

**Report of National Conference of the Presiding Officers  
of CBI Courts**

**September 19 to 21, 2014.**

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Prepared by Programme Coordinator:  
K. Pattabhi Rama Rao, Asst. Prof.

National Conference of the Presiding Officers of CBI Courts was held at National Judicial Academy, Bhopal from September 19<sup>th</sup> to 21<sup>st</sup>, 2014. A total Number of 27 Judges from different high courts participated in this conference from across the country. All the judges are working as Presiding Officers of CBI courts in different jurisdiction.

In the first session Dr. Balram K Gupta, Director, NJA gave the introductory remarks. He referred to the judgments of Guahati High Court in "Narender Kumar" in which the validity of the constitution of CBI as Police force was questioned in which the court held that CBI is not a force constituted in accordance with the law . Later Mr. Nimesh Jani, Expert from UNODC, addressed the participants on "***Corruption on international concerns***". He narrated various steps undertaken by the UNO and other international organizations in compacting the corruption. He mentioned about the convections ratified by Indian Government relating to the problem of corruption on the international obligations of Indian govt. to take steps to eradicate the corruptions. Justice P.K. Mishra and Justice Manmohan Sarin chaired the session.

The second session is on the "***Special Position of CBI Courts in Criminal Justice Administration***". Justice Sarin highlighted the important provisions of the prevention of corruption Act, 1988 and the position of the special judge appointed under section 3 of the Prevention of Corruption Act. Justice P.K. Mishra chaired this Session. analyzed various provisions of "Prevention of Corruption Act, 1988, Lokayukta Act, Prevention of Money Laundering Act etc., and his emphasis however was on "Prevention of Corruption Act 1988. He highlighted provisions such as Section 19 and Section 20 of PC Act. He stressed that the High Courts shall not entertain a revision against the orders passed by the Special Judge except in the circumstances when it feels that substantial injustice will be done to the parties in case

of non intervention. He also has highlighted that on certain aspects there is no clarity in the judgments and therefore judges dealing with prevention of corruption Act shall have thorough understanding of the Bare Act and then only one can understand the interpretations of the provisions by the High Courts and the Supreme Court. Mr. Pattabhi Rama Rao has pointed out that though there are adequate provisions in the prevention of Corruption Act, 1988 for speedy disposal of the cases, a straight case takes about 20 years for conclusion at the logical and participants of the conference also concurred with this view Following are the important points that were discussed in the first session:

1. Only Additional District Judges and District Judges are appointed as Special Judges under section 3 of Prevention of Corruption Act 1988.
2. But Special Judge is a legal fiction in which a Sessions Judge was required to follow the procedure laid down for the trial of warrant cases by the magistrates following S.238 to 250 Cr. P.C.
3. At the same time as per the statute the Special Judge is vested with the powers of Sessions Judge for all the other purposes.
4. It was also pointed out that under S.5 (6) of the P.C. Act, Special Judge discharges the functions of a District Judge while acting under criminal Law Amendment Ordinance 1944.
5. The speaker also mentioned about the establishment of Special Courts under Special Court Act in Orissa, Bihar and Madhya Pradesh and possible conflict between the provisions of Criminal law Amendment Ordinance, 1944 and the legislations of the States under which Special Courts to try the offences under the Prevention of Corruption act, 1988.
6. The Speaker also mentioned about the judgments n cases of A.R. Antulay, Bangaru Laxman in which the Supreme Court has clarified the position of a Special Judge in the criminal Justice System.
7. There as a live discussion about the judgment of Kerala High Court in Dr. Rajan V. State of Kerala in which the Court made observations regarding the Power of the District Judge and Special Judge in attaching the Proceeds of Crime and also

observed that the Special Judge can not attach the proceeds of crime before commencement of trial and it is only the District Judge empowered under criminal Law Amendment Ordinance who can attach the suspected proceeds of crime by following provisions of C.P.C. Attention of the Judges was also drawn to the Judgment of High Court of Andhra Pradesh in Rogala Mohana Rao V. Dy. S.P., ACB, Vishakapatnam where in the court held that the special judge can attach the property suspected to be proceeds of crime even before the commencement of the trial/ There was good discussion this session.

