कलम ४ (१)(ख)(५)

लाचलुचपत प्रतिबंधक विभागात होणाऱ्या कामासंबंधी सर्वसामान्यपणे आखलेले नियम.

नमुना – अ – कायदे/नियमावली

अ.क्र.	विषय	नियम/कायदा	शेरा (असल्यास)
१.	सरकारी नोकरांमधील भ्रष्टाचारास आळा घालणे.	भ्रष्टाचार प्रतिबंध अधिनियम १९८८	या शिवाय भारतीय दंड संहिता अगर अन्य संबंधीत कायद्याच्या तरतुदी आवश्यकतेनुसार लागू केल्या जातात.
२.	शासकीय संस्थामधील भ्रष्टाचारास प्रभावी आळा घालणे.	महाराष्ट्र शासकीय नोकरांची चौकशी (भ्रष्टाचाराचा पुरावा कायदा १९६५)	––
३.	लाचलुचपत प्रतिबंधक विभागाची निर्देशांची नियमावली.	सन १९६८ सुधारीत १९७६	सध्या सुधारणा चालू आहे.

कलम ४ (१)(ख)(५)

नमुना – ब – शासन निर्णय.

अ.क्र.	विषय	शासन निर्णय क्रमांक	शेरा (असल्यास)
१.	लाचलुचपत प्रतिबंधक विभागावरील नियंत्रण.	महाराष्ट्र शासन गृह विभाग, शासन निर्णय क्रमांक : ACB/2671-V-A Dated 6/7/1971.	महासंचालक, लाचलुचपत प्रतिबंधक विभाग, महाराष्ट्र राज्य, मुंबई यांचे नियंत्रण व पर्यवेक्षण.
२.	भ्रष्टाचार प्रतिबंध कायदा १९८८ नुसार न्यायालयात खटला पाठविण्यासाठीची मंजूरी.	महाराष्ट्र शासन, सामान्य प्रशासन विभाग, शा. नि.क्र. अभियो–१३१२/प्र. क्र०/पर्नबांधित–१/११अ, मंत्रालय, दि. १३/०२/२०१३ आणि सामान्य प्रशासन विभाग, शासन निर्णय क्र. अभियो–१६१५/ प्र.क्र.७५/११–अ, सामान्य प्रशासन विभाग, दि.२२/०८/२०१६.	खटला पाठविण्याची मंजूरी मिळण्यासाठीची प्रक्रिया.
३.	भ्रष्टाचार प्रतिबंध अधिनियम १९८८ अन्वयेचे गुन्हे तपासण्यासाठी पोलीस निरीक्षक दर्जाच्या अधिकाऱ्यांना दिलेले अधिकार.	महाराष्ट्र शासन गृह विभाग, Order No. M.I.S. 0389/767/CR - 140/ Pol-3, Dated 19/04/1989.	––

कलम ४ (१)(ख)(५)

नमुना – क – परिपत्रके

अ.क्र.	विषय	परिपत्रके क्रमांक	शेरा (असल्यास)
१.	सरकारी नोकराची सचोटी	महाराष्ट्र शासन सामान्य प्रशासन विभाग, G.A.D. No.Circular No.CDR/ 2067/C-5790-Desk I, Mantralya, Mumbai, Dated 13/2/1968	––
२.	सरकारी नोकराविरूध्दच्या तक्रारी	महाराष्ट्र शासन सामान्य प्रशासन विभाग, G.A.D. No.Circular No.CDR/ 1072/ 13903-Desk I, Mantralya, Mumbai,Dated 07/12/1972	––
३.	वर्ग–१ दर्जाच्या अधिकाऱ्यां–विरूध्दच्या तक्रारी	महाराष्ट्र शासन सामान्य प्रशासन विभाग, G.A.D. No.Circular No.CDR 2080/C-1614/377/XI, Mantralya, Mumbai Dated 12/3/1981	––
४.	सापळा/घरझडती साठी सहाय्य करणे.	महाराष्ट्र शासन सामान्य प्रशासन विभाग, परिपत्रक क्र.सीडीआर–१००२/प्र.क्र.१७/०२/ ११, दिनांक १२/०८/२००२	सदर परिपत्रक सर्व शासकीय कार्यालयांना देण्यात आलेले आहे.

नमुना – ड – कार्यालयीन आदेश.

अ.क्र.	विषय	परिपत्रके क्रमांक	शेरा (असल्यास)
१.	लाचलुचपत प्रतिबंधक विभागाच्या नस्तींच्या जतनचा कालावधी	महासंचालक, लाचलुचपत प्रतिबंधक विभाग, म.रा. मुंबई यांचेकडील जा.क्र. महासंचालक/ॲकब्यु/म.रा./परिपत्रक/ अभिलेख जतन/२०१४/५४८३, ०४/०४/२०१४.दिनांक	––

नमुना – ई – लाचलुचपत प्रतिबंधक विभाग परिक्षेत्र कार्यालय येथे उपलब्ध असलेल्या दस्तऐवजांची यादी.

अ.क्र.	दस्तऐवजांचा प्रकार	संबंधीत अधिकारी/पद
१.	वर्णानुक्रमनिहाय रजिस्टर परिक्षेत्राप्रमाणे	संबंधीत परिक्षेत्रांचे वाचक पोलीस उप अधीक्षक/ पोलीस निरीक्षक यांचे कार्यालय.
२.	गुप्त चौकशी रजिस्टर	
३.	उघड चौकशी रजिस्टर	
४.	गुन्हे तपास रजिस्टर	
५.	सापळा केसेसचे रजिस्टर	
६.	अयशस्वी सापळे रजिस्टर	

F O R E W O R D

The tolerance of any tendency to make unscrupulous money is surely one of the signs of a decadent society even as the crisis of character comes in the wake of the eclipse of the purity of conscience. The impact of corruption can be utterly disastrous. A forward looking society in a nation wedded to egalitarian ideals is bound to get stunted by this evil if its tentacles are going to spread over the surface and the subterranean portion of its social or economic life alike. The danger of its prevalence to the younger generation is doubtless of catastrophic consequence. The right thinking people must of necessity, therefore, make it a matter of their social consciousness to ensure that the evil must be checked and ultimately eliminated from our midst. The determination of the Government of Maharashtra to this end was voiced by our present Chief Minister soon after his assumption of that office and it is really a happy augury that there was such a spontaneous support to it by the public and the press in no uncertain terms if only to underline the will of the people in general to see an era of purity and cleanliness in our socio-economic life.

2. The place of the Anti-Corruption and Prohibition Intelligence Bureau has to be seen in the light of this desideratum. The institution is not merely one of the several wings of the Government. It is endowed with its own social conscience and responsibility which goes beyond the pale of the routine chores of public administration. The Bureau is in every sense something like a mission to wage a relentless war against all types of corrupt practices. Judged by this thought, it is a matter of pride that the Maharashtra Anti-Corruption and Prohibition Intelligence Bureau has rendered an effective and meaningful service right from its inception. It is not for nothing that to its sphere of activities has been added the detection of smuggling and investigation into some serious offences occurring in the field of co-operative societies and the marketing federation.

3. This Manual which the Bureau has prepared with such an assiduous enthusiasm is itself a monument to its devotion to duty and should serve as a hallmark to guide its officers generally to become more adept in the execution of laws relating to corruption. It is indeed a valuable compendium which will help law officers of the Bureau and public prosecutors in handling their cases in a knowledgeable and competent manner. I am also sure that this compilation will also serve as a reminded to all that while the Bureau must unhesitantly assume the role of a crusader against corruption ; it will also serve as a guardian angel to those who are victims of blackmail and fraud.

4. I would like to congratulate Shri M. G. Wagh, the former Director of the Anti-Corruption and Prohibition Intelligence Bureau, for the excellent work done under his stewardship by the team of his dedicated men. I would also like to take this opportunity of extending my best wishes to Shri E. S. Modak in the challenges of his task that lie ahead.

Sd/-
(P. G. Gavai)
Secretary to the Government of Maharashtra,
Home Department.

Bombay, 18th July 1975.

PREFACE TO THE SECOND EDITION

The first edition of this Manual was published in 1968. It served as a compendium for ready reference and guidance to the officers of the Maharashtra State Anti-Corruption and Prohibition Intelligence Bureau, and has also been useful to officers of other departments of Government. It received the approbation, in particular, of the Special Judges all over the State entrusted with the duty of trying cases involving corruption.

2. The seven years which have elapsed since the publication of the Manual have witnessed an all-round growth of the Bureau, its functions, activities and personnel. The jurisdiction of the Bureau has now been expanded to cover anti-smuggling activities, offences committed in the working of the co-operative societies, marketing federation, etc.

3. Corruption emerged as malaise affecting public services during the Second World War and continued to spread its tentacles despite the best efforts of the administration. As the Santhanam Committee on Prevention of Corruption, appointed by the Government of India, observed in its report, published in March 1964 :

" The rapid expansion of Governmental activities in new fields afforded to the unscrupulous elements in public service and public life unprecedented opportunities for acquiring wealth by dubious methods. To this must be added the unfortunate decline of the real income of various sections of the community and particularly that of the salaried classes, a large part of which is found in Government employment…….. The assumption of new responsibilities by the Government has resulted in the multiplication of administrative processes. Administrative power and discretion are vested at different levels of the executive, all the members of which are not endowed with the same level of understanding and strength of character."

4. With the concept of a Welfare State guiding the policies of the administration, Government has expanded its activities to cover many fields, formerly the preserves of the private sector. Government has entered practically every field of activity. This has brought thousands more into the fold of public servants susceptible of falling prey to the evil of corruption blandished before them by unscrupulous persons. Circumstances have so come about and such a social climate has developed that eternal vigilance would be the price for not only liberty but for purity of administration and social well-being also.

5. It is this motive which has always prompted this Bureau in its relentless war on corruption and such other anti-social activities. The Bureau's activities over the years were crowned with many spectacular achievements and it received encomiums from all. The Government of Maharashtra indicated its appreciation of the work of the Bureau not only by expanding it and its fields of activities, but, and what is very important, by entrusting to it work not strictly germane to its field. This was clear proof, if one were needed, of Government's confidence in the Bureau to undertake the most important and delicate of assignments touching the administration.

6. I have had the good fortune of being associated with the work of the Bureau almost right from the inception in 1946 as additional Assistant to the Inspector-General of Police, and thereafter from time to time for different periods aggregating to over ten years as Deputy Inspector-General of Police and thereafter till recently as the Director of the Bureau and the Special Inspector-General of Police. I have been

witness to the excellent work put in by the officers and men of the Bureau with a devotion to duty and industry which should redound to their credit.

7. The work of the Bureau was recognised by Professor Appleby in the following terms :-

"……. In the vigorous activities of a special anti-corruption unit, the State of Bombay has given an outstanding example of good performance."

8. Our popular Chief Minister, Shri S. B. Chavan, recently made a very significant pronouncement viz. that he would do the utmost to root out corruption from public services. In this task the Bureau would do its mite, undertake the duties which would be cast upon it and perform them with the utmost enthusiasm. I am quite confident the Bureau would cover itself with credit in the years to come as it has done in the past.

9. The first edition of the Manual was exhausted and a second was urgently called for. For the purpose of this second edition, the Manual has been thoroughly revised so as to embrace all the present activities of the Bureau. No pains have been spared to make this compilation up to date by the inclusion of all relevant Government circulars, legislative amendments and case law as laid down by the Supreme Court and High Courts. Specimen panchnamas, draft letters for obtaining sanction to prosecute and specimen sanction forms, to be granted by different authorities for the prosecution of their subordinates have been specially incorporated. I am confident they would prove of great use and enable the officers to avoid technical and such other pitfalls.

10. I am grateful to Shri Gavai, Secretary to the Government of Maharashtra, Home Department, for having kindly contributed a Foreword to this edition and to the words appreciation and encouragement to the Bureau contained therein.

11. In this arduous task I received able assistance from Shri S. V. Bhave, Deputy Commissioner of Police, and Superintendent of Police in the Bureau, Shri K. L. Tawde, Assistant Commissioner of Police and Deputy Superintendent of Police of the Anti-Smuggling Branch of the Bureau, Shri B. P. N. Fernandes, Deputy Superintendent of Police, Headquarters, Shri S. B. Mahamuni, Inspector in the Bureau, Shri M. G. Saraff, Assistant Public Prosecutor attached to the Bureau, and Shri S. R. Pande, Senior Police Prosecutor, attached to the Co-operative Cell of the Bureau. I thank them all for their willing co-operation. My thanks are also due to Shri J. V. Rajadhyaksha, former Chief Police Prosecutor, Bombay, who was associated with the Bureau for many years as its Special Public Prosecutor, for going through the manuscript and suggesting many improvements. My thanks are also due to Sarvashri M. T. D'Souza, D. Y. Bhurke and D. R. Shinde and the ministerial staff of the Bureau for having diligently prepared the press copy of this edition.

