchi

Views of Mr. Rajiv Awasthi

Mr. Rajiv Awasthi highlighted the magnitude of scam and money laundering in the high profile cases wherein property worth Crores of Rupees is ordered to be attached. The Speaker also explained what is meant by the term laundering i.e. to launder to project property as untainted. The term has its origin from a case in Chicago wherein an offender raised crime money by cleaning Laundry. The Speaker informed the Gathering that to counter the menace of money laundering, the Global Initiative came up in the form of Vienna Convention which established a Financial Action Task Force (FATF) which oversees the implementation of the Prevention of Money Laundering legislations in the various signatory Countries.

In India the Prevention of Money Laundering Act, 2002 came into force with effect from 01 July 2005. There are two main aspects of this Legislation

- Process of attachment
- Prosecution after Investigation

The broad scheme and defining features of the Act are as follows-

- Section 5 which deals with attachment and confiscation of the property.
- Section 3 which defines the offence of money laundering,
- Section 4 which deals with prosecution and punishment,
- Section 8 which deals with process of adjudication,
- Schedule to the Act enumerating the offences envisaged within the Act

The Speaker laid down a schematic description of the various step by step processes involved in the Prevention of Money Laundering Act, 2002 as follows-

Section 5(1)

Whenever an officer not below the rank of Deputy Director has reason to believe that any person is in possession of any proceeds of crime and is likely to conceal, transfer or frustrate it, he may order for its provisional attachment.



Section 5(5)

Upon such provisional attachment, the Officer must within thirty days file a complaint before the Adjudicating Authority.



Section 8(1)

The Adjudicating Officer must serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, by means of which he has acquired the property attached.



Section 8(2)

The Adjudicating Officer upon taking into account all relevant materials placed on record before him must record a finding whether all or any of the properties referred to in the notice are involved in money-laundering.



Section 8(3)

Where the Adjudicating Authority decides under that any property is involved in money laundering he shall confirm the attachment of the property till the conclusion of the trial.



Section 3 & Section 4

These provisions confer legal validity to the prosecution and punishment for the offence of money laundering.

The provisional attachment is valid only for a period of one hundred and eighty days at the end of which it must be confirmed lest it shall be declared to be invalid thereafter. An order of provisional attachment can be challenged as follows-

- By filing an appeal against the order of the Adjudicating Authority to the Appellate Tribunal under section 26 of the Act,
- Against the order of the Appellate Tribunal, by filing an appeal before the High Court under section 42.

Special Courts under Prevention of Money Laundering Act, 2002

Section 43 provides that the Central Government in consultation with the Chief Justice of the High Court shall for trial of offence punishable under the Act, designate a Court of Session as Special Court.

Section 44 provides for joint trial of the scheduled offence and offence punishable under section 4 of the Act by the Special Judge.

The Speaker also informed the Gathering that under section 44(1)(a), moving an Application for transfer of trial of scheduled offences is sufficient to transfer the case to the Special Judge and no further formalities are required.

Constitutionality of the Prevention of Money Laundering Act, 2002

The speaker drew the attention of the gathering to the case of *B. Rama Raju v. Union of India* wherein the constitutional validity of the Act was challenged. However upholding the constitutionality of the Act, the Court discussed and dealt with the various aspects of the Prevention of Money Laundering Act in detail.

Ambiguity in section 5(1)(a) and Section 5(1)(b)

Section 5(1)(a) and Section 5(1)(b) lay down for attachment of property with respect to following persons-

- any person in possession of any proceeds of crime;
- such person who has been charged of having committed a scheduled offence

However the Speaker pointed out that if such would be the case then every person who has committed a crime punishable under the Prevention of Money Laundering Act, 2002 would evade the liability since the offender in such cases dispose their property with relatives and near ones who are not implicated. Thus to counter this a proviso was added to section 5(1) by way of an amendment which holds that any property of any person, even if he is not charged, may be attached if the non-attachment of the property is likely to frustrate any proceeding under the Act. Herein the Speaker also threw light on the concept of "Layering", that is to pass the money through so many "layers" or processes or people wherein one is unable to reach to the conclusion and determine whether it is tainted or untainted.

Overriding effect of the Act

One participant raised a pertinent query as to whether the property of a Company can be attached under the PMLA, 2002 even if it has gone into liquidation?

The Speaker cited Section 71 of the Prevention of Money Laundering Act, 2002 which gives an overriding effect to the Act vis-à-vis other Statutes and hence even the property of a liquidated Company can be attached under the Act.

The Speaker notably mentioned that attachment is in the nature of an immediate action to protect the property and is exclusive of prosecution under the Act. Thus attachment or prosecution, either can be sought first and the other later. Attachment can continue even after the charge sheet has been filed and Trial has commenced.

Views of Justice S. Muralidhar

Justice Muralidhar raised a question as to whether the Bank Account of the Accused can be freeze under the Act ? Mr. Rajiv Awasthi informed the Gathering that the Bank Account can be freeze however the provisions of Code of Criminal Procedure must be followed.

Justice Muralidhar brought to the notice of the Gathering a core problem faced in the appointment of Special Courts. He noted that under the Act it is actually a Special Judge who is appointed instead of a Special Court and the Special Judge deals with offences under several other Acts, however had the power for trial of offences had been conferred on Sessions Court as a whole, then any of the Presiding Judges could have dealt with the matter and no such problems would need to be faced. For example, he cited The Benami Act, 1988 and several other legislations wherein it is actually the Sessions Court which is conferred with the power of Trial.

Views of Mr. P.V.K. Ramana Prasad

Mr. P.V.K. Ramana Prasad began expressing his views by informing the Gathering that freezing of account can be done under the Prevention of Money Laundering Act, 2002 and the provisions of Section 102 of Code of Criminal Procedure must be followed.

He cited the case of *Tapas Neogy v. State of Maharashtra*⁵ wherein the Supreme Court had held that the Bank Accounts are in the nature of movable property and can be freeze in a case under Prevention of Corruption Act.

⁵ (1999) 7 SCC 685

However the Freezing of account must be authorized by a Police Officer not below the rank of Superintendent of Police. Moreover the Investigating Officer cannot direct the Officers in other Departments but has to seek the order of the Court directing such Officers to freeze the Account.

The following points with respect to Disproportionate Assets case are pertinent-

- Disproportionate Assets mean huge amount of money that is not satisfactorily accounted for.
- *Krishnanand v. State Of Madhya Pradesh*⁶- In this case it was held that a 10% margin is always allowed to the Accused, ie; to say that a benefit of doubt is allowed to an Accused for an income which is ten percent over and above his untainted income.
- *Deviramana v. State Of Tamil Nadu*- This case pertained to disproportionate assets case against the Chief Justice of a High Court. It was held by the Supreme Court that even against a person holding and adjudicating legal disputes, the Investigating Officers can call and hold enquiry against him and it is his duty to collect evidences and documents.
- Ponnuswamy Case- In this case it was held that any family member who allows holding of the property of public servant acquired through corruption in their name shall be treated as an Abettor. In this case the wife of the public servant had allowed property to be registered in her name and hence was convicted as an abettor.
- In another Case it was held by the Supreme Court-
 - Husband and Wife living under the same roof can be prosecuted for abetment
 - When the spouse states categorically in the Court that the cash found in the house belongs to her/him and in absence of the corroborative evidence to the contrary, the Court shall regard the spouse's statement to be true.

The following points were highlighted with respect to witnesses turning hostile

- There are several judgments of the Supreme Court which hold that in cases where the witnesses turn hostile, the Court must look into corroborative evidences to determine the matter at hand so that the administration of justice is not hampered.

⁶ AIR 1977 SC 796

- Some system of payment must be devised to pay to the witnesses since it has been observed that there is lethargy on part of the Witnesses to attend Court Proceedings which results in their turning hostile.
- However no time limit can be fixed for the conclusion of the Trial as held in cases of *Raj Dev Sharma v. State Of Bihar* and *A.R. Antulay v. State of Maharashtra* as that would be against the interest of the justice.
- However the approach of the Courts in the recent history has been to expedite the conclusion of Trial.

One of the participants also informed the gathering that the Investigating Agencies often do not keep the record of the Witnesses which causes further delays in passing of judgments since the Court then has to revisit its own Records to trace the witnesses so that they can be called upon for examination.

Certain other points were highlighted with respect to Trial of Corruption Cases-

- *State of Madhya Pradesh v. Shri Ram Singh*- It was observed by the Supreme Court that the Special Courts must be liberal towards the Prosecution side.
- It has often been observed that the witnesses are not produced on time by the Defense side and it is typically aimed at to cause delay in Proceedings.
- At times the Collection and preservation of Evidences by the Investigating Authority is in a very pathetic which seriously hampers the administration of justice
- It was also highlighted that a Judge must apply his mind while passing any kind of Order, especially in cases of Corruption Trial wherein the interest of Society at large is at stake. To highlight the point, a case was cited

Case- A Maoist was granted pardon by the Court in a case for disruption of public peace in Jharkhand. The Maoist later committed several offences and attacks on Police as he was allowed to scot free

SESSION 3

Appreciation of Electronic Evidence

Speaker- Mr. Vakul Sharma

Chair- Dr. Justice S. Muralidhar and Justice Joymalya Bagchi

Views of Justice S. Muralidhar

Justice S. Muralidhar addressed the Session and highlighted the importance and significance of Section 65B of the Indian Evidence Act, 1872 which deals with admissibility of Electronic Evidence.

