

Sentencing Policy in Anti - Corruption Law

*Roshan Dalvi
Former Judge,
Bombay High Court*

The crime problem is, in part,
an overdue debt that the
country must pay for ignoring,
for decades, the conditions that
breed lawlessness.

- Earl Warren

History

IPC

- S.21
- S.161 to 165A

PC Act

- 1947
- 1952
- 1964
- 1988

We enact many laws that manufacture criminals,
And then a few that punish them.

- Benjamin R. Tucker

Amendments

- Definition of Public Servant – S. 21
- Offences – S. 7, 8, 9, 11 & 13
- Penalties enhanced – S. 10, 12, 14, 15
- Sanction – S. 19(1), (2)
 - Purpose
 - Final, if not challenged till trial
- Day-to-day trial – S. 4(4), 22(b), 22(c)
- Stay in Revision prohibited – S. 19(3)
- Bankers' books – S. 18

*Laws are generally found to be nets of such a texture,
as the little creep through, the great break through,
and the middle sized are alone entangled in.*

– William Shenstone

Features

- Court of Original Criminal Jurisdiction
 - [A.R. Antulay v/s R.S. Nayak (AIR 1984 SC 718)]
 - Remand
- Gratification
 - Motive or reward
 - Favour or disfavour
 - In Cash or kind
 - For doing or not doing
 - For service or dis-service

*Provisions which are rigid in theory,
Are frigid in practice*

Features (Contd...)

- Attachment of properties - **S.102/105C to 105J Cr.PC**
 - Moveable, immovable, tangible, intangible
 - e.g. flats, land, bank accounts, bank lockers, shares
 - Sealing, seizure
 - e.g. premises, books of accounts, documents
- Freezing of bank accounts – S. 18 PC Act
 - Bankers' Book Evidence Act
 - 1999 (7) SCC 685 State of Maharashtra vs. Tapan Neogi
- Presumption – S.114(a) Indian Evidence Act
- Res Ipsa Loquiter ?

Liberation is not deliverance

Over-reaching the Law

- ATMs
- HIV+ persons
- Disposing off properties
- Mala fide transfers

*Against one law-maker,
there are a thousand law-breakers!*

Enforcing the Law

Advanced Electronic Gadgets in Investigation

- Scientific evidence to have enhanced probative value
 - Taping of conversation
 - Sample telephone voice to be collected post arrest / trap
 - Care & caution in sealing tapes
 - Video recording of conversations / interrogations
 - Establish identity of the voice
 - Exhibit truthfulness of confessions, if any
 - Forensic Computing
 - Seizure of computers and securing data
 - Optical scanning techniques
 - Crime mapping

Enforcing the Law (Contd...)

- Commercial sense
 - e.g. internet piracy, post office fraud
 - Teamwork with professionals, e.g. solicitors, accountants, bankers, stock brokers, media, management experts, investment bankers, insurers, capital market regulators, financial experts, economists, IT experts, SEBI officers.
 - Police/prosecutor integration
- Information management
- Private detectives / investigative agencies

The accomplice to the crime of corruption is usually our own indifference.

Sentencing

- Imprisonment
- Fine
- Compensation

The concept of fairness to the accused must not be stretched till it is narrowed to a filament

– Justice Benjamin Cardozo,
US Supreme Court

You must be
the change
you want to see
in this world.

- Mahatma Gandhi