12. Work in the Bureau was a labour of love to me and I am sure the same spirit actuates and will continue to actuate the staff of the Bureau now and hereafter. I am confident they will diligently follow the instructions contained in the pages hereafter and perform their duty ably and sincerely and help maintain the tradition of purity in public services in our State. I wish them God Speed.

Sd/-
(M. G. Wagh)
Director,
Anti-Corrupuption and Prohibition Intelligence Bureau
And Special Inspector-General of Police,
Maharashtra State, Bombay.

Bombay, 28th February 1975

FOREWORD TO THE FIRST EDITION

While bribery has all along been an offence since the time the India Penal Code came to be enacted in 1860, the circumstances during the Second World War and thereafter compelled the Government of India to give serious consideration to the problem of corruption. This led to the enactment of the Prevention of Corruption Act, II of 1947. The Statement of Objects and Reasons of the Bill stated :

" The scope for bribery and corruption of public servants had been enormously increased by war conditions and though the war is now over, opportunities for corrupt practices will remain for a considerable time to come. Contracts are being terminated; large amounts of Government surplus stores are being disposed of ; there will, for some years, be shortages of various kinds requiring the imposition of controls ; and extensive schemes of post-war reconstruction, involving the disbursement of very large sums of Government money, have been and are being elaborated. All these activities offer wide scope for corrupt practise and the seriousness of the evil and the possibility of its continuance or extension in the future are such as to justify immediate and drastic action to stamp it out."

2. Later, the Criminal Law Amendment Act, XLVI of 1952, was enacted to provide for speedy trial by Special Judges and to tighten up the procedure.

3. Even before the enactment of the Prevention of Corruption Act, the then Government of Bombay directed, in 1946, the constitution of the Anti-Corruption Branch in Greater Bombay as a distinct unit charged with the duty of taking up cases of bribery and corruption. In course of time, this grew into the present Anti-Corruption and Prohibition Intelligence Bureau of the Maharashtra State.

4. The constitution of the Anti-Corruption Bureau is an index of the determination of the State Government to do the utmost for the eradication of corruption. The Anti-Corruption Bureau has, over the years, done excellent work in the sphere of the duties assigned to it, and has richly deserved the encomiums which have been showered upon it from all quarters.

5. It was a very good idea on the part of Shri C. J. V. Miranda, I.P.S., the present Director of the Bureau, to compile this Manual for guidance of the officers of the Bureau. There are peculiar difficulties in the matter of investigation of corruption cases and their trial, in a court, to a successful end. Shri Miranda's association with the Bureau covers long years and, with his varied experience, he was eminently fitted for undertaking this compilation. I have read the Manual with great interest; it has drawn upon the rich experience of the last many years. I am confident that this admirable guidance book, which is evidently the product of much labour and discernment, will be of great use to the officers of the Bureau. At the same time, its brevity is noteworthy.

6. An important feature of the Manual is that it gives copious references to precedents and reported judgements of the Supreme Court and the High Courts. This should go a long way in enabling the officers to discharge their duties more efficiently and successfully.

P. J. CHINMULGUND, I.C.S.
Home Secretary,
Government of Maharashtra, Bombay.

PREFACE TO THE FIRST EDITION

The Maharashtra State Anti-Corruption and Prohibition Intelligence Bureau Manual, which incorporates information regarding the organization, structure, administrative practices and operating procedures of the Anti-Corruption agency in this State, is designed to aid officers of this Bureau in the performance of their day-to-day function.

Prior to Independence, no special agency was in existence for dealing with Anti-Corruption work. However, after Independence, in view of the vast and ambitious developmental schemes under way and the consequential concomitants of the developing economy of our Welfare State, involving huge expenditure on the part of Government and other public bodies, unscrupulous members of the public as also public servants began to seek benefits by corrupt practices, as these circumstances afforded opportunity for the same. This brought the realization that the benefits to the Welfare State would not accrue in full measure to the common man unless the avenues of corruption were closed. It was, therefore, felt necessary to focus attention on this problem and accordingly, in 1946, Anti-Corruption Branches were created both in Greater Bombay and in the mofussil. These two Branches continued to function as such until 1953 when the work of prohibition intelligence was also entrusted to them and both the Greater Bombay and the mofussil units were merged and brought under one officer who was designated as the Additional Assistant to the Inspector General of Police. In November 1957, this set-up came to be re-organized and re-designated as the Anti-Corruption and Prohibition Intelligence Bureau, and was placed in charge of a Director to work under the control of Government in the Home Department.

During these 22 years that have rolled by, the general principles which guide Police Officers have remained constant but there have been certain changes in the details of administration, and existing law has undergone modifications from time to time, effected with a view to making it more and more stringent as far as offences of bribery and corruption are concerned. This compilation is, therefore, intended to serve as a vade-mecum to the Bureau Officers.

While compiling and editing this Manual, the aim and scope of which is utilitarian and which is calculated to fill a long-felt want, emphasis has been laid on the methods of investigation, technical aids and legal provisions regarding the investigation of corruption cases, and important and leading judicial rulings on the law relating to bribery and corruption have been quoted for the guidance of the Bureau Officers, to enable them to avoid common pitfalls in the course of investigation. Similarly, Government Resolutions, Circulars and Orders, being the authority for the instructions contained in the Manual, have been cited to facilitate quick reference to them, if required.

I wish to express my thanks to Shri S. D. Panwalkar, Deputy Superintendent of Police, Anti-Corruption and Prohibition Intelligence Bureau, Bombay Range, who, with his long experience in the Bureau, has diligently assisted me in compiling this Manual and to Shri B. R. Raje, Police Photographer, for preparing the photo-features of the technical equipment.

I am deeply indebted to Shri V. S. Bakhale, M.A.LL.B., formerly Sessions Judge, Director of Public Prosecutions, and Member of Maharashtra State Police Commission, and now President, Maharashtra Revenue Tribunal, Bombay, to Shri N.

S. Bhupali, B.A.(HONS), LL.B., Joint Secretary to the Government of Maharashtra, Law and Judiciary Department Bombay, and to Shri J. V. Rajadhyaksha, B.A.(HONS.), LL.B., Chief Police Prosecutor, Greater Bombay, and Special Public Prosecutor, Anti-Corruption and Prohibition Intelligence Bureau, Greater Bombay, for carefully going through the manuscript, with special reference to Chapter XI on 'Important Legal Provisions and their Judicial Interpretation', and for making useful suggestions.

I acknowledge my gratitude to Shri P. J. Chinmulgund, I.C.S. Secretary to the Government of Maharashtra, Home Department, Bombay, for contributing an appreciative 'Foreword' to this Manual, and to Shri G. R. Donde, M.SC., Deputy Secretary to the Government of Maharashtra, Home Department, Bombay, for scrutinizing the references to the relevant Resolutions, Circulars, and Orders, which form the basis of the instructions contained in this compendium, and for making amendments and improvements, wherever necessary.

My thanks are due to Shri V. L. Chandavarkar, my Personal Assistant and Headquarters Deputy Superintendent of Police and to Shri B. G. Sahasrabudhe, my Reader Police Inspector, for furnishing certain data required by me for the compilations of this Manual, and to Shri A. L. D'Souza, M.A., LL.B., Seletion Grade Police Prosecutor, Anti-Corruption and Prohibition Intelligence Bureau, Greater Bombay, Shri P. L. Patil, M.A., LL.B., Selection Grade Police Sub- Inspector, attached to this Bureau, for the arduous work of reading the proofs.

Finally, it gives me pleasure to express my appreciation for the secretarial assistance cheerfully rendered by Sarvashri M. T. D'Souza, V. M. Roplekar and B. D. Shinde of my ministerial establishment.

Sd/-
(C. J. V. Miranda)
Director,
Anti-Corruption and Prohibitin Intelligence Bureau,
Maharashtra State.

Bombay, 1st May 1968

PART I
INTRODUCTION

CHAPTER I
ORGANIZATION AND STRUCTURE

1. (i) The Maharashtra State Anti-Corruption and Prohibition Intelligence Bureau was constituted under the Government of Maharashtra, Home Department, Resolution No. ACB.1857/C-3019-V, dated the 26th November 1957, with a view to eradicating the evil of bribery and corruption and co-ordinating Prohibition detection work.

1. (ii) The Bureau has its Headquarters at Bombay and functions under the overall control and supervision of a Director appointed by the Government under Government Resolution, Home Department, No. ACB.1857/C-3019-V, dated 7th April 1959. The Director who was a Deputy Inspector-General of Police, Maharashtra State, was made a Head of Department. The post has been now upgraded to that of a Special Inspector-General of Police, Maharashtra State, vide Government Resolution, Home Department, No. ACB.2671-V-A, dated 6th July 1971. This post has been made permanent vide Home Department, No ACB.2671-V-A, dated 8th January 1973. The Director is independent of the Inspector-General of Police and functions directly under the administrative control of Government in the Home Department.

1. (iii) The Director is assisted, among others, by four Deputy Commissioners of Police/Superintendents of Police, three Deputy Directors, one from the Building and Communications Department, of the rank of Executive Engineer, one from Forests Department, of the rank of Divisional Forest Officer and the third from the Revenue Department, of the rank of Deputy Collector, one Personal Assistant, an officer of the rank of Deputy Superintendent of Police in the mofussil or Assistant Commissioner of Police in Greater Bombay and one Legal Adviser (an Assistant Public Prosecutor). The officers on deputation from the Building and Communications, Forest and Revenue Departments tender advice to the Bureau Officers in matters relating to their respective departments. All these officers are stationed in Bombay.

1. (iv) There are five Units of this Bureau, with headquarters at Bombay, Nasik, Pune, Nagpur and Aurangabad, each in charge of an Assistant Superintendent of Police or a Deputy Superintendent of Police with the requisite subordinate staff attached to it.

1. (v) In the mofussil a Police Inspector or at least one Police Sub- Inspector of this Bureau is stationed in each District.

1. (vi) One of the Deputy Commissioners of Police/Superintendents of Police exercises general check over the work of these five Units.

1. (vii) The Government of Maharashtra created the following separate Branches/Cells in the State Anti-Corruption and Prohibition Intelligence Bureau:-

(a) The Anti-Smuggling Branch, to curb smuggling vide Government of Maharashtra Resolution, Home Department, No. ACB.0374/16/C-2969-V-A, dated 25th September 1974.

(b) The Marketing Federation Cell, to investigate the cases of criminal misconduct against the office-bearers and staff of the Maharashtra State Co-operative

Marketing Federation with respect to procurement of raw cotton, vide Government of Maharashtra Resolution, Home Department, No. ACB. 1973/C/2020-V-A, dated 22nd June 1973 ; and

(c) The Co-operative Societies Cell, to investigate expeditiously the cases of misappropriation in the Co-operative Societies, vide Government of Maharashtra Resolution, Home Department, No. ACB. 1070/10635-V, dated the 4th May 1970.

The Anti-Smuggling Branch is headed by a Deputy Commissioner of Police/Superintendent of Police; the Marketing Federation Cell is headed by an Assistant Commissioner of Police/Superintendent of Police and the C-operative Societies Cell is headed by a Deputy Superintendent of Police.

The Headquarters of the Deputy Commissioner of Police/Superintendent of Police, Anti-Smuggling Branch, and the Assistant Commissioner of Police/Deputy Superintendent of Police, Marketing Federation Cell are at Bombay, while the Headquarters of the Deputy Superintendent of Police, Co-operative Societies Cell is at Pune.

2. The organizational structure of the Bureau is shown in the Chart at Appendix I.

PART - II
ANTI-CORRUPTION & PROHIBITION INTELLIGENCE WORK

CHAPTER II

FUNCTIONS, POWERS AND JURISDICTIONS

Functions

3. (i) The main functions of the Bureau are :

(a) To collect intelligence for detection of cases of bribery and corruption and to investigate offences falling within the purview of section 5 of the Prevention of Corruption Act, 1947, (II of 1947), and sections 161 to 165-A of the Indian Penal Code. The Prevention of Corruption Act II of 1947, as amended upto date and the said sections of the Indian Penal Code are reporoduced at Appendix IV and Appendix III, respectively, to this Manual. The Criminal Law Amendment Act, 1952, contains special provisions for the trial of corruption offences. This Act and the Anti-Corruption Laws (Amendment) Act, 1967 which further amends the Anti-Corruption Laws Act, are reproduced at Appendices VII and V respectively. There are other offences by public servants specified in sections 166 to 169 of the Indian Penal Code, both inclusive. These sections and cognate rules applicable to Government servants together with comments thereon have been included in this Manual at Appendix XXIII.