The Speaker pointed out that for the purposes of cases coming before the Court under the Prevention of Corruption Act, 1988 the Electronic Evidence is a major source of corroborative evidence. However, in the modern times with the advent of Information Technology, Electronic Evidence is not merely a corroborative evidence but also at times may become *the* evidence.

In this regard he highlighted also that most of the Advocates practicing in various Courts across the Country are not up to date with changing avenues of law brought about by newer technology and thus there is an urgent need for the legal and the judicial system to get well versed with the technological dimensions of law and practice.

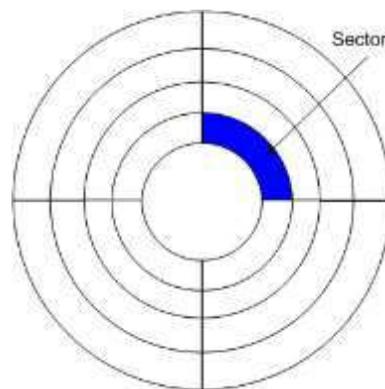
Views of Mr. Vakul Sharma

Mr. Vakul Sharma began addressing the Session with an introduction as to the importance of the Hard Disk in a Computer and informed the gathering that it is the Hard Disk of the Computer which is of primarily of evidentiary value in a case.

Hard Disk

The Speaker highlighted the following points with regard to the Hard Disk of the Computer-

- The Hard Disk of the Computer stores all the critical information.
- It is basically the Recording of all the information available in the Computer.
- Its structure is in the form of a spool which consists of a magnetic strip. This magnetic strip consists of certain sectors



Magnetic Strip of the Hard Disk⁷

Sectors within the Hard Disk⁸

- The various Files within the Computer are saved on these sectors. Usually one File is saved on one Sector.
- The Hard Disk also records the Deleted Files and hence they are always available within the Hard Disk and can be recovered at any time when needed.
- Even when the Hard Disk is burnt, the Files can be recovered and are not damaged.
- However it must be noted that if the Disk is not handled properly, it may cause damage to any of the sectors, resulting in loss of Files and then the evidence would be lost forever.
- Environmental factors such as heat and humidity can deteriorate the contents of the Hard Disk, and hence it is important to preserve the Hard Disk in a proper manner.
- The Speaker also expressed his view point that the Court must direct a Replica of the Hard Disk to be maintained.
- Such replica or copy has to be created through the Central Forensic Science Laboratory (CFSL), New Delhi.

⁷ Source- https://en.wikipedia.org/wiki/Magnetic_tape#/media/File:Magtape1.jpg

⁸ Source- <https://www.protegga.com/resources/deleted-computer-data-uncovered/>

- In the creation of a Replica, sector by sector of the Hard Disk is copied to a DVD while the original Hard Disk is preserved.
- No two Hard Disks in the World have the same Serial number, i.e; each and every Hard Disk manufactured has a unique Serial number.
- The Speaker also drew attention to the conditions within Maalkhanas, wherein the Computers are randomly stacked in a dusty room thus posing serious threat to preservation of evidence.
- In the case of *Dharambir v. Central Bureau Of Investigation*⁹ the following remark was made by the Delhi High Court for the preservation of Hard Disks-

"The four HDs so brought back, will be kept in an aseptic environment in a temperature controlled room in either the Cyber Crime Section of the CBI or any other similar convenient place with prior intimation to the learned Special Judge. This place should be immediately identified by the CBI, in consultation with the learned Special Judge so that the four HDs when brought back are straightway taken and kept in the said place".

IP Address

The Speaker then highlighted the importance to understand the role played by an IP Address in Investigation of a case. Following points were highlighted with regard to an IP Address-

- IP Address is the abbreviation for Internet Protocol Address.
- It provides the physical location from where the information is sent.
- An IP Address typically consists of four different number separated from each other. These numbers range from 0 to 255 and are known as an Octets.
- For example 172.16.254.1 would constitute an IP Address. The following is the description with respect to all the Octets within the IP Address-
 - The First and the second Octet represent as to who is the Internet Service Provider and which Country does it belong to.
 - The third Octet represents the location, i.e; the city from where the Subscriber sent the information/message.
 - The fourth and the final Octet represents the exact Room no./Machine from which the information/message was sent.

⁹ 148 (2008) DLT 289

- The Speaker then highlighted the fact that an IP Address without date and time would be redundant since then it would not be possible to pinpoint and identify the sender of the information. Thus it is of prime importance that the Judge must take care to see that the time and date has been submitted along with the IP Address as evidence before the Court.

Some other concerns with respect to electronic evidence and IP Address were highlighted by the Speaker-

- The Internet Service Providers must capture the Machine ID of the Machine used for sending the information over the Internet.
- However most of the Internet Service Providers are not following the practice of capturing and providing the Machine ID.
- In this regard, there has been an ever growing demand of having every Laptop registered and provided with a Machine
- ID worldwide. This ID is unique for every device.
- It was highlighted that most of the Institutions do not have any record or retention Policy or Rules for CCTV Footage and therefore the Court must always ask the question whether any such Policy or Rules are maintained whenever a CCTV footage is produced before it as an evidence.
- It was also highlighted in the context of Corruption cases that the Audio to be presented as an evidence is recorded on a pen phone which is then transferred to a laptop from wherein it is copied on a DVD which is then produced before the Court. However, when the serial number of all the devices used in the abovementioned process is not recorded, the credibility of the evidence tends to get besmirched.

Hash Value

The Speaker then drew attention to the importance of a hash value in the context of electronic evidence-

- A Hash Value is obtained when the entire content of the electronic record is reduced to an Alpha Numeric Code. That is to say that the entire content is compressed and a unique code is obtained. For example- ab123 would be an example of an alpha numeric code.

- Hash value for every document is unique.
- It is only in case of a clone Document that the hash value would be the same.
- The Hash value can be used to test the Integrity of the Document to test whether the information provided is authentic or any manipulations have been made.
- Whenever presented with electronic evidence, Court can always ask following questions
 - when was the Hard Disk deposited?
 - whether the hash value of its content was calculated?
 - whether on determination of such Hash value any manipulations appear to have been made?
- Hash Value is always determined using a Hash Algorithm
- Under the Information & Technology Act, 2000, the following Internationally acclaimed algorithms for calculating Hash Value are recognized-
 - SHA1 and,
 - SHA2

Electronic Evidence

The Speaker discussed various aspects pertaining to Electronic Evidences by way of a power point presentation-

- Electronic evidence means that the evidence which existed in electronic (intangible) form is being produced in tangible form.
- Electronic evidence is “any probative information stored or transmitted in digital form that a party to a court case may use it at trial¹⁰.”
- The following are the various user created electronic evidences-
 - Activity Logs
 - Subscribers Records
 - Text & Images
 - User Created Digital Evidence
 - Videos, Sound files
 - Web pages

¹⁰ Casey, Eoghan (2004), Digital Evidence and Computer Crime

- Databases
- The following are the various computer created electronic evidences-
 - Network sockets
 - Browser Cache, Cookies
 - Backup & Registry files
 - Computer Created Digital Evidence
 - Surveillance tapes
 - Email Headers
- Electronic Evidences are collected through the following sources-
 - Emails
 - Digital photographs/videos/social media postings
 - ATM transactions
 - E-commerce transactions
 - Instant Messengers/VoIP/Web-chats
 - Internet browsers/search engines key words
 - Databases (Call Data Records, etc.)
 - Hard discs
 - Data Cards/SIM cards/magnetic cards
 - Digital devices/servers/IP addresses
 - Device memory
 - Media storage devices (pen drives, CD/DVD, etc.)
 - Routers/Ports
- Highlighting the importance of human intervention or human agency, the speaker was of the view that one may lose evidence not because of ‘lack of technology’, but because of ‘lack of appreciation of technology’.
- The role of Judges has now also taken up a technocratic dimension by weaving technology in appreciation of evidence and delivery of judgment.
- The primary questions that have to be determined by a Judge are-
 - Did the investigators/litigants take care in gathering the evidence?
 - Could they fake the evidence?