Mr. Pattabhi Rama Rao highlighted the recent pronouncement of Supreme Court in Lalitkumari V. State of U.P. regarding the compulsory registration of FIR on reporting the non cognizable offences and the observations made by the court regarding CBI (Crime) manual. He pointed out that as per the ratio of Lalitkumari. The provisions of CBI manual as far they are consistent with Cr. P.C. can be validly accepted and therefore the Supreme Court validated registration of "Source Information Report" and keeping it as secret by CBI. Mr. Pattabhi Rama Rao also has drawing the attention of the participants to the judgment of Supreme Court in Ganeswaran in which Supreme Court made similar observations regarding CBI (Crime) Manual and he opined that though CBI (Crime) manual was prepared as per the directions of the Supreme Court in Vineet Narain's case, all the provisions of CV (Crime) manual cannot be validated on that ground and the provisions of CBI (Crime) manual which are against the basic tenets of criminal procedure cannot be validated by the Supreme Court. Post lunch Bhuvan Shyam a movie related to problem of corruption acceptance was screened to the participants to sensitize them. In the 4<sup>th</sup> session all the participants were divided into five groups and they were allowed to discuss on "*Challenges facing the CBI Courts*". From 4 to 5 PM. the participants made their presentations through one representative from each group. Justice Sarin chaired the session and guided the discussions. The following are important points out of the presentation made by the participants.

### Group-I

1. Insufficient infrastructure in CBI Courts.
2. Non service of summons on accused and witnesses causing delay in disposal of cases. Many witnesses are in high profile position and CBI could not serve summons on them. Most highly placed witnesses are not served with summons.
3. In Himachal Pradesh CBI, special Judges are entrusted with other cases. The very purpose of establishment of Special Courts is defeated.
4. Final reports are filed and when further investigation is ordered they are not able to understand the true purpose of ordering further investigation.
5. CBI Officers due to fear of superior officers, they are seizing all documents and they are citing all the witnesses without considering whether they are necessary.
6. Public prosecutors are not able to give up the witnesses, as they are not free as they may be taken to the task if the case ends in a acquittal. Public prosecutors are not independent. Due to this rigidity they are not able to give up the unnecessary witnesses and causing loss of time.
7. Investigating officers are filing the charge sheets without submission orders and reports of Forensic Laboratories.
8. Public prosecutors are requesting time for going through the documents and no assistance is given to the public prosecutors I.O. shall be present and assist Public Prosecutor.
9. Stays are being granted by the High Courts despite the statutory prohibition in granting stay.

### Group-II

1. Attempt of CBI Officers in writing letters signed by the. A conscious attempts are made by the CBI Officers to get the letters signed by the witnesses in the statements and it shall be checked
2. Section 29 of Cr.PC is to be emphasized by the Public Prosecutors.
3. Media pressure on CBI Judges is high and Judges shall not consider media.

### Group III

1. CBI Judges are dealing with the other general cases including Civil, OPS and other civil cases in some of the States.
2. P.P. informs that he needs to take permission from Joint Director to drop the witnesses.
3. When a case ends in acquittal P.O. is looked with skepticism.
4. Documents are in vernacular and some witnesses do not know English
5. Stenographer do not know English
6. Witnesses are from very far off places.
7. Every order is challenged and stays are granted by higher courts.
8. Discourage petitions are filed one after another to delay the proceeds.
9. When influential persons are involved problems are more and this needs special attention

#### Group-IV

1. Absence of witnesses supported by medial certificates is a problem.
2. Applications for returning the bribe amount in some states are causing delay.
3. V.C.Ds are brought by the prosecuton and lapstoms are to be provided to the courts for viewing them.
4. CBI has been filing applications without a provision of law.
5. All seized documents to be produced by the CBI. When they do not produce the documents but ask for order u/s 457 Cr.P.C. for retuning documents from Malkhana.
6. Frequent changes of Public Prosecutor is a matter of hgh concern
7. Different rank police officers are investigating the cases and there is not consistency in this regard

#### Group-V

1. How to make the cases reading for trial is a big problem.
2. (Law need to be changed) but Judges can fix the date for hearing on changes.
3. Laptops and prosecutors are needed
4. Wrt Petitions are filed and stay are granted
5. This group suggests that there is no need for any application under section 294 Cr.PC, and a pro active judge can take steps calling the parties to admit or deny documents.

6. It is further opined that with the increased use of VCDs, cell phones, computer aided recordings to collection of evidence, more number of witnesses are being added, as paunch witnesses, or as witnesses to transcripts, witness to recording, witnesses at the time of taking voice sample, ponch witnesses when the voice sample is sealed and sent to FSL, a colleague of the accused as witness etc.

The fifth session "*Special investigation Procedures by CBI*" Mr. Rajiv K Tandon addressed the participants. He referred to the Judgment in Vineet Narayan, Ganaswaran etc.. The participants have discussed the issues relating to the investigation of the cases. Mr. Tandon also spoke on the problems that the investigating officers encounter in the cases relating to the corruption cases from the side of courts. The session was chaired by Justice Manmohan Sarin and Justice P.N. Prakash.