(b) To institute enquiries into complaints made by the members of the public or received from Government officials and from Lokayukta and Upa-Lokayuktas relating to bribery, corruption, criminal misconduct, embezzlement of Governmnet money and other venal practices by public servants. (The relevant provisions of the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971, are reproduced at Appendix VIII.)

3. (ii) With the limited staff available to them, it is not possible for the officers of the Bureau to act as internal vigilance organization of all the departments. The responsibility of rooting out or curbing corruption is that of the Heads of the respective Departments and the Vigilance Officers appointed for this work in different Departments. The Bureau is expected to supplement these efforts. The Bureau will take up only those cases which cannot be investigated or enquired into by the officers of the Departments, especially when, the enquiry involves recording of statements of a large number of witnesses outside not belonging to the concerned department and collection of documents from Banks and other offices. The Bureau should investigate such cases thoroughly and ensure that the corrupt officials are brought to book to set an example to others.

As far as the Police department is concerned, the Inspector-General of Police, under his Confidential Circulars, No. E/6081, dated 27th July 1968 and 12th September 1968, has directed that the Commissioner of Police, Deputy Inspector-General of Police and Superintendents of Police should themselves initiate prompt action in respect of applications containing allegations of corruption and other malpractices against their subordinates (except Class I Officers) and should not, as a matter of routine, send such applications to the Bureau for enquiries. They may obtain the assistance of the Bureau for laying traps, if necessary.

3. (iii) The expression " public servant " has been defined in section 21 of the Indian Penal Code. The text of that section, as amended upto date, is reproduced at Appendix II of this Manual. Besides this, many enactments, both Central and State, provide that persons appointed, exercising powers or performing functions under them, shall be deemed to be "public servants ".

3. (iv) Police Officers attached to the Bureau are competent to investigate cases against all public servants, irrespective of the fact whether the public servant concerned is under the control of the Central Government or of the State Government or of a local or other authority. However, there is a separate agency (i.e. the Central Bureau of Investigation) to deal with cases against Central Government servants. Hence, to avoid duplication of work, the officers of the Bureau should make enquiries and investigations into complaints only against servants of the State Government, of the statutory Corporations or Bodies set up and financed by the State Government, and of the Municipal Corporations, Nagar Parishads, Zilla Parishads and Panchayats in the State except in the circumstances indicated in paragraph 4 *infra*.

Circumstances under which officers of the Bureau may undertake investigations into complaints against Central Government servants and the procedure to be followed in that behalf.

4. (i) It has been agreed under an administrative arrangement that the officers of the Bureau may take action against public servants under the control of the Central Government under the following circumstances :--

(a) Where a trap is to be laid to catch a Central Government servant red-handed and there is no time to contact any representative of the Special Police Establishment Division of the Central Bureau of Investigation, the trap may be laid by an officer of the Bureau. Thereafter, the Special Police Establishment Division should be informed immediately and it should be decided, in consultation with that agency, whether further investigation should be carried out and completed by the Bureau or by the Special Police Establishment Division.

(b) Where there is a likelihood of destruction or suppression of evidence if immediate action is not taken the Bureau should take steps to secure the evidence against the Central Government servants concerned and thereafter had over the case to the Special Police Establishment Division for further investigation.

4. (ii) The following procedure should be followed in cases against Central Government servants investigated by the officers of the Bureau :--

(a) Cases in which sanction of the Central Government or a Central Government Department or an officer of the Central Government is necessary should be referred to the Inspector-General, Special Police Establishment Division, who will take necessary steps to obtain the required sanction.

(b) Cases which are considered fit only for taking departmental action should be reported to the Government of India through the Inspector-General, Special Police Establishment Division, who will communicate to the Bureau, in due course, the result of the action taken by the concerned department of the Central Government.

Prohibition Enforcement

5. In addition to the work relating to the detection and investigation of cases of bribery, corruption and criminal misconduct, the Bureau has been entrusted with the work of collection of intelligence for the enforcement of Government's policy of

prohibition. The following functions have been assigned to the Bureau in this behalf :--

(a) To collect intelligence regarding illicit distillation and sources of supply, activities of known bootleggers, use of children in the liquor trade, inter-district rackets, smuggling of liquor and other articles by sea or road into the State and smuggling of liquor from Military areas.

(b) To check connivance of the local Police at breaches of the Prohibition Act.

(c) To deal with Government servants indulging in drinking in contravention of the Bombay Prohibition Act and directives of the Government.

(d) To inspect the Police stations, organize mass raids and suggest action about notorious pockets.

(e) To pass on the information collected to the Superintendents of Police of the District concerned for necessary action.

(G.R.H.D.,No.498/17-II, dated 23rd July 1953)

Powers

6. (i) All Police officers working in the Bureau continue to be " Police Officers " and as such have powers vested in them under various Acts.

6. (ii) According to the Maharashtra Government Order, Home Department, No.ACB. 3059-V, dated the 23rd October 1961, whenever any officer of and above the rank of a Police Sub-Inspector of the Anti-Corruption and Prohibition Intelligence Bureau investigates, at any place in the State, any offence, he is deemed to be an officer-in-charge of the Police Station within the limits of which such place is situate. In view of this order, every Police officer of and above the rank of a Police Sub-Inspector of the Bureau can exercise all powers of an officer-in-charge of a Police Station while investigating any offence at any place in the State *(vide* Appendix XVIII*)*.

Jurisdiction

7. (i) The Anti-Corruption and Prohibition Intelligence Bureau has jurisdiction over the State of Maharashtra, including Greater Bombay, and its officers exercise the powers and functions and have the privileges of Police officers throughout the State. However, for the purpose of administrative convenience, the Bureau is divided into five Units and the staff attached to each of these Units functions in the areas as shown below :---

(1) Greater Bombay Unit ---------- (Headquarters : Bombay)	Greater Bombay.
(2) Bombay Unit ---------- (Headquarters : Nashik)	Thane, Kolaba, Ratnagiri, Nashik, Dhule and Jalgaon.
(3) Pune Unit ---------- (Headquarters : Pune)	Pune, Satara, Solapur, Ahmednagar, Kolhapur and Sangli.
(4) Nagpur Unit ---------- (Headquarters : Nagpur)	Nagpur, Bhandara, Wardha, Yavatmal, Chandrpur, Akola, Buldana and Amravati.
(1) Aurangabad Unit---------- (Headquarters : Aurangabad)	Aurangabad, Bhir, Nanded, Osmanabad and Parbhani.

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CHAPTER IX

PROCEDURE FOR OBTAINING RECORDS

46. During the course of an enquiry or investigation, it becomes necessary to obtain official papers or documents from different departments either of the State or Central Government or local bodies, etc., or from banks. The following procedure should be observed for obtaining the required documents :--

(a) *Departments of the State Government* .-- The officer of the Bureau should approach the officer-in-charge of the office concerned and request him in writing to deliver the documents required for the purpose of the enquiry or investigation. The latter would then pass on to the officer of the Bureau all relevant information and official documents in his possession. The Government of Maharashtra, in their Political and Services Department Circular No. CDR.2058/D, dated the 20th October 1958, have laid down, *inter alia*, that--

" the Anti-Corruption Police should not hereafter be required to seek the previous permission of the District Collector or Head of Department for obtaining from a Government office any official record having a bearing on a case of corruption. The Anti-Corruption Police should instead straightway approach the Officer-in-charge of the Government office concerned and the latter should pass on to them promptly all relevant information and official documents in his possession. "

This authority should be used by the Anti-Corruption Police with proper caution.

(b) In some cases, the enquiry officer who is required to secure documents from a public servant against whom the enquiry is being made experiences certain difficulties. In this context the Government of Maharashtra in their General Administration Department Circular No. CDR. 2068-D-I, dated the 20th May 1968, have laid down :

" It has, however, been brought to the notice of Government that sometimes officers concerned refuse to give any information to the Anti-Corruption Officers, in connection with an investigation into the charges against those officers. While a person against whom an enquiry is being conducted cannot be compelled to give a statement regarding the misconduct alleged to have been committed by him, there is no reason why he should not supply the investigating officers with all the relevant information in his possession (as distinct from giving a statement). Government is, therefore, pleased to direct that the officers facing an enquiry should fully co-operate with the Anti-Corruption Police Personnel and supply them promptly with all the relevant official information, in their possession, when the latter approach them with such a request and report the fact to the Head of Department/Head of Office, wherever necessary. "

(c) *Departments of the Central Government (except Audit Offices and Telegraphs Department).* --- The procedure as indicated above for obtaining papers or documents from offices under the control of the State Government should also be followed by the officers of the Bureau when it is considered necessary to have information or records from the offices under the Central Government except Audit Offices and Offices of the Posts and Telegraphs Department. If any difficulty is experienced in getting the required information or documents the matter should be referred to the Director.

(d) *Audit Offices.* -- The documents in the custody of the Accountant-General will be made available to the officer of the Bureau for perusal and scrutiny in the

Audit Office on making a request to the Accountant-General through the Director. If on inspection, it is considered necessary to have photostat copies they will be supplied on request. If a document is to be shown to witnesses in any case, this may be done in the Audit Office itself, as far as possible.

(e) However, when it is considered necessary to obtain the document in original for enquiry or investigation the officer should submit a report (in triplicate) to the Director giving therein the reasons in support thereof. The Director after satisfying himself that the investigation cannot be conducted without the original documents and that they are absolutely essential for the purpose of the investigation, will make requisition for making available the original documents in the form of a personal letter addressed to the Accountant-General by name. The Director will also name the responsible officer in such a letter to be deputed to the office of the Accountant-General with the necessary proof of identity to collect the original documents personally. The Director, Anti-Corruption Bureau, has been authorized to requisition the documents from Audit Offices under Government of India, Ministry of Home Affairs, letter No. 2561/68-AVD-II, dated the 21st August 1968 and C. B. I. Delhi's No. 21/3/58-RD, dated 3rd September 1968.

(f) Posts and Telegraphs Department. – A similar procedure as indicated at *(d)* and *(e)*above should be followed when documents in the custody of the Posts and Telegraphs Department are required.

(g) Section 92 of the Criminal Procedure Code, 1973 makes a provision for delivery of any document, parcel or thing in the custody of Postal or Telegraph authorities when required for the purpose of any investigation, trial or other proceeding under the Criminal Procedure Code. According to sub-section (1) of section 92 of the Code, if any District Magistrate, Chief Judicial Magistrate, Court of Session or High Court considers that any such document etc. is required for the purpose of any investigation, inquiry, trial or other proceeding under the Criminal Procedure Code, such Magistrate or Court may direct the Postal or Telegraph authorities, as the case may be, to deliver the document, etc. to such person as such Magistrate or Court directs. Under sub-section (2) of the same section, any other Magistrate, Commissioner of Police or Superintendent of Police may require the Postal or Telegraph authorities to cause a search to be made for and detain such document etc. pending the orders of any such District Magistrate, Chief Judicial Magistrate or Court.

(h) *Banks*. -- On some occasions in the past, Investigating Officers found it difficult to obtain copies of bank accounts while investigating offences of corruption and criminal misconduct. A special provision has, therefore, been made in sub-section (2) of section 5A of the Prevention of Corruption Act, 1947, authorising an Investigating Officer to inspect any bankers' books and obtain certified copies of relevant entries. The following are the salient features of sub-section (2) :--

(A) The power is given to an officer making an investigation into an offence punishable under section 161, 165 or 165-A of the Indian Penal Code or section 5 of the Prevention of Corruption Act, 1947. However, the Investigating Officer, if below the rank of a Superintendent of Police, must be authorised to exercise the power under sub-section (2) by a Police Officer of and above the rank of a Superintendent of Police.

(B) The officer so authorized may inspect any bankers' books in so far as they relate to the accounts of the person suspected to have committed that offence, or of

any other person suspected to be holding money on behalf of such person and take or cause to be taken certified copies of the relevant entries therefrom.

The attention of the officers of the Bureau is invited to section 4 of the Bankers' Books Evidence, Act, 1891, which provides that a certified copy of any entry in a banker's book shall, in all legal proceedings, be received as *prima facie* evidence of the existence of such entry and shall be admitted in evidence to the same extent as the original entry. Section 5 of the Act provides that no officer of a bank shall, in any legal proceedings to which the bank is not a party, be compelled to produce any book the contents whereof can be proved as mentioned above. Officers should bear these provisions in mind when they are required to collect evidence about transactions recorded in the books of a banker.