Following are the cases that were referred to by the Speaker-

- *Kajal Sen v. State of Assam*¹¹- It was held by Supreme Court that the process by which a judge concludes whether or not a fact is proved is called appreciation of evidence and it is a duty of the court to appreciate evidence minutely, carefully, and to analyze it
- *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra & Ors*¹²- The Hon'ble Supreme Court appreciated the electronic evidence, whether in the form of CCTV footage, mobile devices, memory cards, data storage devices, intercepted communications over VoIP, IP Addresses, etc. while delivering the judgment.
- *Tukaram S.Dighole v.Manikrao Shivaji Kokate*¹³- Hon'ble Supreme Court held that “standard of proof” in the form of electronic evidence should be “more accurate and stringent” compared to other documentary evidence.
- *Trimex International FZE Ltd.v. Vedanta Aluminium Ltd. India*¹⁴- The Court held that in the absence of signed agreement between the parties, it would be possible to infer from various documents duly approved and signed by the parties in the form of exchange of e-mails, letter, telex, telegrams and other means of telecommunications.
- *Sanjay Kumar Kedia v. Narcotics Control Bureau & Anr*¹⁵- The Appellant company had designed, developed, hosted the pharmaceutical websites and using these websites, huge quantity of psychotropic substances were distributed in USA. On appreciation of evidences in the form of various domain names, IP Address etc. the Supreme Court found them not be a mere innocent intermediary under section 79 of IT Act.
- *Mrs.Nidhi Kakkar v Munish Kakkar*¹⁶- the court held “If person produced text of information generated through computer, it should be admissible in evidence, provided proof was tendered in manner brought through Evidence Act...”
- *Gajraj v. State (NCT of Delhi)*¹⁷- The Supreme Court noted the “irrefutable fact” that the IMEI number of a handset is exclusive in nature and no two handsets have the same IMEI number. Every time a mobile handset is used for making a call, besides recording the

¹¹ AIR 2002 SC617

¹² (2012) 9 SCC 1

¹³ (2010) 4 SCC 329

¹⁴ (2010)3 SCC1

¹⁵ Criminal Appeal No. 1659 OF 2007, (SLP (Crl.) No. 3892 of 2007)

¹⁶ (2011)162 PLR113

¹⁷ (2011) 10 SCC 675

number of the caller as well as the person called, IMEI number of the handset is also recorded by the service provider. Therefore, this piece of evidence, establishing the link between the accused and the deceased, was held by the Supreme Court to be of 'conclusive nature'.

- *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*¹⁸- The Supreme Court held that “*source and authenticity are the two key factors for an electronic evidence*”.
- *K.K Velusamy vs N.Palanisamy*¹⁹- The Supreme Court held that a compact disc can be produced as a piece of evidence as per amended definition of 'evidence' in Section 3 and 'electronic record' in Section 2(t) of the Information Technology Act,2000 that includes a compact disc containing an electronic record of a conversation. The Court held that it is similar to a photograph and can be received in evidence under Section 8 of the Evidence Act, 1872.
- *Shamsher Singh Verma v State of Haryana*²⁰ - Supreme Court held that the compact disc is also a document under s.294(1) Cr.PC.

Section 65B of the Indian Evidence Act, 1872

The Speaker explained to the Gathering that section 65 B pertaining to the admissibility of electronic evidence envisages a step-by-step processes to identify whether the computer in question has properly processed, stored and reproduced whatever information it received.

The following cases were referred to by the Speaker-

- *State v. Mohd. Afzal*²¹- It was held that under S.65 B, computer generated electronic records is an admissible evidence at trial if proved in manner specified by section. Electronic record in form of a print out compliant with S.65 B(1) and S. 65B(2) is enough to make admissible and prove electronic records. This conclusion flows out, even from the language of sub-section (4).

¹⁸ (2015) 3 SCC 123

¹⁹ 2011 (11) SCC 575

²⁰ (Crl.Appeal No. 1525 of 2015)

²¹ 107(2003) Delhi Law Times 385 (DB)

- *State v. Navjot Sandhu*²²- It was held by the Supreme Court that call records stored in huge servers cannot be easily moved and produced in the court, hence printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service providing company can be led in evidence. Irrespective of the compliance with the requirements of section 65B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely sections 63 and 65.

- *Anvar PV v P.K. Basheer & Ors*²³- It was held that:
 - Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. The same is also supported by section 65B which starts with a *non obstante* clause.
 - Under section 65B(4) it was further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence.
 - All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

- *Tomaso Bruno v. State of UP*²⁴- The trial court in its judgment held that:
 - non-collection of CCTV footage, incomplete site plan, non-inclusion of all records and SIM details of mobile phones seized from the accused are instances of faulty investigation and the same would affect the prosecution case.

²² (2005)11 SCC 600

²³ [CA No. 4226 of 2012], September 18, 2014

²⁴ Supreme Court decision dated 20 January 2015) in Criminal Appeal No. 142 Of 2015).

- Non- production of CCTV footage, non-collection of call records (details) and SIM details of mobile phones seized from the accused cannot be said to be mere instances of faulty investigation but amount to withholding of best evidence.
- *Harpal Singh @ Chhota v State of Punjab*²⁵ In this case the prosecution had relied upon the secondary evidence in the form of printed copy of the call details, however, in absence of a certificate under Section 65B(4), the same was held inadmissible in evidence.
- *Kundan Singh v State*²⁶- It was held that the certificate under section 65B(4) can be produced when the electronic record is to be admitted and taken on record, i.e., when the prosecution, defense or a party to the civil litigation wants the electronic record to be marked as an exhibit and read in evidence.

As a concluding remark, the Speaker stated that for the purpose of admissibility of electronic record, a three prong test is important:

- Document in question – is an electronic record [as defined under S.2(1)(t) of the IT Act, 2000],
- Produced by a computer [as defined under S.2(1)(i) of the IT Act, 2000], and
- Accompanied by a certificate, fulfilling the conditions laid down S.65 (B)(2)-(B)(4).

Views of Justice Joymalya Bagchi

Justice Joymalya Bagchi expressed his views on the issue as to what shall be the stage at which the certificate under section 65 (B) (4) should be produced. He stated that in *Kundan Singh v State*, the Court stopped short of stating that certificate can be produced at a stage subsequent of when the electronic evidence is produced in the Court. However the *Anvar PV v P.K. Basheer & Ors case* unequivocally states that the two must happen simultaneously and this may raise problems for the Courts. The Speaker also expressed his views on the issue as to whether the certificate under section 65 (B) (4) can be produced orally or it must be produced in writing. The Speaker stated that the said certificate is in the nature of a document and not an electronic evidence. Thus the dichotomy can best be resolved in view of section 92 of the Indian Evidence

²⁵ [Crl.Appeal 2539 of 2014]

²⁶ 2015SCC OnLine Del 13647

Act which states that any Document which the law mandates to be produced in writing is produced orally shall not be admissible.

SESSION 4

Cyber Crimes

Speakers-Dr. Harold D'Costa and Dr. Debashis Nayak

Chair- Dr. Justice S. Muralidhar and Justice Joymalya Bagchi

Views of Dr. Debashis Nayak

Dr. Debashis Nayak addressed the Session and said that under sections 64 to 75 of the Information & Technology Act, 2000 cybercrimes have been dealt very comprehensively and no aspect or any form of cyber-crime has been left out within the provisions of the Act. Through a power point presentation, the Speaker dealt with the various aspects of the cyber-crimes.

The cyber-attacks or crimes are generally targeted at the following-

- Targeting cloud computing
- Infrastructure (Stuxnet, DuQU)
- Mobile devices (Wallet fraud in Bangalore)
- Automobile access (Tracking devices)
- Credit card theft
- Phishing attacks (Mandate frauds, usual)
- Malware/Ransomware
- Medical devices
- State sponsored hacking

Cloud Computing

The Speaker cited the example of Facebook, which has about 80 million users and 250,000 new users are being added per day. This requires over 50,000 transactions per second, and thus

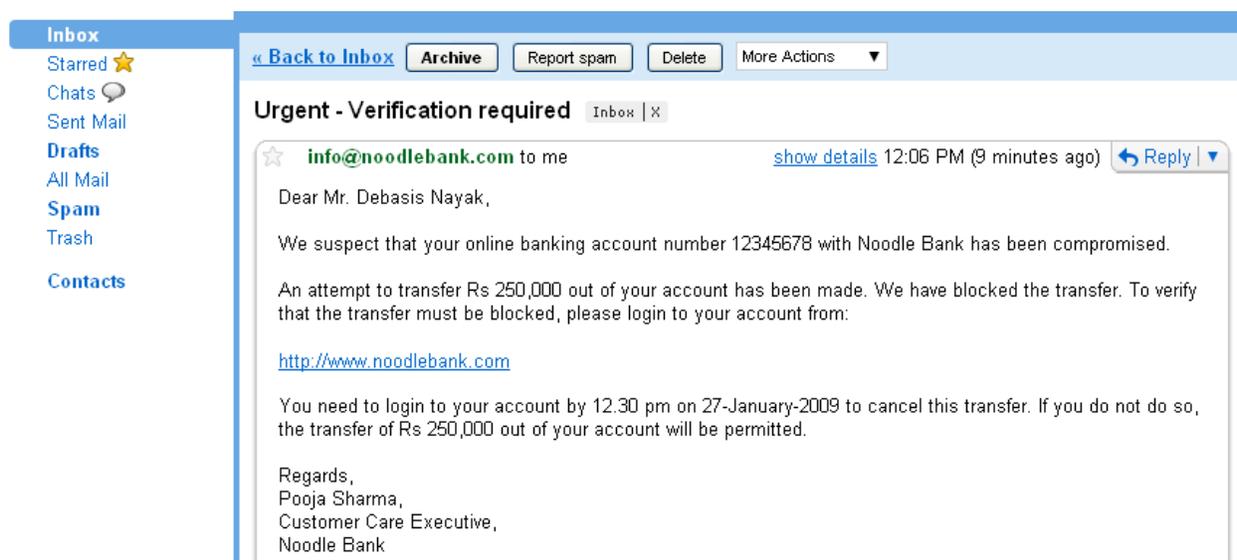
Facebook utilizes over 10,000 servers to accomplish the said task. Similarly, Banking Services, Telecom, Intelligence, etc. are all big data using services. Such massive requirements makes it infeasible to conduct operations only from one place. Hence Data is collected from different sources and displayed through cloud computing infrastructure.