In 6<sup>th</sup> Session Ms. S.Bhattacharya Retd. Addl. Director of Prosecution, CBI, addressed on the concept of public servant. He narrated the various changes that were made in the legislation regarding the definition of public servant on highlighted the difference between section 21 of IPC on the definition in prevention of corruption Act. He mentioned important judgments delivered by the Supreme Court under section 20 of the PC Act. He highlighted the issues relating to "Trapcases" as well as the cases of "Disproportionate Assets". There was a discussion the difference between "acceptance" and "obtainment" while discussing on presumption in cases taking under section 7 of the PC Act. Mr. Bhattacharya maintained that presumption can be drawn in all cases of recovery of trained money, but still it is a rebuttable presumption.

Mr. Pattabhi Rama Rao intervened to draw the attention of the participants to the judgments of the Supreme Court in C.M. Girish Babu and the judgements after Girishbabu case. He tried to impress the judges ta there is not consistency in the judgments of the Supreme Court on drawing of presumption and mentioning the cases which are provided in the reading material, he requested the participant juges to find out the difference in approach of the Supreme Court after massive campaign against

corruption in New Delhi. He requested the judges to observe the change in approach of the Supreme Court for drawing of presumption U/s 20 of the PC Act in recent times. He pointed out that though in some cases of recent pas Supreme Court held that mere recovery of trained money from the possession of the accused is not enough for conviction in immediate past it was held by the Supreme Court that mere recovery of money is enough to convict the accused in the light of presumption under section 20 of the PC Act. He also has drawn the number of judgments on various presumptions under P.C. Act.

The 7<sup>th</sup> session Jusitice P.N. Prakash dealt with two different subjects (i) Sanctioned to prosecute (ii) Attachment of property. Justice Manmohan Sarin chaired this sessions. The 8<sup>th</sup> Session Dr. Harold D'Costa dealt with Fraud cases with special reference to Bank Frauds cases. He presented his view on developing technology and cyber crime. He talks about ATM fraud, Credit card frauds, online payment frauds etc. Justice Manmohan Sarin and Justice P.N. Prakash chaired the session.

On the last day of the conference in the first session Justice P.N. Prakash spoke on "Trial of corruption cases and Right to Speedy Trial" Justice Prakash said that it is now recognized even by the supreme court that trial of cases under PC ACT is taking a minimum of 10-15 years on once the court commences the trial, the counsel for the accused of start filing a number of petition to stop the trial on despite provisions indicating that no stay shall be granted against the interlocutory orders in cases under PC ACT. Somehow or other the accused could obtain the stay of the proceedings. . He analyzed the problem of delay not only in the perception of the accused, but also in the interest of society and opined that trial of cases under P.C. Act shall be as expeditious as possible. There was live discussion on the judgments in P. Ramachandra Rao and also on Motilal Saraf. Justice Prakash opined that it is for the judges to take note of the stage of the case. There was also discussion on various provisions of the PC Act under which revisions and appeals against the interlocutory orders of special judge under P.C. Act were barred. 6.19 of the PC Act was analyzed and discussed. All the participants however agreed that despite so many provisions in

the PC Act for expeditious disposal of the cases, the trial of cases under PC Act, particularly the D.A. Cases have been procrastinated for at least a decade.

In the last session Mr. K. Pattabhi Rama Rao spoke on "Sentencing Practices in Cases of Corruption and Economic Offences". Mr. Rao opined that the Supreme Court has no consistent sentencing policy and the judgments of the Supreme Court are not able to guide the lower court judiciary. Mr. Rao also opined that one consistent factor that could be found is the approach of the Supreme Court in economic offences. There was discussion on factors that are to be considered fixing the Quantum of the sentence. Justice Prakash discussed provisions of P.M.L. Act and power of Enforcement Directorate. Justice Prakash discussed the judgment of High Court of Kerala in V. Rajan. After discussing sentencing practices and on confiscation of proceeds of crime, participants have also discussed the Power of District Judge under criminal Law (Amendment) Ordinance, 1944 before filing charge sheet and also power of the Special Judge after commencement of trial.

The following copies of the judgments are furnished to all the participants:

1. State of Maharashtra Vs. Tapas D. Neogy
2. State of M.P. Vs. Dr. Krishna Chandra Saksena
3. State of Maharashtra through CBI Vs. Vikram Anantrai and Others.
4. Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr.
5. Kapri (AP) Vs. The Lord Advocate...

(Copies of the above are annexed to the report.)

The copies of the Orissa special courts Act 2006 Chapter IX-12 on 13 of CBI Manual are also furnished to the participants.

The Concluding remarks made by Justice P.N. Prakash and the programme closed at 1.15 PM.

**(Pattabhi Ramarao)**

Programme Coordinator P-845