(i) *Income Tax Department.--* According to the provisions of the Income Tax Act, officers of the Department are prohibited from disclosing any information contained in any statement made, return furnished or accounts or documents produced before them under the provisions of the Income Tax Act or in evidence, affidavit or depositions given during the course of any assessment proceedings under the Act. However, the above prohibition does not apply to the disclosure of such information in certain circumstances. Under Notification No. S.O. 2048 issued by the Ministry of Finance (Department of Revenue), Government of India, published in the Gazette of India, Extraordinary Part II, Section 3(ii), dated the 23rd June 1965, the disclosure of such information (including the production of such document or record) is permitted –

" to any officer or department of the Central Government or of a State Government for the purpose of investigation into the conduct and affairs of any public servant or to a Court in connection with prosecution of the public servant arising out of any such investigation. "

(i) *Procedure for obtaining Records and Documents in possession of Courts-*

(A) Documents and records in the possession of the High Court : The Anti-Corruption Police should approach the Prothonotary and Senior Master, or the Registrar, High Court, Appellate Side, Bombay, as the case may be. (B) Documents and records in the possession of the District or Subordinate Courts: The Anti-Corruption Police should approach the District Judge concerned.

(B) Documents and records in the possession of Courts of Metropolitan Magistrates, Small Causes Court, Bombay, City Civil and Sessions Courts : the Anti-Corruption Police should approach the Chief Metropolitan Magistrate, the Chief Judge, Small Causes Court and the Principal Judge, City Civil and Sessions Court respectively. (G.C.,P. & S.D.,No.CDR-2059-D, dated 6th July 1959)

(K) The other course which the Anti-Corruption Police could adopt but which would not normally become necessary in view of the above instructions from Government is to apply to a Magistrate having jurisdiction to issue an order under section 91 of the Criminal Procedure Code to the Court concerned to make the required record available to the Anti-Corruption Bureau. On authorization by the Court, the Anti-Corruption Police can legally ask any officer to produce any official record in his possession which may be required for the investigation of a case of corruption or of any other case.

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CHAPTER XI

IMPORTANT LEGAL PROVISIONS AND THEIR JUDICIAL INTERPRETATION

Permission of a Magistrate for investigation as required under section 5A(1) of the Prevention of Corruption Act, 1947.

51. (i) *Requirements of the order granting permission*.---

According to section 5A(1) of the Prevention of Corruption Act, 1947, a Police Officer below the rank of an Assistant Commissioner of Police or a Deputy Superintendent of Police is required to obtain the permission from a Metropolitan magistrate or a Magistrate of the First Class, as the case may be, for investigating an offence punishable under section 161, 165 or 165-A of the Indian Penal Code or under section 5 of the Prevention of Corruption Act, 1947. *In state of Madhya Pradesh V. Mubarak Ali* (1959 Cri.L.J.920), the Supreme Court laid down that in a case where an officer other than the designated officer seeks to make an investigation, the magistrate should satisfy himself that there is sufficient reason, owing to the exigencies of administrative convenience, to entrust a subordinate officer with the investigation. It is desirable that the order giving permission should ordinarily, on the face of it, disclose reasons for giving the permission. *In state of Andhra Pradesh V. P.V. Narayan* (1971 Cri.L.J.676), the Supreme Court held: " The grant of permission to Inspector of Police on his application and mere ipse dixit that Senior Officers being otherwise busy were unable to take up investigation is illegal and would nullify the object of section 5A ".

51. (ii) *Separate orders not necessary for investigation of demand and subsequent acceptance*..--- An order granting permission for investigation of an offence under section 161 of the Indian Penal Code issued by a Magistrate immediately after a demand has been made does not become an anticipatory order even if the payment of the money, in pursuance of such demand, is made on a different date. The order given by the Magistrate includes permission for investigation into an intended offence of acceptance of illegal gratification or such an offence immediately likely to take place [Gulabsingh V. state of Maharashtra, 1962 (2) Cri.L.J. 598, Bombay]. Section 5A does not contemplate two sanctions, one for laying the trap and another for further investigation. Once an order under that provision is made, that order covers the entire investigation. A permission given under that provision enables the officers concerned not only to lay a trap but also to hold further investigation (sailendranath V. State of Bihar 1968 Cri. L.J. 1484 == AIR 1968 Supreme Court 1292).

What is Gratification ?

52. (i) The expression used in section 161 of the Indian Penal Code and clauses (a) and (b) of sub-section (1) of section 5 of the Prevention of Corruption Act, 1947 is " gratification other than legal remuneration " and not " illegal gratification ". In C.I. Emden V. State of U.P.(1960 Cri. L.J. 729) it was contended before the Supreme Court that the presumption under section 4(1) cannot be raised merely on proof of receipt by the accused of some money, and that in order to justify the raising of the presumption it must further be shown that the money was obtained or accepted by way of a bribe. This contention was not accepted by the Supreme Court. It held that if the word " gratification " is construed to mean " money paid by way of a bribe " then that would require that the prosecution must prove the very thing which under section 4 (1), the Court is called upon to presume. Such a construction would render

it futile or superfluous to provide for the raising of the presumption as regards the motive or reward. The same would apply to the presumption in a prosecution under section 165 or section 165-A of the Indian Penal Code. " Gratification " need not necessarily be in cash. For the purpose of bringing a case within section 161 of the Indian Penal Code it is not necessary that the " gratification ", i.e.the amount, should be intended for the personal benefit of the public servant. The payment of money to a public officer by way of donation to an institution in which such officer is interested, if the motive behind such payment was that the officer should show favour in his official capacity to the person making the payment or if it was made as a reward for favour shown in the past, would still constitute the offence. (Crown Prosecutor V. R.K.Pillai and another : 49 Cri. L.J. 265==AIR 1948 Madras 281 : also see Emperor V. Amruddin : 23 Cri. L. J. 466==AIR 1923 Bom.44). The word gratification in section 4(1) is to be given its literal dictionary meaning of satisfaction of appetite or desire, it cannot be construed to mean money paid by way of a bribe (Sailendranath V. State of Bihar 1968 Cri.L.J. 1484==AIR 1968 S.C. 1292). Recently the Bombay High Court held in *Manohar* V. State of Maharashtra (1973 Mah.L.J.921) that the accused Talathi who demanded and accepted from the complainant a sum of Rs.100 for deposit in the post office under the Small Savings Scheme as a reward for effecting mutation entry in his name in the mutation register, the acceptance of money not being independent of the work for which the complainant had approached the accused, the accused was still guilty under section 161, Indian Penal Code.

52.(ii) The offence would be complete even if the bribe was paid not by the person for whom the favour was sought but by someone else interested in him.

Law relating to presumption –Presumption against the accused.

53. (i) A cardinal principle of your criminal jurisprudence is that it is the duty of the prosecution to prove behind any reasonable doubt facts constituting every ingredient of the offence. In a corruption case, the main ingredient is that the gratification other than legal remuneration was accepted or obtained by the public servant " as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor " , etc.

53. (ii) This ingredient, it can verily be said, is rather difficult of proof, specially because of the general tendency of the Courts to regard the complainant as a partisan witness and to call for corroboration of his evidence. It was perhaps in appreciation of this difficulty that the Legislature enacted section 4 of the Prevention of Corruption Act, which creates a statutory presumption against the accused.

53. (iii) Sub-section (1) of section 4 provides that where in any trial of an offence punishable under section 161 or section 165 of the Indian Penal Code or of an offence referred to in clause (a) or clause (b) of sub-section (1) of section 5 of the Prevention of Corruption Act, it is proved that the public servant accepted, or agreed to accept or attempted to obtain any gratification other than legal remuneration or any valuable thing, it shall be presumed that he accepted or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 161 in prosecutions for the offences punishable under section 161 of the Indian Penal Code or section 5(2) of the Prevention of Corruption Act, read with clause (a) or (b) of sub-section (1) of section 5 thereof, or without consideration or for consideration which he knows to be inadequate, in prosecutions for offences punishable under section 165 of the Indian

Penal Code. In In *Sailendranath V. state of Bihar (*1968 Cri. L.J.1484== AIR 1968 S.C.1292), the Supreme Court held : " The presumption under section 4 arises when it is shown that the accused has received the stated amount and that the said amount was not legal remuneration ". Where marked currency notes are recovered from the pocket of the shirt which the accused was wearing and not from the shirt lying elsewhere in the room, it is for the accused to show how he came into possession of the notes as observed by the Supreme Court in *Man Singh V. State of Haryana* (1973 Cri. L.J. 383).

53. (iv) In view of this presumption it is no longer necessary for the prosecution to prove that the gratification accepted or attempted to be obtained by a public servant (provided, of course, it was not legal remuneration due to him) was as a motive or reward or that in a prosecution under section 165 of the Indian Penal Code he accepted a valuable thing without consideration or for inadequate consideration.

Presumption Rebuttable.

54. (i) This presumption is, however, rebuttable. By reasons of the presumption, the burden of proof in respect of the main ingredient shifts from the prosecution to the accused. Once the prosecution establishes that the public servant accepted, obtained or agreed to accept or attempted to obtain gratification other than legal remuneration, it is for the accused to prove the contrary, viz. that he did not accept it, as such, which means that he would have to show that it was accepted on some other account. The same applies to the acceptance, etc. of a valuable thing in a prosecution under section 165 of the Indian Penal Code.

54. (ii) The question that, however, arises is : what is the standard of proof expected of the accused to rebut the presumption ? At one time the law was interpreted to mean that the presumption cast a duty on the accused to prove his defence as to this ingredient much in the same manner as the prosecution is required to prove any fact. In *State of Madras V. A.Vaidyanath Iyer* (1958 Cri.L.J. 232 == AIR 1958 S.C. 61), the Supreme Court ruled, " The presumption under section 4 is a presumption of law and therefore, it is obligatory on the Court to raise it in every case brought under section 4 of the Prevention of Corruption Act because unlike the case of presumption of fact, presumptions of law constitute a branch of jurisprudence. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. " In *C.S.D. Swami V. State of Punjab* (1960 Cri.l.J. 131 == AIR 1960 S.C. 7), the Supreme Court, while discussing the presumption under sub-section (3) of section 5 (as it then stood), observed that the words of the statute are peremptory and the burden must be all the time on the accused to prove the contrary. It held that after the conditions for raising the presumption are fulfilled, the Court must raise it. However, in later decisions a shift is noticeable and it is now well settled that although a burden is cast upon the accused, it is not so heavy as is generally placed upon the prosecution in other cases ; it is akin to the burden placed upon a litigant in a civil matter and can be discharged by him by proving the preponderance of probability (V.D.Jhingam V. State of U.P. 1966 Cri. L.J. 1357 == AIR 1966 S.C. 1762 and Deonath Dudnath Mishra V. State of Maharashtra 1967 Cri. L.J. 21 == AIR 1967 Bom.1). In a subsequent decision (Sailendranath V. State of Bihar 1968 Cri. L.J. 1484 == AIR 1968 S.C. 1292), it was held by the Supreme Court, " The burden resting on accused under section 4(1) is not as light as that placed on him under section 114 of the Evidence Act and the same cannot be discharged merely by reason of the fact that the explanation offered by him is

reasonable and probable. I must be further show that the explanation is a true one. It must be further shown that the explanation is a true one. In the case of M.P. Gupta V. State of Rajasthan (1974 Cri. L.J. 509) the Supreme Court observed that the presumption uder section 4(1) has to be rebutted by the accused by establishing his case by preponderance of probabilities. In State of Assam V. Krishnrao (1973 Cri.L.J. 169 == AIR 1973 S.C.28), it was held that where it is proved that a gratification has been accepted the presumption under section 4 of the Prevention of Corruption Act shall at once arise. It is a presumption of law and it is obligatory on the part of the Court to raise it in every case brought under section 4. The words "unless the contrary is proved " mean that the presumption raised by section 4 has to be rebutted by proof and not by bare explanation which may be merely plausible. The required proof need not be such as is expected for sustaining a criminal conviction ; it need only establish a high degree of probability ". In *R.C.Mehta V. State of Punjab (1971 Cri.L.J. 1119 == AIR 1971 S.C. 1420),* however, the Supreme Court has held that presumption under section 4(1) is not applicable to prosecution of accused under section 5(1)(d) read with section 5(2) and the burden of proving his innocence cannot be cast on accused. The Bombay High Court, in the case of P.R.Pande V. State of Maharashtra (1973 Cri. L.J. 1004), observed : " where the trial court wrongly convicts the accused holding that the accused has not rebutted the presumption under section 4(1) by proof beyond reasonable doubt, the proper course for the appellate court is to order retrial instead of reappraising evidence itself ".