The Cloud Computing services face the following kind of security challenges-

- Hacking,
- Security of virtual Operating Systems in the cloud,
- Possibility for massive outages,
- Public cloud and internal cloud security challenges

Phishing

Phishing involves fraudulently acquiring sensitive information (e.g. passwords, credit card details etc) by masquerading as a trusted entity. An Identity theft may also be committed using phishing. The Speaker explained a typical example of phishing scam that may be committed using a spoof e-mail. The spoof e-mail would typically have the following kind of content-



The link so provided would lead to a fake website, wherein once the Account Holder logs in to their Bank account, their password could be stolen. This Data so stolen may then be used for various fraud and crimes and even blocking and reissuing of SIM cards.

The various kinds of cyber crime pose serious threats of public safety and security and even to strike terror in the minds of the people. The said crimes can be done to attack the following systems-

Air Traffic Control-

The example of Warsaw's Chopin airport case was cited wherein 1400 passengers were stranded as the hackers attacked the airline ground computer systems used to issue flight plans and they had hacked into the plane's computer in flight causing it to climb

Railways-

The following instances demonstrate the point:

- May 2016: Personal data of around 1 crore customers stolen from the IRCTC server.
- Computer-based interlocking (CBI) is a signaling system designed to prevent conflicting routes. Its vulnerability poses threats to *Safety, Economics and Reliability* of the Railways.
- For example, a hacker with access to CBI can cause physical damage by changing a switch while a train is passing over it; or by setting up conflicting route.

Industrial Sector-

A case from Germany demonstrates the point where in the hackers first hacked into the office software network of the industrial site:

- Penetrated the production management software of the steel mill.
- Took over most of the plant's control systems.
- Then methodically destroyed human machine interaction components.
- Succeeded in preventing blast furnace from initiating security settings in time; caused serious damage to infrastructure.

Irrigation and Infrastructure-

- In a case, some Iranian hackers infiltrated the control system of a small dam less than 20 miles from New York City
- carried out a dozen attacks that have infiltrated the U.S. power grid system in the last decade

Healthcare-

In August 2014, Community Health Systems, which operates 206 US hospitals announced that hackers broke into its computers and stole data of 4.5 million patients. Moreover the following threats can be posed when the medical infrastructure is hacked into-

- Reset temperature settings on refrigerators storing blood & drugs and cause spoilage.
- Altering digital medical records.
- Restart / reboot critical equipment.
- Spoofed blood test reports.

Mobile Devices-

One of the most notorious attacks were carried out using RuMMS which constitutes a family of Android Malware spread through MMS. The attacks were typically carried out by sending photo in MMS format: hxxp://yyyyyyyyy.XXXX.ru/mms.apk, which once accessed would attach the malware to the device without the user even being aware of it. It functions by performing the following actions-

- Sending device information to a remote command and control server (C2)
- Contacting the C2 server for instructions
- Sending SMS messages to financial institutions to query account balances.
- Uploading any incoming SMS messages (including the balance inquiry results) to the remote C2 server.
- Sending C2-specified SMS messages to phone numbers in the victim's contacts.

- Forward incoming phone calls to intercept voice-based two-factor authentication

Installed Applications in the Smartphones usually request for the following accesses upon being installed; typically to gain access to the Data present in the device -

- Request device administrator privileges
- Remove icons to hide themselves from user
- Remain running in the background

A case at hand is that of a Bank in Karnataka where in customers installed Mobikwik mobile wallet and linked the wallet with bank’s debit card to transfer funds to wallet. However a fraud was committed and Mobikwik affiliated merchant transactions effected. Total amount grossing over 80 Lakhs loss was caused to the customers which ultimately the Bank had to pay.

Credit Card Theft

The credit card identity theft are typically conducted using a Point Of Sale (PoS) malware which is attached to the PoS machine. It is typically carried out by the following process

- MULTIGRAIN malware uses DNS to extract card data
- Is activated only when it finds the *multi.exe* process running at PoS
- It is highly targeted, digitally signed, and infiltrates stolen payment card data over DNS and thus the credit card holder is defrauded of his money.

The Speaker also explained the difference between E-Money and Digital Money:-

E-Money	Digital Money
It is affiliated to the Bank Account of the Customer	It has no physical existence
The access to E-Money can be secured through net banking/ credit cards etc.	It is not supported by the Government
Examples would include NEFT/RTGS etc.	Example would include Bitcoins

Darknet

Darknet is the term used for that part of the Internet which cannot be traced. This invincible nature of Darknet is achieved through encrypting IP Address and passing it through millions of Computers so that its trail is lost. The carrying out of illegal activities on the Internet is typically carried out using the Darknet.

The Criminals usually sell the following on the Darknet-

- Narcotics & controlled substances
- Guns, ammunition, UAVs
- Stolen financial information like credit card numbers, bank account login credentials etc
- Forged documents like passports, driver's licenses etc.

Case 1: Silk Road (Online Narcotics Marketplace)

Silk Road provided a platform for drug dealers around the world to sell narcotics through the Internet. It was set up in 2011 by Ross Ulbricht, and about 957,079 registered users. Transactions conducted on it were estimated to be US \$ 1.2 billion and were carried out in bitcoins. The site was taken down in September 2013.

The site's anonymity was maintained by using TOR (the onion ring network) to run the site and was accessible through Tor on: silkroadvb5pizr.onion

Silk Road provided an online platform for trading in:

- Narcotics and controlled substances (heroin, cocaine, LSD, methamphetamine)-The site had 13,000 listings of controlled substances on it under various categories like Cannabis, Dissociatives, Ecstasy, Intoxicants, Opioids, Precursors, Prescription, Psychedelics, Stimulants etc.
- Malicious software- designed for computer hacking (password stealers, key loggers, remote access tools etc.)

- Unlawful services- The site had 159 listings for "Services" such as hacking into Facebook, Twitter etc, tutorials for hacking ATM machines, contacts for guns and firearms, fake currency etc.
- Pirated content- The site had 801 listings for "digital goods" such as pirated content and hacking tools.
- Forged documents- The site had 169 listings for "Forgeries" such as fake driver's licenses, passports, utility bills, credit card statements, social security cards etc.

Case 2: Darkmarket (Online Carding Forum)

Darkmarket facilitated the buying and selling of stolen financial information. It was set up in 2008 by Renukanth Subramaniam and had 2500 members. The site was taken down in 2010

Its members were involved in buying and selling:

- stolen credit card data,
- login credentials, and
- equipment for carrying out financial crimes.

In a two-year operation, an undercover FBI agent with the handle *Master Splyntr* penetrated Darkmarket. 60 people were arrested. The entire operation was handled by the US Federal Bureau of Investigation along with law enforcement officials from the United Kingdom, Germany, and Turkey. Subramaniam, was sentenced to nearly five years in prison.

Following are the Estimates of the underground Economy-

- Expensive email spam (using a customer database): \$50-\$500 (£31-£310) per one million emails
- SMS spam: \$3-\$150 (£1.86-£93) per 100-100,000 messages
- Bots for a botnet: \$200 (£124) for 2,000 bots
- DDoS botnet: \$700 (£433)
- Windows rootkit (for installing malicious drivers): \$292 (£180)
- Hacking a Facebook or Twitter account: \$130 (£80)

- Hacking a Gmail account: \$162 (£100)
- Hacking a corporate mailbox: \$500 (£310)
- Scans of legitimate passports: \$5 (£3.10) each
- Traffic: \$7-\$15 (£4.33-£9.29) per 1,000 visitors for the most valuable traffic (from the US and EU)

Bitcoins

- Bitcoins are an anonymous, decentralized form of electronic currency existing entirely on the Internet. They are generated and controlled automatically through computer peer-to-peer networks.
- The Bitcoin scheme is a large scale global payment system in which all the transactions are publicly accessible, but quite anonymous.
- Bitcoins are like "cash" in cyberspace - anonymous.
- Bitcoins are not issued by any Government, bank or company. They are not issued or backed by any central body. This is unlike currencies (e.g. Rupees, Dollars, Euro) which are backed by Governments.
- Bitcoins work on public key cryptography and digital signatures.
- Bitcoin keys do not have to be registered anywhere in advance, as they are only used when required for a transaction.
- Transacting parties do not need to know each other's identity. This is analogous to walking into a shop and paying cash to buy something. The shop owner does not need to know your identity.