54. (iii) Conversely, in a prosecution under section 165-A of the Indian Penal Code, section 4(2) of the Prevention of Corruption Act provides for a presumption against the accused. It is to the effect that where it is proved in such a case that any gratification other than legal remuneration or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed unless the contrary is proved that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 161 of the Indian Penal Code, or as the case may be, without consideration or for inadequate consideration.

54. (iv) Sub-section (3) of section 4, however, provides that the Court may decline to draw the presumption referred to in sub-section (1) or sub-section (2), if the gratification or thing concerned is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

54. (v) It is not incumbent upon the accused that he should himself give evidence on oath in his own defence, as provided under section 315 of the Criminal Procedure Code, or examine witnesses and produce documents in his defence, for rebutting the presumption. For this purpose he may as well depend upon the material brought on record through the prosecution witnesses. Not only this, but it is open to the Court, considering all the facts and circumstances of the case, to accept an explanation which the accused may give in the course of his statement when examined under section 313 of the Criminal Procedure Code (*vide State of Maharashtra V. Laxman Jairam 1962(2) Cri. L.J. 284].*

54. (vi) Although presumptions are available to the prosecution as above, investigating officers will do well not to depend heavily upon them and slacken their efforts to procure proof of the important ingredients.

Demand of Bribe by Public Servant and Offer of Bribe to Public Servant.

55. (i) It is not necessary that the public servant demanding a bribe should be in a position to do the official act. There is an impression that if a public servant demands illegal gratification for doing a favour and it is found that he was not in a position to do it because he was not actually dealing or concerned with the subject matter touching which the favour was promised to be done, he cannot be said to have committed an offence under section 161 of the Indian Penal Code. This is not correct. It is not necessary that the accused should actually perform the work or be in a position to do it ; if he creates an impression that it is within his power to do the act, it is sufficient. This point was clarified by the Bombay High Court in *Indur Dayaldas V. state of Bombay (1952 Cri.L.J. 925),* in which the High Court observed that from the last explanation to section 161 of the Indian Penal Code, it is clear that "it is not necessary, in order to constitute an offence under that section that the act for doing which the bribe is given should actually be performed. It is sufficient if a representation is made that it has been or that it will be performed and a public servant who obtains a bribe, will be guilty of the offence punishable under section 161 of the Indian Penal Code even if he had or has no intention to perform and has not performed or does not actually perform that act. A representation by a public servant that he has done or that he will do an act impliedly includes a representation that it was or is within his power to do that act ". Thus the power of a bribe-taker to perform his promise is not necessary for proof of the offence. The words " in the discharge of his duty "occurring in section 5(1) of the Prevention of Corruption Act do not constitute an essential ingredient of the offence under section 5(1)(d) of the Act. To bring home an offence under section 5(1)(d), it is not necessary to prove that the acts complained of were done by the accused in the discharge of their official duties (*Dalpat Singh V. State of Rajasthan 1969 Cri. L.J. 262 == AIR 1969* Supreme Court 17). When a public servant is charged under section 161, Indian Penal Code and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, it is not necessary for the Court to consider whether or not the accused public servant was capable of doing or intended to do such an act (Shiv Raj V. Delhi Administration 1969 Cri. L.J. 1== AIR 1968 Supreme Court 1419).

55. (ii) It is not necessary that the public servant to whom a bribe is offered should be in a position to do the favour. The offence of offering a bribe to a public servant would be complete even if the public servant to whom it is offered is not in a position to show the favour or do the work for showing or doing which the bribe is offered. *In Ram Sevak V. Emperor* (1948 Cri.L.J. 467 --- Allahabad High Court), in which one Ram Sevak was prosecuted for offering a bribe to a public servant for doing certain work, it was found that the public servant had already sent his report to his superior, and therefore, he could not show any favour to the accused. It was contended on behalf of the accused that in these circumstances he could not be held to be guilty of the offence. The Court rejected the contention on the ground that the accused was not aware of the fact, while committing the offence, that it was not within the power of the public servant to show favour to him and that he offered the bribe to the public servant because he was under the impression that it was the mental attitude of the accused that was important in such a case. (Also see Mahadeo Dasappa Gunaki V. State of Bombay : 1953 Cri. L. J. 902 Supreme Court).

A public servant accepting gratification for himself or any other public servant in the same office for doing any official act or getting it done is guilty under section 161 of the Indian Penal Code.

56. Where the accused is a public servant in the very office in which the work of the person giving a bribe is to be got done and takes money in order to get the work done, there is no further question of the charge or evidence indicating who was the other public servant with whom the service would be rendered. It is not necessary to show whether there was any other public servant who was to be approached where the public servant accepting the money is himself in the same office where the work would be done. In such a case, the accused public servant would be taking money for himself or for any other public servant in his office in order to do any official act or to get it done. It is enough if it is shown that the money was paid to a public servant in a particular department by which an order would be made and it was taken for doing any official act in that department. [State of Mahrashtra V. J.C. Arora and another 1964 (1) Cri. L. J. 432 Supreme Court].

Nature and Extent of Corroboration necessary in Trap cases and use of Government money for traps.

57. (i) *Whether the complainant who is sent to pay the amount of bribe is an Accomplice*. – An "accomplice" means a person who is concerned in the commission of a crime. Since offering illegal gratification is as much an offence as accepting it, an impression has been prevailing that the complainant who pays the bribe amount to the accused public servant during the trap is also an accomplice. Various courts have, however, held that the evidence of witnesses who are not willing parties to the giving of a bribe and are only actuated by the motive of trapping the accused cannot be treated as that of accomplices but their evidence must be viewed as evidence of partisan witnesses. In Shiv Bahadur Singh V. State of Vindhya Pradesh (1954 Cri. L. J. 910), it was discovered that in the trap that was laid to catch the accused, the most important witness was one Nagindas who offered a sum of Rs.25,000. Nagindas, who was acting on behalf of his master, did not have the money to offer as a bribe, and hence the money (which was offered to the accused by Nagindas) was provided by the Superintendent of Special Police Establishment. One Pannalal, who was a servant of Nagindas, had accompanied Nagindas during the trap. The first point in that case was whether Nagindas and Pannalal were accomplices, and therefore, their evidence should be treated as on that basis. This was answered in the negative by the Supreme Court on the ground that neither of them was a willing party to the giving of the bribe and therefore, they did not have the necessary criminal intend to be treated as abettors or accomplices. They were treated as partisan witnesses who were out to entrap the accused. This ruling was considered by the Supreme Court in subsequent cases, namely State of Bihar V. Basawan Singh (1958 Cri. L. J. 976), and R.M.Pandya V. State of Bombay (1960 Cri. L.J. 1380), and confirmed.

57. (ii) Extent of Corroboration necessary to the evidence of a Partisan Witness. – In Shiv Bahadur Singh V. State of Vindhya Pradesh (1954 Cri.L.J. 910), the Supreme Court did not accept the evidence of witnesses Nagindas and Pannalal. This had again led to a belief that the testimony of those witnesses who form the "raiding party" must be discarded unless that testimony is corroborated by independent witnesses. In State of Bihar V. Basawan Singh (1958 Cri. L.J. 976), the Supreme Court held that in Shiv Bahadur Singh's case referred to above it was observed that Nagindas and Pannalal were partisan witnesses who were out to entrap the accused,

and further " a perusal of the evidence left in the mind the impression that they were not witnesses whose evidence could be taken at its face value ". It was clear from these observations that the decision did not lay down any universal or inflexible rule of be called partisan or interested witnesses. The Supreme Court further held that it was plain and obvious that no such rule could be laid down, for the value of the testimony of a witness depends, on diverse factors, such as the character of the witness, to what extent and in what manner he was interested, how he had fared in cross-examination, etc. There was no doubt that the testimony of partisan or interested witnesses must be Singh's case, where the Court would, as a matter of prudence look for independent corroboration. It was wrong, however, to deduce from that decision any universal or inflexible rule that the evidence of the witnesses of the raiding party must be discarded unless independent corroboration was forthcoming. "Where the alleged gratification is extorted from a person he cannot be considered as an accomplice and it is incorrect to say that his evidence cannot be accepted without corroboration " as observed by the Supreme Court in Dalpat Singh V. State of Rajasthan 1969 Cri. L.J. 262 == AIR 1969 S.C.17.

As regards the nature of corroboration required, the Court held that independent corroboration did not mean that every detail of what the witnesses of the raiding party had said must be corroborated by independent witnesses and that corroboration need not be by direct evidence that the accused committed the crime, it was sufficient even though there was circumstantial evidence of the accused's connection with the crime.

57. (iii) *Use of Government money for laying Traps and evidentiary value of the evidence in such cases*. – Judicial decisions tend to indicate that Courts have not objected to the system of supplying money to complainants in trap cases and that they have held that it was not correct to view the evidence of witnesses with suspicion simply because the money for the trap was provided by the police. This would be clear from the observations of the Supreme Court in R.M. Pandya V. State of Bombay (AIR 1960 S.C. 961== 1960 Cri. L.J. 1380):--

"The Appellant's counsel contended that witnesses in the present case were not only partisan but their testimony must be taken to be in the nature of evidence of a accomplices as the sum of Rs. 250 was provided by Deputy Superintendent of Police Pandya. In this connection reference was made to Shiv Bahadur Singh V. State of Vindhya Pradesh (AIR 1954 S.C. 322== 1954 S.C.R. 1098 : 1954 Cri. L.J. 910) ". But that case has been explained in State of Bihar V. Baswan Singh (AIR 1958 S.C. 500) wherein the Supreme Court observed as follows :--

" We must make it clear that we do not wish it to be understood that we are deciding in this case that if the money offered as a bribe is provided by somebody other than the bribe giver, it makes a distinction in principle."

It was also stated in that case that in judging the testimony of a witness many considerations arise and the decision of every case must depend upon the facts and circumstances of each case. Again the learned Judge observed that the correct rule was :

" If any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated ; "if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations

which must vary from case to case, and in a proper case, the Court may even look for independent corroboration before convicting the accused person."

It does not seem to be the law that if the money given as a bribe is provided by a particular officer of the Police then the evidence of all the witnesses becomes evidence of accomplices and must be looked at with suspicion. In the present case, no doubt Rs.250 came from the Police Officer Deputy Superintendent of Police Pandya and this money was given to the complainant to be passed on to the appellant purporting to be a bribe but even in such a circumstance the testimony of the witnesses has to be judged like the testimony of any other witnesses and all diverse factors which arise for consideration and their relative importance must depend upon the facts of that particular case. In the case before us the money was given to the appellant in the presence of one of the search witnesses Mohanbhai Shankarbhai and when it was thrown on the ground by the appellant it was picked up by that witness at the instance of Deputy Superintendent of Police Pandya. It cannot be said that these two witnesses were not independent witnesses even though they consented to become search or panch witnesses. Mohanbhai Shankarbhai has been characterized by the trial Court as a respectable man who has worked as a teacher, was then in business and was at the time of the occurrence serving in the Agricultural Produce Market Committee. He had no connection whatever with the complainant, and he had no connection with the appellant either. The other witness Rambhai Dahyabhai is described as B.Ag.(Honours) and he was in service as Assistant Dairy Superintendent in the Kaira District Co-operative Milk Union Ltd. He also had no connection with the complainant or with any other person with regard to whom it could be stated that he was inimical towards the appellant. In regard to these persons the trial Court said :

" It appears to be highly improbable that such persons would be willing tools in the hands of Shri Tribhovandas and Bhailalbhai in fabricating false evidence against an innocent man."

Their evidence was accepted by the High Court also. This is not a case where the Police or anybody else had done any act in order to oblige any particular person but it is one of those cases where a complaint was made to the Police that the appellant was demanding a bribe from the complainant. The Police no doubt provided the money and were witnesses to the passing of the money but it is not a case where the Police had instigated any one to offer a bribe to the appellant. Even if it was a case where it was necessary to have corroborative evidence, that is supplied by the testimony of Mohanbhai Shankarbhai and Rambhai Dahyabhai and as was pointed out by this Court in Rameshwar V. State of Rajasthan (1952 S.C. 377: 1952 Cri. L.J. 547 : AIR 1952 S.C. 54) it is not necessary that there should be independent corroboration of every material circumstance. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplices or the complainant is true and that it is reasonably safe to act upon it and the corroboration need not be by direct evidence. It is sufficient if it is merely circumstantial evidence of the connection of the accused with the crime. In Rameshwar V. State of Rajasthan (1952 S.C. R. 377: AIR 1952 S.C. 54) the previous statement of the complainant was held to be evidence of conduct and also as corroborative evidence within the limits of section 157 of the Indian Evidence Act. The observations of Lord Goddard, Chief Justice of England, in this context, in Brannan V. Peek [(1947),1 All E.R. 572], are quoted below :--

"It is wholly wrong for a Police Officer or any other person to be sent to commit and offence in order that an offence by another person may be detected. It is not right that Police authorities should instruct, allow or permit detective officers or plain clothes constables to commit an offence, so that they can prove that another person has committed an offence. "

In this case, Lord Goddard was dealing with an unwilling bookmaker who was disinclined to accept a bet from a Police constable and not with an accused person who, far from being unwilling, was endeavoring to corrupt a public servant. Thus, what is objectionable is to become an *agent provocateur* and instigate a person to offer a bribe if there is not demand. It would be pertinent to reproduce in this context, for the information of the Bureau Officers, the observations made by a learned Judge of the Allahabad High Court (Dalal J.) in *Ajudhia Prasad V. Emperor* (30 Cri.L.J. 67) namely the " walk-into-my-parlour-said-the spider-to-the-fly" tactics were " revolting " to the mind of the Court. In fine, where the complainant is willing or in a position to produce the amount required for laying the trap, he should be called upon to bring in the amount and it should be utilized for the trap. In fact, this would add to the strength of the prosecution case. It has been commented that the willingness of the Police to utilize their own amounts for laying traps is likely to open gates for litigants to treat the whole matter as a pastime as the complainants are to lose nothing. Officers may please bear this in mind. The inability or unwillingness of a complainant to produce the requisite amount should, however, not lead to the abandonment of the trap and the closing of the case. The investigating officer should invariably mention in the case diary that the complainant was asked to produce the amount and that on his failure to do so Government money was used for the purpose of the trap.

Criminal Breach of Trust

58. (i) The topic of criminal breach of trust is dealt with in the Indian Penal Code in Chapter XVII, offences against property. Section 405 defines criminal breach of trust, section 406 provides punishment for the criminal breach of trust, section 407 provides punishment for criminal breach of trust by a carrier, etc. Section 408 provides punishment for criminal breach of trust by a clerk or servant and section 409 provides punishment for criminal breach of trust by a public servant, or by a person in the way of his business as a banker, merchant, factor, broker, attorney or agent.

58. (ii) *Case law on "entrustment"* .--- This is one of the essential elements of the offence defined in section 405, Indian Penal Code. That section provides "being in any manner entrusted with property or with dominion over the property " as the first ingredient of criminal breach of trust. The words " in any manner " are significant. The section does not require that the entrustment of property should be by someone or the amount received must be the property of the person on whose behalf it is received. As long as the accused is given possession of the property for a specific purpose or to deal with it in a particular manner, the ownership being in some person other than the accused, he can be said to be entrusted with that property to be applied in accordance with the terms of entrustment and for the benefit of the owner. The expression "entrusted" in section 405 is used in a wide sense and includes all cases in which property is voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to law or the terms on which possession is handed over.

Entrustment is thus explained in *Somnath Puri V. The State of Rajasthan* by the Supreme Court, 1972 S.C.C. (Cri.) 359.

58. (iii) The doubt, as to whether the obtaining of the property by practicing deception would amount to entrustment within the meaning of section 405, Indian Penal Code is set at rest by the Supreme Court in the State of West Bengal V. S.K.Roy 1974 S.C.C. (Cri.) 399. It has been held that to constitute an offence of criminal breach of trust, it is not necessary that misappropriation must take place after the creation of a legally correct entrustment or dominion over property. The entrustment may arise "in any manner whatsoever". That manner may or may not involve fraudulent conduct of the accused. Section 409, Indian Penal Code covers dishonest misappropriation in both types of cases, that is to say, those where the receipt of the property is itself fraudulent or improper and those where the public servant misappropriates what may have been quite properly and innocently received. All that is required is what may be described as 'entrustment' or acquisition of dominion over property in the capacity of a public servant who, as a result of it, becomes charged with a duty to act in a particular way, or at least honestly.

58. (iv) What is " property" ? --- The word "property" has been elaborately defined by the Supreme Court in the case of R.K.Dalmia and others V. The Delhi Administration reported at 1962 (2) Cri. L.J. 805 as under :---

"The word 'property' is used in Indian Penal Code in a much wider sense than the expression 'movable property'. There is no good reason to restrict the meaning of the word 'property of movable property only when it is used without any qualification in section 405 or in other sections of the Penal Code. Whether the offence defined in a particular section of the Penal Code can be committed in respect of any particular kind of property will depend not on the interpretation of the word 'property' but on the fact whether that particular kind of property can be subject to the act covered by that section. It is in this sense that it may be said that the word 'property' in a particular section covers only the type of property with respect to which the offence contemplated in that section can be committed. "

Thus even 'immovable property' also can be a subject of criminal breach of trust in the circumstances of a particular case. The following have all been held to be 'property' within the meaning of this section :---

(a) Funds.--- The word ' fund ' may mean actual cash resources of a particular kind e.g. money in a drawer or a bank or it may be a mere accountancy expression used to describe a particular category which a person uses in making up his accounts. The words 'payment out of' when used in connection with the word 'fund' in its first meaning connote actual payment e.g. by taking money out of the drawer or drawing a cheque on the bank. When used in connection with the word 'fund' in its second meaning they connote that, for the purposes of account in which the fund finds a place, the payment is debited in that fund, an operation which of course, has no relation to the actual method of payment or the particular cash resources out of which the payment is made (see R.K.Dalmiya's case cited above).

(b) Sale proceeds of property entrusted to a bailee.

(C) *A debt or actionable claim.*

(d) Property purchased with amounts entrusted to the accused for purchasing property.

(e) A cancelled cheque.

(f) A chose in action.

A chose in action has been defined as a right of proceeding in a court of law to procure the payment of a sum of money (e.g.bill of exchange, a policy of insurance, an annunity or a debt or to recover pecuniary damages for the infliction of a wrong or the non-performance of a contract). Any tampering with a chose in action without the consent of the owner thereof, which injudiciously or prejudicially affects his right of action, would amount to conversion of it is law and if such injurious tampering is accompanied by *mens rea* or dishonesty, such conversion would be criminal. This principle has been laid down in Gopaldas Mohta and others V. State of Maharashtra in 1973 Mah. L.J. 337. Thus the word 'property' occurring in section 405, Indian Penal Code is not confined to tangible movable property.

58. (v) *Misappropriation and Conversion*. --- Misappropriation of money is the wrongful setting apart or assigning of a sum of money to a purpose or use to which it should not lawfully be assigned or set apart. It is not necessary in order to constitute misappropriation that the money entrusted should have been applied or used in any particular manner, it is sufficient if the accused dishonestly intends to hold the property as his own or to deprive another of his property and such intention is indicated by some overt act or conduct on the part of the accused. The appropriation by the accused need not be for his own use or benefit. A misappropriation does not cease to be a misappropriation because it is only for a short time. Similarly, a dishonest conversion of property by the accused to his own use or for purposes other than those for which it was entrusted is an offence under this section. It has been held by the Supreme Court in *Sushilkumar Gupta V. Joy Shankar Bhattacharya* 1970 (i) S.C.C. 504 that the offence of criminal breach of trust is committed when a person who is entrusted in any manner with property or with dominion over it dishonestly misappropriates it, or converts it to his own use, or dishonestly uses it or disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, express or implied, made by him touching such discharge, or wilfully suffers any other person so to do. Therefore, disposal against law, rules, regulations and bye-laws or the direction is an offence under this section. Ratification of the criminal breach of trust against rules governing disposal by an authority who has no power to override the rules is ineffective and does not validate the disposal.

58. (vi) *Parallel provisions of the Maharashtra Co-operative Societies Act and the Indian Penal Code and Prevention of Corruption Act*. --- In Chapter XII of the Maharashtra Co-operative Societies Act, offences falling under the Act have been enumerated in section 146 and punishments for those offences have been provided in section 147. Clauses (*o)* and (*p*) of section 146 are important provisions in the said Act. Clause (*o*) deals with an offence where an officer of the Society wilfully recommends or sanctions for his own personal use or benefit or for the use or benefit of a person in whom he is interested, a loan in the name of any other person. This clause, therefore, speaks about the advance of loan in the name of one person but the real beneficiary under the loan is not the person in whose name the loan is actually awarded. The beneficiary is either the officer himself or some other person in whom he is interested. It is, therefore, a different type of offence and it has nothing to do with the offence of misappropriation or cheating or forgery. (*Waman Sambhaji Duka V. Narhari Sambhaji Phatale,* 1968 Cri. L.J. 305, Bombay). Thus entrustment is an ingredient of an offence under section 146*(o).* Similarly the element of dishonest and fraudulent intention is absent in section 146*(o)*. Only the word "wilfully" is used

in this section "wilfully" presupposes a conscious action. Section 146 *(o)* is limited to the willful sanction or a recommendation for the sanction of a loan, which is distinct from the dishonest or fraudulent misappropriation or conversion to one's use of any property. Under section 146*(p)* an offence may be committed by *(a)* an officer or member or by a past officer or member *(b)* such officer or member or past officer or past member must have destroyed, multilated, tampered with or otherwise altered, falsified or secreted *(c)* or must have been privy to the destruction, mutilation, alteration, falsification, secreting *(d)* or must have made or be privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the Society. The clause does not make intention an ingredient of the offence. Again a person who is privy to the above acts is liable to punishment. Section 465 Indian Penal Code penalizes the offence of forgery. Sections 466,467,468,469 are more serious offences of forgery when committed in respect of record of a Court or of Public Registers, Valuable securities, wills or for cheating or harming reputations of persons. Section 477, Indian Penal Code penalizes dishonest cancellation, destruction, defacement or attempts to cancel, destroy or deface or secret or attempt to secret any document which is or purports to be a will, or an authority to adopt a son, or any valuable security or mischief in respect of such document. Section 477-A penalizes falsification of accounts by a clerk, officer or a servant or by a person employed in the capacity of a clerk, officer or servant. These offences and the offence under section 146 *(p)* are distinct offences. The punishment provided for the offences under the Indian Penal Code is more severe. The provision of the Maharashtra Co-operative Societies Act does not protanto repeal the provisions of Indian Penal Code. There is nothing in the provision of the Maharashtra Co-operative Societies Act, 1960 which suggests that certain acts by the officers of the Society which are offences under this Act, could not be tried under any penal provision of the laws of the land. On the contrary section 27 of the Bombay General Clauses Act, specifically enables prosecution under any of the alternate provisions, if the same act constitutes offence under two or more penal laws. It is certainly not the function of the Co-operative Societies Act that the graver offence should go unpunished and accused should be prosecuted only under the lesser offence. (1968 Cri. L.J. Bom. 305 and Ram Rao and other, Narayan and other, 1969 Mah. L.J. Supreme Court 597).

58. (vii) *Criminal breach of trust under section 409 Indian Penal Code vis-à-vis Criminal misconduct under section 5(1)(c) of Prevention of Corruption Act--*
Normally section 5(1)(c) of the Prevention of Corruption Act is to be included along with other sections of law against the person committing misappropriation in a Co-operative Society. An offence which falls under section 409 Indian Penal Code if it is committed by a public servant, would also fall under section 5(1)(c) of the Prevention of Corruption Act. The offence created under section 5(1)(c)of the Prevention of Corruption Act is distinct and separate from the one under section 409 of the Indian Penal Code. It does not repeal or abrogate section 409. There can be a trial and conviction under section 409 of the Indian Penal Code even though the accused may have been acquitted in a trial for the offence under section 5(2) of the Prevention of Corruption Act. The decisions in state V. Pandurang Baburao AIR 1955 Bom. 451 and M.P. State V. Veereshwar Rao AIR 1957 S.C. 592 may be referred to.

58. (viii) *sanction to prosecute.*---Sanction to prosecute for an offence under section 5(1)(c) of the Prevention of Corruption Act is a must. However, it is not necessary in respect of an offence under section 409 Indian Penal Code, if the public servant is removable from service by an authority subordinate to the Government. Whether sanction under section 197(1) Criminal Procedure Code is necessary, will depend upon the facts of each case. The leading cases on this point decided by the Supreme Court are (1) AIR 1955 S.C. 309, (2) AIR 1955 S.C. 287, (3) AIR 1969 S.C. 686 and (4) AIR 1970 S.C. 1661. The principle laid down is " if the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, sanction under section 197(1) would be necessary, but if there was no necessary connection between them and the performance of duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required. "

58. (ix) Section 212(2) of the Criminal Procedure Code contains a special provision enabling one charge to be framed for criminal breach of trust in respect of the aggregate of the amounts or other movable property criminally misappropriated during a period of one year. The investigating officer should bear this in mind when drafting charges of criminal breach of trust in addition or in the alternative to a charge under section 5(1)(c) of the Prevention of Corruption Act, 1947. In case of corruption the charge should contain particulars of the amounts taken as bribe and the persons from whom they were taken. As per observations of the Supreme Court in N.G. Mitra V. State of Bihar (1970 Cri. L. J. 1396 : AIR 1970 S.C. 1636) the absence of these particulars does not however, invalidate the charge but entitles the accused to better particulars.