Sample bitcoin transaction-

Pooja wants to send 1 bitcoin to Rohit

Step 1: Rohit sends his bitcoin address to Pooja.

e.g. 1PC9aZC4hNX2rmmrt7uHTfYAS3hRbph4UN

Step 2: Pooja adds Rohit's address and the amount of bitcoins to transfer to a "transaction" message.

Step 3: Pooja signs the "transaction" message with her private key, and announces her public key for signature verification.

Step 4: Pooja broadcasts the transaction on the Bitcoin network for all to see. (See www.blockchain.info)

Steps 1 and 2 require human action. Steps 3 and 4 are done by the Bitcoin client software.

How Silk Road used bitcoins-

- Every Silk Road user had one or more bitcoin addresses associated with his Silk Road account.
- These addresses were stored on wallets maintained on servers controlled by Silk Road.
- A user had to first send bit coins to an address associated with his Silk Road account.
- The user could then make a purchase on Silk Road. This amount was held in escrow till the transaction was completed.
- Once the transaction was complete, the bit coins would be transferred to the vendor's Silk Road bitcoin address. From here the vendor could transfer the bit coins to an external bitcoin address and convert them to real currency.
- Silk Road charged a commission between 8 - 15% for each transaction.
- Silk Road used a special technique to send payments through a "complex semi-random series of dummy transactions" to further maintain the anonymity the transactions.

In addition to this, the Speaker also informed that with the advent of Information Technology, it has now also become possible to send Computer viruses via microphone and sound waves.

The invention of 3D printers has also raised the risk of weapons being manufactured through the use of 3D printing technology.

Following challenges and recommendations were mentioned-

- Under section 45A of the Indian Evidence Act, 1872 read with section 79A of The Information & Technology Act, 2000, the expert opinion with respect to electronic

evidence is to be provided by an Agency appointed by the Government which are barely two or three in number. Thus there is a need to increase such Agencies.

- Proper Training of the Investigating Agencies and of the judges and advocates is also necessary.
- Lack of proper and requisite infrastructure is another major challenge.
- Lack of awareness also hampers the proper incorporation of electronic evidences in the judicial regime.

Views of Dr. Harold D'Costa

The Speaker explained in detail the various kinds of cyber frauds that may be committed making special reference to the emerging trend of e-wallet cases:

- The Speaker cited a case from Pune wherein a courier Agency was the victim. A fraud was committed in which the perpetrator had posted advertisements on websites such as quikr and olx regarding sale of iphone. The prospective buyers made payments to the e-wallet when the perpetrator provided forged receipts of courier delivery. A complaint was lodged by the buyers against the Courier Agency for not having delivered the product. The investigation in this case is still pending.
- Fraud have also been committed on e-wallets by implanting malwares such as Trojan Horse and other spyware whereby the sms received on the device are routed elsewhere and money is redirected from one account to another.
- There are approximately 105 crore domain names registered on the internet, about 76% of which are not active. All these domain names are available with ICANN that is a part of Department of Commerce, USA and recently there has been a growing inclination towards privatization of ICANN. This poses severe threat of personal data filling in the hands of the private players.
- There have been several cases in the past of whatsApp spoofing and e-mail spoofing whereby messages were sent by a non-existent user masquerading as a known user to spread confusion and to steal data.
- A major challenge is also posed by Darknet which makes use of proxy software to commit the offence of money laundering. These Darknet users are really tough to track,

however the US Government maintains database of all internet transactions therefore upon proper investigation they may be tracked.

- A reference was also made to the recent incident of the stealing of IRCTC customer's data from their website. The Speaker informed that no such data theft was committed and it was the Agents, who were hard struck by Government's recent policy of imposing transaction limit of six per day on ticket booking on the website, who approached the Police claiming hackers had stolen data by producing their own details. This was done to malign the IRCTC so that said policy would be lifted.

The Speaker also made the following recommendations-

- Under the Forensic examination performed by the Investigating Agency there is a special need to properly look into the role played by the proxy servers.
- Static VoIP must be promoted and implemented.
- Awareness regarding the misuse of technology must be promoted.
- The features of various Applications and web pages that play an active role in data theft must be disabled and prohibited.
- The Indian Computer Emergency Response Team (CERT) must take active steps to minimize any breaches of law committed using technology.

DAY 2: 15 January 2017

SESSION 5

Trial of Economic Offences

Speaker- Mr. Rajiv Awasthi

Chair- Justice Manmohan Sarin

Views of Justice Manmohan Sarin

Justice Manmohan Sarin began addressing the Session by highlighting the importance of participatory Discussion.

At the very outset the Speaker pointed out the following components that are necessary to maintain the faith of the people in legal system-

- Certainty of law; since it is in the certainty of law that societal interest lies and flourishes.
- Expedition and swiftness in determination of criminal trial.

In this regard he highlighted that whenever delay is caused in determination of a case, the quality of evidences deteriorates and also leads to non-availability of witnesses, seriously hampering the dispensation of justice. This thus results in what is commonly known as eclipse of evidence.

The Speaker stated that Economic Offences are most commonly known as white collar crimes since historically the perpetrators of these crimes have been the ones with lots of financial resources, outreach, and received legal advice from one of the best legal advisors.

In contrast the State Counsels at times face stiff competition from their opponent side and also do not do not receive high value remuneration. Thus this provides the offender with a lot of room to subvert the law.

The Speaker also pointed out that the major problem concerning delay in trial is that the accused receives a lot of misplaced sympathy. With trials lasting for years altogether, the general perception of the public also tends to favour the accused.

However the Speaker stated that it is the long adjournments sought by the Counsel of the accused that the long delays are generally caused. Hence the plea of injustice caused to the accused in such a scenario holds no ground.

The Speaker also cited a report wherein the pathetic amenities with which police forces work in India were stated. It was stated that over 400 police stations lack a telephonic connection and over 188 lack vehicles. In such a scenario the Speaker pointed out that it is unfair and futile to place the blame solely on the police forces.

Bank Frauds

The Speaker then enlightened the gathering about various aspects of Banking Frauds. Following are the main points that were discussed-

- One of the major problems faced is the fabrication of documents that are presented to the Bank.
- Once the accused are declared absconding, no further efforts are made by the police to trace and bring them back.
- A serious problem is faced when the accused go absconding and trial has commenced. On passage of several years the accused approach the Bank for a settlement and make a plea for quashing of proceedings under Section 482 of CrPC.
- However the Speaker clarified that such incidents do not give rise to a sufficient cause for quashing of the trial. The quashing of trial under section 482 can be sought only under following circumstances-
 - Carrying on with the trial would be an abuse of the process.
 - Carrying on with the prosecution would be an exercise in futility.
 - Or that no public interest is served by keeping the Prosecution alive.
 - It is apt to be applied in cases where in the witnesses have been examined but a stalemate has arrived in the Proceedings, or a settlement has been arrived in a matrimonial dispute.
- **Central Bureau of Investigation v Maninder Singh**²⁷ - In this case the Court refused to quash the proceedings under section 482 CrPC stating:

"The allegation against the respondent is 'forgery' for the purpose of cheating and use of forged documents as genuine in order to embezzle the public money. After facing such serious charges of forgery, the respondent wants the proceedings to be quashed on account of settlement with the bank. The development in means of communication, science & technology etc. have led to an enormous increase in economic crimes viz. phishing, ATM frauds etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at public at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is a well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved."
- **State of Maharashtra Through CBI v Vikram Anantrai Doshi**²⁸- In this case the Supreme Court dealt with the question as to how far a superior court should proceed to analyse the factual score in exercise of its inherent jurisdiction bestowed upon it u/s. 482

²⁷ (2016) 1 SCC 389

²⁸ 2014 (10) SCALE 690

of the Code of Criminal Procedure, to quash the criminal proceeding solely on the ground that the parties have entered into a settlement. The Court referred the following cases-

- *Gian Singh v. State of Punjab and Another* (2012) 10 SCC 303- In this case the Court held that quashing of proceedings would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime.
 - Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences.
 - But the criminal cases having overwhelmingly and predominately civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim.
- *Central Bureau of Investigation v. Jagjit Singh* (2013) 10 SCC 686- In this case the Court had observed the following:

"The offences when committed in relation with banking activities including offences under Sections 420/471 IPC have harmful effect on the public and threaten the well-being of the society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank is the victim in

such cases but, in fact, the society in general, including customers of the bank is the sufferer. In the present case, there was neither an allegation regarding any abuse of process of any court nor anything on record to suggest that the offenders were entitled to secure the order in the ends of justice."

The Speaker also referred to the case of *Sunil Bharti Mittal v Central Bureau of Investigation*²⁹ wherein additional 2G spectrums were allocated to the Accused at a mere incremental rate of 1% instead of 2% as was prescribed by the Committee and thus undue benefit had accrued to him. It was observed by the Court that an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision. It is abundantly clear that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid down in the aforesaid judgment is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company.