Causing of Wrongful Loss to Government by a public servant by benefiting a Third Party also would attract the provision of section 5(1)(d) of the Prevention of Corruption Act, 1947

59. If a public servant obtains a valuable thing or pecuniary advantage for himself or for any other person by corrupt or illegal means or by abusing his position as a public servant, he commits an offence of criminal misconduct, as laid down in clause (d) of sub-section (1) of section 5 of the Prevention of Corruption Act. The provisions of the clause are generally interpreted to mean that the benefit obtained by the public servant either for himself or for any other person, should be only from a " third person ".The act of a public servant obtaining a benefit for another person by causing wrongful loss to Government would also attract the provisions of this clause. In N. Narayan Nambiar V. State of Kerala [1963 (2) Cri. L. J. 186], the Supreme Court held that it would not be correct to say that section 5(1) (d) of the Act would apply only in cases of direct benefit obtained by a public servant for himself or for any other person from a third party, in the manner described therein. The case of a public servant causing wrongful loss to the Government by benefiting a third party squarely falls within it.

Sanction for Prosecution (section 6 of the Prevention of Corruption Act, 1947)

60. (i) According to the provisions of section 6(1) of the Prevention of Corruption Act, no Court shall take cognizance of an offence punishable under sections 161, 164 and 165 of the Indian Penal Code or sub-section (2) or (3A) of section 5 of the Prevention of Corruption Act, 1947 alleged to have been committed by a public servant except with the previous sanction of the authority competent to remove him from his office, as mentioned in sub-clauses (a), (b) or (c) of section 6(1) of the Act.

The provision has been specially made to afford reasonable protection to public servants in the discharge of their official functions and to discourage frivolous or doubtful prosecutions. Further, the prosecution is for an offence which challenges the honesty and integrity of the public servant and therefore, the discretion to grant or refuse to grant sanction for prosecuting the public servant is vested in the departmental authorities. Hence, for considering the question of granting the required sanction, all material obtained during the course of the investigation including the statements of the accused and witnesses examined at his instance should be placed before the authority who will decide whether or not a prima facie case is made out against the accused person justifying the grant of sanction (for specimen letter see Appendix X).

60. (ii) The requisite sanction for prosecution must have been obtained before the court is invited to take cognizance of the offence. It should therefore , be obtained prior to filing of the charge-sheet in the court . A trial without a proper sanction obtained before cognizance is taken by the court is ab initio void, it would not be saved by a sanction obtained after cognizance is taken. The absence of a sanction prior to the institution of a prosecution cannot be regarded as a mere technical defect. (Spence C.J. in Basdeo Agarwala v. Emperor : AIR 1945 Federal Court 16).

60. (iii) No special form is prescribed for according sanction under sanction 6 of the Act. The prosecution, however, must show that the sanctioning authority had before it the relevant facts on the basis of which the prosecution was contemplated. In Jaswant Singh v. State of Punjab (1958 Cri.L.J. 265), the Supreme Court observed: " the sanction under the Act is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. The object of the provisions for sanction is that the authority giving sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden " In Gokulchand Dwarkadas Morarka V. Emperor (AIR 1948 PC 82 : 75 Ind. App. 30 at p. 37) the Privy Council also took a similar view when it observed : " In their lordships' view to comply with the provision of clause 23 of the Cotton Cloth and Yarn (Control) Order it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential since clause 23 does not require the sanction to be in any particular form, not even to be in writing. But if the facts constituting the offence charged are not show on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. The sanction to prosecute is an important matter, it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. In Som Nath v. Union of India (1971 Cri. L. J. 1422, AIR 1971 S.C. 1910) the Supreme Court has held " For a sanction to be valid it must be established that the sanction was given in respect of the facts constituting the offence, with which the accused is proposed to be charged. Though it is desirable that the facts should be referred to in the sanction itself, nonetheless if they do not appear on the face of it, the prosecution must establish aliunde by evidence that those facts were placed before the sanctioning authorities."

60. (iv) It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it, and after a consideration of all the

circumstances of the case, sanctioned the prosecution and therefore unless the matter can be proved by other evidence, the facts should be mentioned in the sanction itself to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case. The sanction should relate to specific offences. In Yusofalli Mulla v Emperor (AIR 1949 P.C. 264), it was held that a valid sanction on separate charges of hoarding and profiteering was essential to give the court jurisdiction to try the charge. Without such sanction the prosecution would be a nullity and the trial without jurisdiction. The principle laid down here should be kept in mind in corruption cases too.

60. (v) In short, an order sanctioning the prosecution of a public servant should indicate that the below mentioned requirements have been fulfilled :---

(a) A court cannot take cognizance of offences under the Prevention of Corruption Act, 1947, unless a competent authority has sanctioned the prosecution of the accused public servant as required by section 6 of the said Act, Once cognizance is taken, the order sanctioning the prosecution has no importance because it cannot be used for considering the guilt or otherwise of the accused public servant.

(b) The sanction should be granted by an authority competent to remove the public servant from his office. The question as to which authority should grant the sanction should be decided by reference to the post held by the public servant at the time he is alleged to have committed the offence, or at the time the charge-sheet is sent against him whichever post is higher.

60. (vi) The following principles should be borne in mind in deciding the competency of an authority to remove a public servant from the post held by him, and therefore, to accord sanction to prosecute him. As required under section 6 of the Prevention of Corruption Act ; --

(a) The authority having power to make an appointment also has the power to dismiss the person appointed by it in exercise of that power (section 16 of the Bombay General Clauses Act, 1904, when the appointment is made in exercise of the power under a Bombay Act, and section 16 of the General Clauses Act, 1897, when the appointment is made in exercise of the power under a Central Act). The power to dismiss includes the power to remove from a post.

(b) No person who holds a civil post under the Union or a State Government can be dismissed or remove by an authority subordinate to that by which he was appointed [Article 311 (1) of the Constitution of India].

(c) Article 311 (1) of the constitution lays down that no person holding a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. The principle of the law is that what a subordinate officer is empowered to do can be done by his superior officer also. Therefore, any authority superior to the appointing authority can remove a public servant from his post (State of Punjab V. Yash Pal 1957 Cri. L.J. 540, AIR 1957 Punjab 91), (Md.M.Qidwai V. G.G.in Council, AIR 1953 Allahabad 17), (karandeo V. State of Bihar, AIR 1956 Pat. 228), (Balabdas V. Asstt.Security Officer, AIR 1960M.P. 183), (Krishnamurthy V. State of Andhra Pradesh, AIR 1960 A.P. 29) and (State of Mahrashtra V. Govind Purushottam Shahane, 1973 Mah.L.J. 314). It follows that an authority superior to the appointing authority can accord sanction for prosecution. Hence it is not necessary that sanction to prosecute need be obtained from the lowest authority competent to remove the public servant it may be granted by any authority superior to such authority. In fact, in case of doubt it is advisable to

obtain the sanction from the authority competent to remove the public servant from the post held by him at the time of his prosecution if such post is higher than that which he held at the time the alleged offence was committed. The sanction of the Union or the State Government, as the case may be, would be necessary for the prosecution of a person employed in connection with the affairs of the Union or the State, as the case may be, if he is not removable from his office save by or with the sanction of the Central of the state Government, as the case may be.

(d) In certain Acts governing public servants (as defined in section 21 of the Indian Penal Code) other than servants of the Union or a State, Special provisions are incorporated prescribing authorities competent to remove persons appointed under the Act. Sanction to prosecute should be obtained from the competent authority so prescribed. Care should be taken to ensure that the procedure, if any, prescribed under the relevant law is followed. Thus, section 83(1) of the Bombay Municipal Corporation Act provides that an employee of the Corporation may be dismissed by the authority by whom he was appointed but the provisos lay down that, in respect of certain officers, the powers cannot be exercised without the previous approval of the Standing Committee or the Education Committee. The sanction should show on the face of it that the prescribed procedure was followed, as for example, that the approval of the concerned Committee was obtained, the sanction should contain a reference to the relevant resolution of the Committee, mentioning its number, date and such other details.

60. (vii) The facts constituting the offence for which the public servant is to be prosecuted should be mentioned in the sanction. If the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. These requirements are essential to ensure that the sanctioning authority granted the sanction after satisfying itself that the material placed before it disclosed a *prima facie* case against the accused public servant.

60. (viii) The sanction must relate to specific offences for which the accused is to be prosecuted.

60. (ix) It is essential that the original copy of the order sanctioning the prosecution (which is meant to be produced in the Court) should be signed in ink by the sanctioning authority.

60. (x) The discretion of the competent authority to grant or refuse sanction to prosecute is absolute and cannot be challenged in a court of law.

60. (xi) The provisions of section 197 of the Criminal Procedure Code, which apply to a public servant removable from his post by the Government only should also be kept in mind. Government's sanction under that section would be essential in the circumstances specified above [For specimen of sanction under section 197 of the Criminal Procedure Code, see Appendix XI (vi)].

Sanction for Prosecution is not necessary if the accused ceases to be a Public Servant at the time the Court takes cognizance

61. In giving effect to the plain meaning of the words used in section 6 of the Prevention of Corruption Act, 1947, the inevitable conclusion is that at the time a Court is asked to take cognizance, not only the offence must have been committed by the public servant concerned but the accused person must still be a public servant removable from his office by a competent authority, as stated in the section. Therefore, if an accused person has ceased to be a public servant at the time when the

Court is called upon to take cognizance of the alleged offence, the provisions of section 6 of the Act do not apply and the prosecution against him is not vitiated by the lack of a previous sanction by the competent authority. (*V.D. Jhingan V. State of U.P.* 1958 Cri. L.J. 254 Supreme Court : *State of Bombay V. Vishwanath Shrikant* : 1954 Cri. L.J. 284 :AIR 1954 Bom. 109). " Income-tax Officer employed in connection with affairs of Union when dismissed from service for criminal misconduct ceases to be a public servant within the meaning of section 6(1)(a) of the Prevention of Corruption Act, and no sanction for his prosecution is necessary. The fact that his appeal against dismissal is pending cannot make him a public servant." These are the observations of the Supreme Court in (*C.R.Bansi V. State of Maharashtra* 1971 Cri.L.J. 662, AIR 1971 S.C. 786). However, sanction as required by section 197, Criminal Procedure Code in case of judges or public servants, not removable from their office save by or with the sanction of the Central Government or the State Government, would be necessary even if the concerned public servants have ceased to be public servants before the charge sheets are filed.

A fresh sanction for prosecution is not necessary in a case where fresh investigation has been ordered by the Court

62. A sanction for prosecution of the accused accorded under section 6 of the Prevention of Corruption Act, 1947, does not lapse by reason of the fact that a fresh investigation into the offence has taken place under the orders of the Court [because of failure to conform to the provisions of section 5-A (1) of the Act], even though the sanction for prosecution was accorded by the authority on the basis of the material illegally collected during the earlier investigation. The sanction already granted remains valid and there is not need of any fresh sanction after the re-investigation. Even if fresh material is assumed to have been collected in the course of fresh investigation, it would not affect the sanction accorded earlier. (*Parasnath Pande and another V. State of Maharashtra* : 1962 (2) Cri. L.J. 326, Bombay High Court.)

Recording of First Information Report is not a condition precedent to the setting in Motion of a Criminal Investigation

63. (i) Chapter XII of the Criminal Procedure Code relates to "Information to the Police and their powers to investigate. " The Chapter begins with section 154 which lays down the procedure that should be followed if information of a cognizable offence is given to an officer in charge of a Police Station. This section is followed by other sections defining the powers and duties of the officer in-charge of a Police Station in the matter of investigation. This has given rise to an impression that the investigation relating to a cognizable offence cannot be made unless a first information report is recorded by the officer in charge of a Police Station. However, in *King-Emperor V. Khwaja Nazir Ahmed* (46 Cri. L.J. 413), the Privy Council observed that the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. Though in the great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded, there is not reason why the Police, if in possession through their own knowledge or by means of credible, though informal, intelligence which genuinely leads them to the belief that a congnizable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged. According to the Court, the object of the provisions regarding the first information report is to obtain early information of alleged criminal activity and to record the circumstances before there is time for them to be forgotten or

embellished. However, in the case of P. Sirajuddin V. State of Madras (1971 Cri. L.J. 523, AIR 1971 S.C. 520), the Supreme Court observed : " Before a public Servant is publicly charged with acts of dishonesty which amount to serious misdemeanor and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who occupied the top position in a department, even if baseless, would do incurable harm not only to the officer in particular but to the department he belonged to, in general."