The Speaker also highlighted a case that they were faced with during their tenure in this regard-

Case- A family consisting of the Mother, Son and the brother of the Mother were convicted for a crime for which the three were sentenced for life. However the mother had been absconding. The Speaker stated that it is against human nature and impossible for her to have never even paid a visit to her son and brother and thus he inquired for the Prison Entry Register. Upon perusal of the Register it was found that she had been visiting them in the Prison and it was a case of sheer lethargy of the Police in not making any attempt to bring back the absconding offender.

Views of Mr. Rajiv Awasthi

Mr. Rajiv Awasthi began addressing the Session by highlighting the gravity of the rising economic offences such as the 2G Spectrum case, Satyam case etc. that cause serious losses to the public exchequer.

²⁹ (2015) 4 SCC 609

He pointed out the following major challenges that are typically faced in cases of such serious nature-

- The first and foremost is the battery of lawyers that the said offenders avail themselves of. These advocates are generally very resourceful and influential and are thus able to subvert the law. In light of such glaring challenge, it is necessary that proper legal assistance is also provided to the State Counsels.
- At times it is generally observed that the Judges treat the accused, when presented before the Court, as a convict rather than as an accused. Thus a cultural change is necessary in this regard to obtain better cooperation from the accused.
- Another glaring problem that is faced is that a single Special Judge is burdened with several cases from various other Statutes. Therefore it is of utmost necessity that one Special Judge deals with the matters arising under only one particular Statute.

The Speaker also highlighted several other challenges that are generally faced in such Trials-

- It has been observed that in several remote places of the country, at times the Judges and Advocates are not well versed with the necessary legal provisions
- Some of the basic amenities are not available in the court rooms. In such a scenario it is a major challenge as to how can the technology driven facilities such as video conferencing can be introduced in trial procedures.
- The investigation quality has to be enhanced and technology should be utilized to the maximum extent since it is a very reliable and efficient source of evidence
- It should be a part of the accountability of the investigating officer that the Investigation is concluded in a particular time frame.
- The charge sheet should be properly scrutinized by the investigating officer and also by the Presiding Judge since the charge sheets are at times faulty.
- Adjournments during the trial proceeding should be granted only under severe exigencies and Trial must be concluded expeditiously.

Views of Mr. B.V.L. Chakravarthy

Mr. B.V.L. Chakravarthy, one of the participating Judges of the Seminar was the Special CBI Judge in the trial of Ramalinga Raju in Satyam scam case. He was invited by Justice Sarin to share with all the participants of the Seminar, the challenges faced by him during the said Trial.

Following are the challenges that Mr. B.V.L. Chakravarthy shared in the Seminar-

- Mr. Ramlinga Raju, the Accused, was admitted in hospital before the trial could commence. When Hospital authorities were asked to produce the Accused, it was stated by them that he might collapse during the Trial Proceedings and that it would pose a serious risk to his life. This led to holding back of the Trial for over three to four months.
- Since the accused was admitted in Hospital, his examination could not be completed. Thus a written questionnaire had to be sent to the Hospital.
- A discharge petition was also filed by the accused. However the said petition under section 239 of CrPC was held to be an argument in writing rather than as an Application. Moreover the disposal of Discharge Application and framing of charges were both done on the same day so as to prevent the Accused from filing an Appeal against the order and upon an Order of the Supreme Court, the Trial was conducted on day to day basis.
- There were over four thousand and five hundred Documents; and seven hundred witnesses that were examined as evidences before the Court. Thus dealing with such huge amount of evidences was a major challenge, especially in light of the fact that the precise numerical values of the huge amount of money and their unit of currency had to be taken note of.
- The Speaker also informed the Gathering that considering the huge documentary evidences that had to be dealt with, the Speaker would stay back after the Court Hours to prepare the questionnaire for the section 313 CrPC deposition to be made by the Accused. In this way the questionnaire was ready by the time the Trial ended.
- The Speaker also informed that he would maintain handwritten notes to assist at the time the Final Judgment has to be delivered.

Views of Justice Manmohan Sarin

Justice Justice Manmohan Sarin at the conclusion of the Session pointed out the following challenges and suggestions-

- The numerical values mentioned and number of evidences forwarded are the major challenges that any Judge has to deal with.
- The Judges must always ask the Counsels to earmark the most important documents and submit written synopsis.
- Referring to Satyam scam case, it was pointed out by the Speaker that instead of a written questionnaire, the accused might demand an oral questionnaire to be made at the Hospital to further delay the trial proceedings. In such instances the Judge must be careful to hold a written questionnaire.
- The finest Judges are the ones who are able to grasp the essence of the judgment by stating the most complicated matters in the shortest period of time without undermining the essential aspects of it. Thus Judges must always strive to achieve the said goal.
- The best judgments are the ones that are handwritten by the Judge instead of dictating it to the stenographer.
- The Speaker also highlighted the fact that the Court Room atmosphere should be polite, caring, receptive, and as far as practicable, the Judge should wear a smile.
- However the Speaker also cautioned to carry out any jokes, humor or wit only when the Judge feels very confident to carry it out maturely

SESSION 6

Extradition of Fugitives: Role of Special Court

Speaker- Ms. Sonia Mathur

Chair- Justice Manmohan Sarin

Views of Justice Manmohan Sarin

Justice Manmohan Sarin began addressing the Session by defining a fugitive criminal to be one who commits a crime in one country and then escapes to another country.

There are two kinds of countries involved herein-

- Requesting State- i.e; the Country wherein the crime was committed by the fugitive criminal and the State now seeks to extradite him back.
- Requested State- i.e; the Country where the fugitive criminal has escaped to and is residing after having committed the crime.

For the purposes of extradition, there exist two kinds of avenues within the law-

- Extradition Treaties- whenever the two States have entered into a Treaty for the purposes of extradition of fugitive criminals, then their extradition shall be governed according to rules laid down under the Treaty.
- Provisions of Law- If there exists no Treaty between the two countries, then the provisions of law laid down in the national legislation come into play. In India the same is governed by The Extradition Act, 1962.

The Extradition Act, 1962

The object of the Act is to consolidate and amend the law relating to the extradition of fugitive criminals

The Speaker briefly discussed the structure of the Act as follows-

➤ Chapter I

- Under section 2(e), a "foreign State" means any State outside India.
- Under section 2(j) "treaty State" means a foreign State with which an extradition treaty is in operation.
- Under section 2(c) "Extradition offence" are defined as-
 - i. in relation to a treaty State, an offence provided for in the extradition treaty with that State;

- ii. in relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence.
 - Under section 2(a) "composite offence" is defined as an act or conduct occurred, wholly or in part, in a foreign State or in India but its effects or intended effects, taken as a whole, would constitute an extradition offence in India or in a foreign State.
 - Under section 2(f), a "fugitive criminal" means a person who is accused or convicted of an extradition offence within the jurisdiction of a foreign State and includes a person who, while in India, conspires, attempts to commit or incites or participates as an accomplice in the commission of an extradition offence in a foreign State.
- Chapter II- This Chapter deals with matters pertaining to extradition of criminals to a foreign State and with which no extradition treaty exists.
- Under section 4, a requisition for surrender of a fugitive criminal is to be made to the Central Government by any of the following means-
 - by a diplomatic representative of the foreign State at Delhi, or
 - by the Government of that foreign State through its diplomatic representative, or
 - such other mode as is settled by arrangement between the two Governments
 - Under section 5, the Central Government nominates a Magistrate to make inquiry into the case whenever a requisition for extradition is made by a foreign State.
 - The Requesting State applies Documents to the Central Government stating-
 - what are the offences made out against him,
 - whether he deserves to be prosecuted,
 - what are the punishments prescribed, etc.

The Magistrate must then scrutinize these Documents when placed before him.

- Magistrate must see to it that credible information is received and that a case has been made out under the Documents submitted. Thereupon the Magistrate must submit a Report to the Central Government stating as to whether-
 - A prima facie case has been made out,
 - It is a good case for extradition
 - Under section 6, it is the Magistrate who is empowered to issue a warrant for arrest.
 - Section 7(1) categorically confers upon the magistrate with the same jurisdiction and powers, to inquire into the matter, as if the case were one triable by a court of session or High Court.
 - Such wide ranging powers on the Magistrate are conferred since the matters arising under the Extradition Act involve a question of foreign relations and hence a proper determination of the matter at hand is indispensable.
 - However if the offence for which the extradition of the accused is sought is one of political character in nature, then it does not constitute an extraditable offence and the Accused shall be discharged and the case quashed under section 482 of CrPC.
 - Therefore under section 7(2), an opportunity of being heard is provided to the Accused to produce before the Court any evidence that goes on to show that the said offence is in the nature of political character. The same also upholds the principle of Natural Justice.
- Chapter III- This Chapter deals with matters pertaining to extradition of criminals to a foreign State with whom an extradition treaty has been entered into.
- Chapter V- This Chapter deals with Miscellaneous provisions of the Act
- Section 25 prescribes that in the matter pertaining to the Bail of the fugitive criminal, the provisions of code of criminal procedure shall apply.
 - It was clarified by the Speaker that with respect to matters of extradition, the principle of "Bail and No Jail" does not apply since there is a high probability that

the Accused would escape and the relations with the foreign State would be jeopardized. Thus in extradition cases, Bail is very rarely granted to the Accused.

- Under section 29, the Central Government can discharge the Accused for any of the following reasons-
 - The case is of a trivial nature
 - the application for the surrender is not made in good faith or in the interests of justice
 - the application for the surrender is made for political reasons
 - It is unjust or inexpedient to surrender or return the fugitive criminal
- The Speaker then clarified that by way of section 29, the Central Government seeks the administration of Justice to be in its own hands.
- The same is sought since people under the garb of fugitive criminals are often persecuted and forced to seek asylum in foreign lands.
- Thus section 29 permits the discharge of the Accused if any of the following may be the cause-
 - It is not sought in good faith
 - Prosecution is sought for political reasons/ideology
 - The Accused is sought to be oppressed
 - No fair trial will be provided in the foreign State,
 - The said extradition would be unjust to the Accused

The Speaker then referred to following cases-

Verhoeven, Marie-Emmanuelle v Union of India and others³⁰- In this case the issue had arose as to whether an Extradition Treaty is in existence? The MEA had argued that once the Government had said in Court that the Treaty exists, no further examination as to its existence need be done by the Court. However the Supreme Court of India observed that existence of a Treaty is a matter of actual determination and political view on its face may not be accepted. Determination of such question is not beyond the scope of Judicial Review.

³⁰ (2016) 6 SCC 456

The Court on perusal of the record held that there is a binding extradition treaty between India and Chile and that the provisions of the Extradition Act, 1962 (other than Chapter III thereof) are applicable to the Republic of Chile in respect of the offences specified in the Extradition Treaty.

Abu Salem Abdul Qayyum Ansari v Central Bureau of Investigation³¹- In this case, the CBI sought to withdraw certain charges against the Accused which have been termed as "Additional Charges" by the Portuguese Court and thus violation of the Principle of Speciality. The Supreme Court of India coming to a conclusion that offences for which the appellant was extradited to India are grave enough to even award the appellant with maximum punishment and therefore no prejudice would be caused by withdrawal of the additional charges, allowed such withdrawal. The Supreme Court of India had also observed that in such cases wherein two divergent views are expressed by the Supreme Court of Portugal and India with respect to Principle of Speciality, the available options for the Union of India are either to approach an international forum to settle the divergent view or in alternate reconcile via diplomatic channels.

Bhavesh Jayanti Lakhani v State Of Maharashtra³² - In this case the Ho'ble Supreme Court of India had held that cases pertaining to private disputes such as matrimony, custody of child, etc. are not fit cases for extradition.

Views of Ms. Sonia Mathur

Ms. Sonia Mathur defined extradition as an official process whereby one country transfers a suspected or convicted criminal to another country. The process is premised on the "solidarity of nations in the repression of criminality"

The Speaker explained that there can be two kinds of extradition-

- By India, or

³¹ 2013(10) SCALE 31

³² (2009) 9 SCC 551

- From India

Generally the role of the Special Courts comes into picture only when extradition is sought by India. The duty of the Magistrate in such cases is to see that a prime facie case is made out.

The Speaker highlighted the need of an Extradition Treaty due to following causes-

- Territoriality of criminal law- since a State cannot apply its penal laws to acts committed outside its boundaries
- It plays an important role in international battle against crime.
- Since under the principle of sovereignty, there is no obligation upon a State to surrender an alleged criminal to a foreign state
- Desire for the right to demand such criminals from other countries
- An expulsion or return of an individual would then be sought without a treaty

Some of the initiatives taken by the International Community with respect to extradition are as follows-

- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance
 - Article 6 of the Convention provides for extradition in drug-related cases among countries having no other extradition treaties. In addition, the Convention requires the parties to provide mutual legal assistance to one another for purposes of searches, seizures, service of judicial documents, and so on.
- Financial Action Task Force (FATF) The FATF established in 1989 by the G7
- Political Declaration and Global Programme of Action adopted by UNGA on 23.02.1990
 - States are invited to give consideration to the model treaties on mutual assistance in criminal matters and on extradition, which contain specific provisions related to illicit traffic in narcotic drugs and psychotropic substances and for the Prevention of Crime and the Treatment of Offenders.

Some of the Initiatives undertaken by India include-

- Bilateral Extradition Treaties with several countries

- Regional extradition treaties such as the London Scheme (Commonwealth Scheme for the Rendition of Fugitive Offenders 1966)
- 1997 International Convention for the Suppression of Terrorist Bombings

The Speaker then briefly traced the evolution of Extradition Law in India

- Pre-independence - Fugitive Offenders Act, 1881 was enacted for Commonwealth Countries and the Extradition Act, 1903, was enacted for other nations.
- In March 1904 an order was made declaring part II of 1903 Act to have effect in British India as part of 1870 Act. This position continued till independence.
- Post-independence - The Extradition Act, 1962, repealed and replaced both the above.

The Ministry of External Affairs (MEA) is the Central Authority for all requests for Extradition. Extradition requests are sent to the MEA for consideration by:

- State Government,
- Court of Law;
- CBI, NIA etc. through Ministry of Home Affairs

Procedure under Chapter III

Chapter III deals with matters pertaining to extradition of criminals to a foreign State with whom an extradition treaty has been entered into. Under the procedure prescribed-

- Central Government may endorse a warrant received from a Foreign State.
- Endorsed warrant is sufficient authority to apprehend the person named in the warrant.

The Magistrate would then have to make an Enquiry into-

- If indorsed warrant is duly authenticated; And
- If the offence is an extradition offence,

Upon such enquiry, the Magistrate must-

- Commit the fugitive to prison, and
- Send certificate of the committal to the Central Government.

Or else,

- May detain the person in custody or release him on bail

The Speaker also explained the difference between role played by the Magistrate under chapter II and chapter II

Chapter II	Chapter III
whether a <i>prima facie</i> case is made in favour of the requisition by the foreign State u/S 7(2)	scope limited to being satisfied that the endorsed warrant is duly authenticated and that the offence alleged is an extradition offence u/S 17

General Conditions of Extradition

Three general conditions for extradition that have emerged effectively:

- a. The Principle of Double Criminality- i.e; The fugitive's act must constitute an offence according to the laws of both countries
- b. The existence of an “ extradition offence”, and
- c. The existence of an Extradition Treaty

By virtue of Section 34, the Extradition Act has extra-territorial jurisdiction and an extradition offence committed by any person in a Foreign State shall be deemed to have been committed in India and such person shall be liable to be prosecuted in India for such offence.

Extradition may be refused in the following cases-

- The offence is of a political character - (section 7(2) and section 31(1)(a)) read with section 31(2) and the Schedule);
- The offence is a non-extraditable one ; (section 7(2) read with section 2(c)(i))
- The offence is punishable with less than one year’s imprisonment (section 7(2) read with section 2(c) (ii))
- The period of limitation for prosecution has expired

- The rule of Speciality is violated- According to the principle of specialty, extradition is granted only on the condition that the person extradited will not be tried or sentenced for any offence other than that for which extradition is granted under section 31(c)
- Non Bis In Idem- provides against double jeopardy for the same act, extradition may be refused if the offender has already been tried and discharged or punished, or is still under trial in the requested State, for the offence for which extradition is demanded.

Following are the Enabling Provisions under CrPC with respect to extradition-

- Chapter VII (A) CrPC - reciprocal arrangements, attachment and forfeiture of property.
- S. 105-B CrPC - assistance in securing transfer of persons.

Following are the Enabling Provisions under PMLA, 2002 with respect to extradition-

- Chapter IX, S.59, PMLA, 2002- Reciprocal arrangements for processes and assistance for transfer of accused persons
- Schedule includes offences u/S.7,8,9,10 & 13 of the Prevention of Corruption Act,1988.
- Section 44 (1) (a) - an offence punishable u/S.4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court.

Where the Central Government is of the opinion that a fugitive criminal cannot be surrendered or returned, pursuant to request for extradition by the Foreign State, the Central Government, if it deems fit and proper, it can take steps to prosecute such fugitive criminal in India.

Guidelines for Extradition request for an accused/ fugitive-

- After chargesheet has been filed,
- Court having taken cognizance,
- Issued orders/directions for committal,
- Non-bailable Warrant issued,
- All extradition requests should be supported by relevant documents, affidavits and information.

The affidavit should also indicate that if the accused were extradited to India, he would be tried in India only for those offences for which his/her extradition is sought. If the concerned court is requesting for extradition of a person, the request in the form of an affidavit should be in first person, i.e. by the Hon'ble Magistrate/ Judge himself/herself. (Such requests are usually received from Court Masters or other court officials writing in third person on behalf of the Court). The request for extradition and the documents thereof should be prepared as per the requirements of the extradition treaty between India and the country concerned from which the fugitive is to be extradited to India.

Section 34C

Where the extradition is to a country where the punishment for the relevant offence is not death but life imprisonment, the extradition shall be made conditional upon the punishment of the accused in the foreign country with life imprisonment even if the same offence attracts the death penalty in India (section 34C).

When extradition and deportation collide, the section 33 of the Act gives an overriding effect to the Foreigners Act and hence nothing would prevent the Government to deport a person.

Following cases were referred-

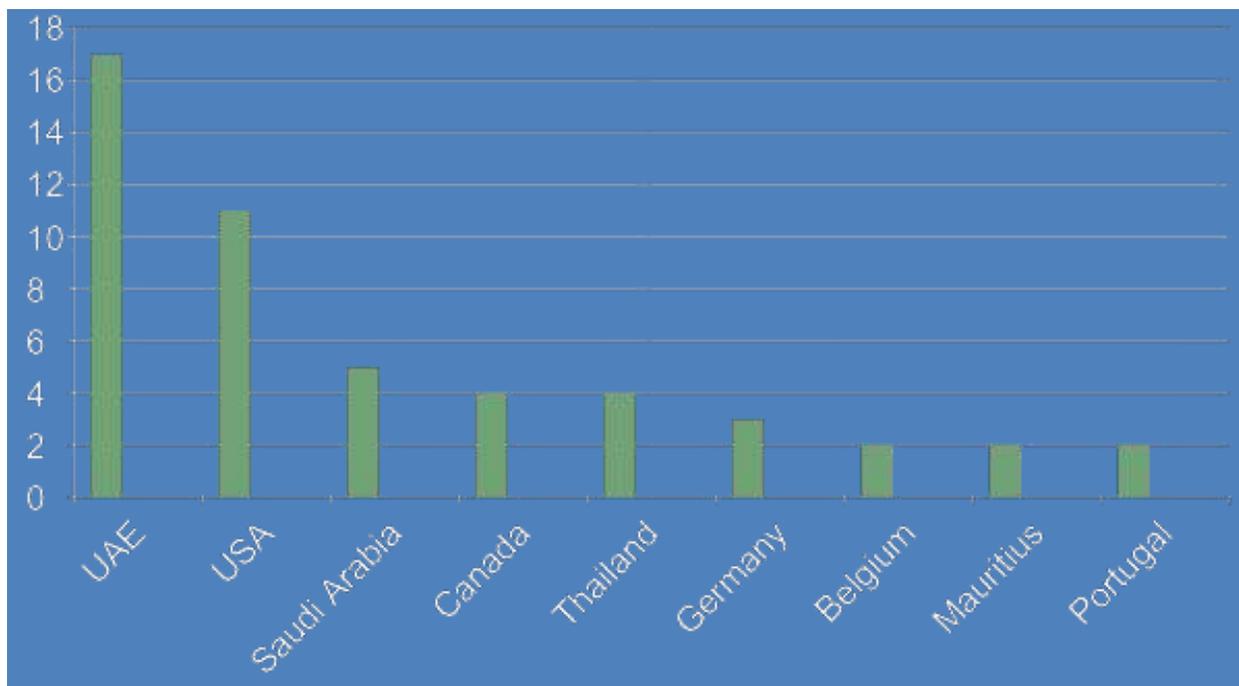
*Saifi v. The Governor of Brixton Prison & The Union of India*³³, the fugitive criminal had sought for refusal of extradition to India on the basis that the evidence of the major witnesses has been taken in Hindi language and that if he is extradited back to India, he will not receive a fair trial due to his religion. The Court in England refused his extradition that some mala fide was present against the Accused and that the Application received were not properly authenticated. Moreover if he were to be extradite then there is an apprehension of bias against him and that he would not receive a fair trial.

³³ 2000] EWHC QB 33 (21st December, 2000)

*Sarabjit Rick Singh v Union of India*³⁴ - Indian citizen who was a resident of US was alleged to have been aiding and abetting sale & supply of MDMA and other offensive substances. He was arrested in India after request by USA. Under section 5, the inquiry was conducted by the Magistrate, documents were granted and an opportunity to file Written Statement was also provided. The fugitive criminal claimed that only an affidavit without some of the documents were supplied to him and thus the rest of the Documents should be supplied. This request was rejected by the Magistrate and also dismissed by the High Court. The Supreme Court held that the inquiry by Magistrate was restricted to prima facie case and the mode and manner of inquiry has nothing to do with standard of proof. Under section 7 and 10 of the Act and Article 9 of treaty, “information” would not mean evidence brought on record after strict compliance of Evidence Act but the Extradition Act being a special statute would prevail over Cr p C and section 10 exhibits/evidence need not be taken in presence of person against whom it is used.

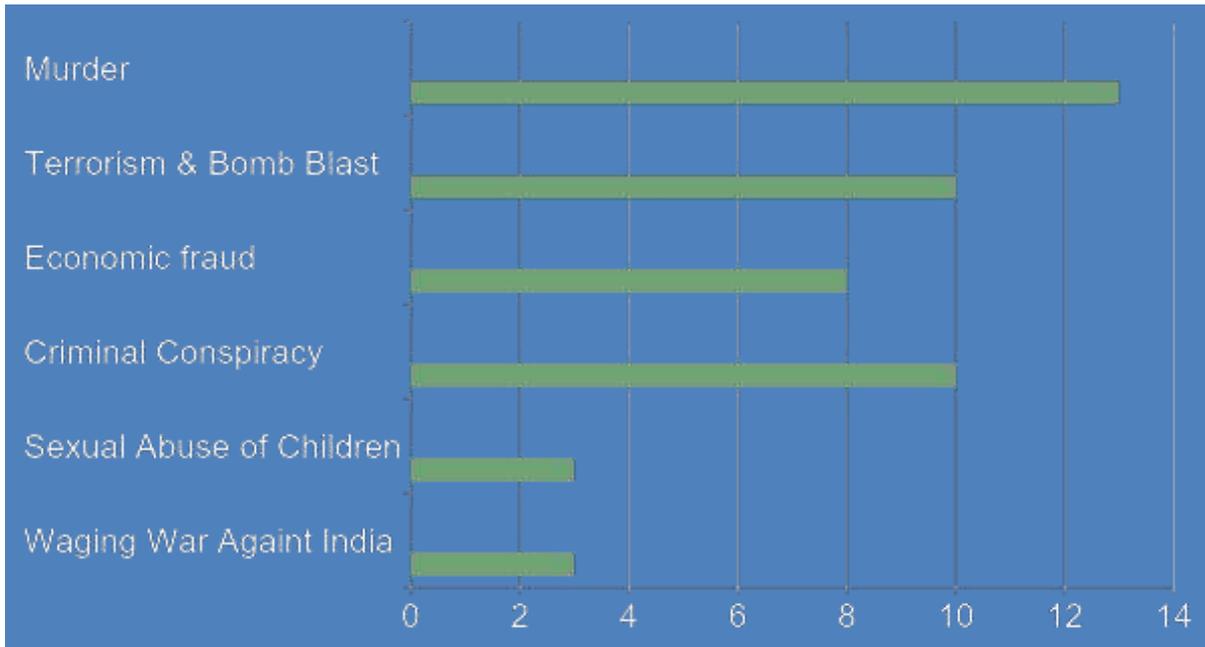
The Speaker also enlightened the Gathering with the following Data:-

No. Of people extradited since 2002 from various countries



³⁴ 2007(14) SCALE 263

Extradition Offences of those who were extradited



Views of Justice Manmohan Sarin

Justice Manmohan Sarin concluded the Seminar by enlightening the Gathering with some of the cases in which the Indian Courts had denied extradition-

Gurdev Sangha case- In this case, an Indian citizen was prosecuted in Canada for conspiracy of smuggling cannabis into Canada. He had engaged a Queen's Counsel but was defrauded by him. The Counsel promised to avail him Parole in two years in exchange of Plea Bargaining. However the Accused was sentenced to fourteen years imprisonment and half a million Dollars as Fine while his Deputy, a white man was sentenced for only four years for the same offence. The Counsel misused the Power of Attorney sanctioned in his favour and sold off various properties of the Accused. Later on the Canadian Law Society found the Counsel to be guilty for duping the Accused into pleading Guilty and he was prosecuted and also sentenced to five years imprisonment.

The Accused now a Convict managed to Escape to India from where his extradition was sought to Canada. The Delhi High Court refused a Discharge Petition under section 29 of the Act

holding that Canada was an important State for India. However due the long delays, by the time of conclusion of the Trial, the Court quashed the warrant holding that the extradition cannot be sustained in Law due to -

- The Convict had already spent over One Thousand and Four Hundred days in Jail in Canada.
- The Convict had spent ten years in Jail in India.
- Thus he had already undergone the term of imprisonment prescribed for his offence.
- He would also face racial discrimination in Canada since his Deputy had been served a lesser punishment for the same crime.

Similarly in another case wherein the Government of Malaysia had sought extradition from India of an Accused who was also a President of Hindu Mahasabha. It was brought before the Court that no credible information was provided against him by the Government of Malaysia and the he was being persecuted out of a political vendetta. The Court refused his extradition and granted him Bail.

Feedback and Audit of the Course

The Final Session was followed by feedback and audit of the Course provided by participants.

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