63. (ii) As to the question whether the First Information Report should be given only to an officer-in-charge of a Police Station, the Supreme Court observed in R.P.Kapur V. Sardar Pratap Singh [1961(2) Cri. L.J. 161] that section 154 of the Criminal Procedure Code does not say that an information of a cognizable offence can only be made to an officer-in-charge of a Police Station. That section merely lays down, *inter alia,* that every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a Police Station shall be reduced to writing by him or under direction, and be read over to the informant; and every such information shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

Admissibility of evidence of Tape-Recorded Conversation

64. The question regarding the admissibility of evidence of a tape-recorded talk has been decided by the Supreme Court in *Yusufalli Esmail Nagree V. State of Maharashtra* reported at 1968 Cri. L.J. 103 : AIR 1968 S.C. 147, affirming the decision of the Bombay High Court in the same matter reported at AIR 1965 Bom. 3 : 1965(1) Cri. L.J. 12 : Their Lordships of the Supreme Court have made authoritative pronouncements as under :--

(a) Like a photograph of a relevant incident, a contemporaneous tape-record of a relevant conversation is a relevant fact and is admissible under section 7 of the Indian Evidence Act ;

(b) If a statement is relevant, an accurate tape-record of the statement is also relevant and admissible;

(c) The time and place and accuracy of the recording must be proved by a competent witness and the voices must be properly identified; and

(d) The tape should be sealed to avoid suspicion or allegation that the recording medium might have been tampered with before it was replayed. In the case of *R.M. Malkani V. State of Maharashtra* (1973 Cri. L.J. 228 == AIR 1973 S.C. 157), the Supreme Court has held: "Tape-recorded conversation is admissible provided that the conversation is relevant to the matter in issue, that there is identification of the voice and that the accuracy of the conversation is proved by eliminating the possibility of erasing the tape-record. A contemporaneous tape-record of a relevant conversation is a relevant fact and is admissible under section 8 of the Evidence Act. It is resgestae. It is also comparable to a photograph of a relevant incident. Further the conversation must not be within the vice of S. 162, Cri. P.C.".

Testimonial Compulsion [Article 20(3) of the Constitution of India]

65. Article 20(3) of the Constitution of India prohibits compelling a person, accused of any offence, to be a witness against himself. A number of points raised as to the scope and applicability of this privilege have been decided by the Supreme Court in

State of Bombay V. Kathi Kalu Oghad [1961 (2) Cri.L.J. 856==AIR 1961 S.C. 18081] as quoted below : --

(a) *A statement made by a person before he is actually accused of an offence is not hit by Article 20(3).* – "To be a witness " in its ordinary grammatical sense means giving oral testimony in Court. The case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, giving testimony in court or out of court by a person accused of an offence, orally or in writing. To bring the statement in question within the prohibition of Article 20(3) of the Constitution, the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused any time after the statement has been made.

(b) *Circumstances under which a statement made by an accused person in Police Custody is not hit by article* 20(3). – an accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in Police Custody, without anything more. In other words, the mere fact of being in Police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lead to the inference that the accused was compelled to make a statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement. The mere questioning an accused person by a Police Officer resulting in a voluntary statement which may ultimately turn out to be incriminatory is not "Compulsion".

(c) *A Statement leading to the Discovery of a Fact under section 27 of the Indian Evidence Act is not prohibited by Article 20(3).*— A statement made by an accused person in Police custody to a police officer leading to the discovery of a fact which may prove incriminating is admissible in evidence under section 27 of the Indian Evidence Act [vide also *k.Chinnaswamy Reddy V. State of Andhra Pradesh* – 1963 (1) Cri.L.J. 8== AIR 1962 S.C. 1788 and *Nandkumar V. State of Rajasthan – 1963 (2) Cri. L.J. 702 Supreme Court]*. If self-incriminatory information has been given by the accused person without any threat, that will not be hit by the provisions of clause (3) of Article 20 of the Constitution, for the reason that there has been no compulsion. Thus the provisions of section 27 of the Indian Evidence Act are not within the aforesaid prohibition unless compulsion has been used in obtaining the information.

(d) *Giving Finger Impressions, or Specimen Writings or showing Parts of Body for Identification is not "to be a witness".* --- Giving thumb-impression, or impressions of foot, palm or fingers, or specimen writings, or showing parts of the body by way of identification, are not included in the expression "to be a witness". Hence, taking of impressions of thumb, foot, palm or fingers or taking specimen writing of an accused person for comparison or holding a parade for identification of a person accused of an offence cannot be called "testimonial compulsion".

Provisions regarding Limitation laid down in section 161(1) of the Bombay Police Act, 1951, are not applicable to a prosecution for accepting a Bribe

66. Sub-section (1) of section 161 of the Bombay Police Act, 1951, lays down that in any case of alleged offence by a police officer, etc., or of a wrong alleged to have been done by such an officer by any act done under colour of or in excess of any such duty or authority under the Bombay Police Act, the prosecution or suit shall

not be entertained if instituted more than six months after the date of the act complained of. The public servant mentioned in this section cannot claim the benefit of the provisions of this section in a prosecution for accepting illegal gratification. The Supreme Court in *State of Maharashtra V.Narhar Rao (1966 Cri. L.J. 1495),* held that in order to have the benefit of six months' period mentioned in section 161(1) of the Bombay Police Act, it must appear to the Court (i) that the offence was committed under the colour of any duty imposed or any authority conferred by any provision of the Bombay Police Act or any other law for the time being in force, or (ii) that the act was done in excess of any such duty or authority. The test to determine as to whether a particular act complained of was done under colour of the office or in excess of the duty is to see that a reasonable nexus exists between the act complained of and the powers and duties of the office. The act cannot be said to have been done under the colour of office merely because the point of time at which it is done coincides with the point of time the accused officer is invested with powers or duty of his office. It was held that the act of acceptance of a bribe cannot be said to have been done by an officer under the colour of his office or done in excess of his duty or authority within the meaning of section 161 (1) of the Bombay Police Act, 1951, and the limitation of six months' duration is not available to such an officer. The same view has been reiterated by the Supreme Court in *Bhanuprasad V. State of Gujarat* 1968 Cri. L.J. 1505 == AIR 1968 S.C. 1323. Even though the limitation of six months, or two years, with the previous sanction of the Government, as per the proviso inserted by Maharashtra Act 45 of 1967, may not operate in the case of police officers charged with bribery, the investigation should be completed as expeditiously as possible.

Grant of Summaries in Cases of Corruption :

Power of Magistrates in the matter

67. (i) An order made under section 173 of the Criminal Procedure Code regarding grant of summary is not an administrative order but a judicial order.

67. (ii) According to section 7(1) of the Criminal Law (Amendment) Act, 1952, offences punishable under sections 161, 162, 163, 164, 165 or 165A of the Indian Penal Code or section 5(2) of the Prevention of Corruption Act, 1947, are exclusively triable by a Special Judge appointed under section 6 of the Criminal Law (amendment) Act, 1952. A Magistrate has, therefore, no jurisdiction to try any of these offences and as such he cannot take cognizance of such offences.

67. (iii) The Criminal Procedure Code has not defined the expression, "take cognizance", but it is clear from decided cases that taking of cognizance is different from initiation of proceedings. A magistrate may apply his mind and consider a report submitted to him by a police officer under section 173(2) of the Criminal Procedure Code for the grant of a summary as prescribed in Rule 246 of the Police Manual, 1959, Vol.III ; but before it could be said that he has taken cognizance under section 190 of the Criminal Procedure Code, it is not sufficient that the magistrate concerned should have applied his mind to the report but he must do something for proceeding under the subsequent provisions of the Code, e.g. under section 202 under which he has to examine the complainant on taking cognizance. A magistrate may grant the summary as requested by the Police or grant a summary of a different type but since no further proceedings are intended to be taken, it cannot be said that in issuing a summary, the magistrate has taken cognizance of the offence (*State V. Shankar Bhaurao Khirode,* 1959 Cri. L.J. 1153, Bombay High Court).

Power of the Police to sent "Supplementary" Charge-sheet (Section 173, Criminal Procedure Code)

68. (i) Section 173(1) of the Criminal Procedure Code lays down that after completing the investigation, a report in the prescribed form (Charge-sheet) should be sent to a magistrate empowered to take cognizance of the offence on a Police report. It is nowhere stated in the Code of Criminal Procedure as to when the investigation is to be considered to have ended. There is also no authority in law indicating that a supplementary charge-sheet cannot be submitted. There is no finality either to the investigation or to the laying of charge-sheets. Hence, if a police officer, who has filed what is styled as a "final charge-sheet", gets additional information about the offence, he can still investigate the offence further, and send a further charge-sheet against any of the accused persons concerned in the commission of the offence. (*Palaniswami Goundon* – 47 Cri.L.J. 993, Madras High Court).

68. (ii) This view of the Madras High Court also finds support in the ruling of the Bombay High Court in *State of Bombay V. J.D.Daroga* (1959 Bom.L.R. 118: 1959 Cri. L.J. 959) in which are incorporated the following observations : --

> "With the filing of a charge-sheet under section 173 (1) of the Code, the powers of the police for investigation in respect of that case do not come to an end. Even after filing the charge-sheet, if the police come across fresh facts, they are entitled to make another investigation. "

This was a ruling under the Code of 1898. It has now been incorporated in section 173(8) of the Code of 1973.

Complaint under section 182, Indian Penal Code (False Information with intent to cause public servant to use his lawful power to the injury of another person)

69. (i) It sometimes becomes necessary to proceed against a person for giving information which he knew or believed to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause the public servant to take action or to use his powers as a public servant to the injury or annoyance of another person. This offence is punishable under section 181 of the Indian Penal Code. It is non-cognizable and action has to be instituted by a complaint filed before a magistrate. Section 195 (1)(a) of the Criminal Procedure Code, however, provides that no Court shall take cognizance of any offence punishable under section 182 of the Indian Penal Code, except on the complaint in writing of the public servant to whom the information was given or of some other public servant to whom he is subordinate. This is a mandatory provision of the law and must be strictly complied with. The law does not permit any delegation of authority in the matter of the filing of the complaint by the public servant to whom the information was given, in favour of a subordinate. Thus, where false information was given to the Chief Minister, a complaint by his Personal Assistant, even though the latter was authorized by the Chief Minister to file the complaint, was held not to have been properly instituted. (*Krishna Tukaram Jadhav V. Secretary to the Chief Minister, Bombay* : 1955 Cri. L.J. 1156, Bombay High Court). The Court can proceed only on the basis of a complaint filed by the public servant to whom the false information was given in the first instance, or by his superior. Thus, if a person addresses a letter to a Divisional Commissioner making allegations which are ultimately shown to be false, a complaint will have to be filed by the Commissioner and not by an officer of the Bureau even though it was he who had made enquiries into the matter and found the allegations to be false. It would not be necessary for instituting such a case for the

Commissioner to appear before the magistrate in person to file the complaint. Advantage can be taken of proviso to section 200 of the Criminal Procedure Code and the Court requested to issue process on the basis of the complaint. Nor would it be necessary for the Commissioner to be present in the Court throughout the trial; the Court can be requested to exempt him from personal appearance.

69. (ii) Every case in which the prosecution under section 182 of the Indian Penal Code is contemplated, whether the information was given direct to an officer of the Bureau or inquired into by him on an application to an officer of another department endorsed to him for enquiry, should be reported to the Director. The Government of Maharashtra, in their Political and Services Department Circular No. 1581/34, dated the 16th January 1949 (printed as Appendix XIV), have laid down that such prosecutions should not be undertaken without the sanction of Government. The Director will obtain the necessary orders from Government.

Important case-law on the point of "Irregular or illegal Investigations "

70. In the case of *Sailendranath V. state of Bihar* (1968 Cri. L.J. 1484 ==AIR 1968 S.C. 1292), the Supreme Court has held: " An illegality committed in the course of investigation does not affect the competence and jurisdiction of the Court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination the invalidity of the preceding investigation does not vitiate the result unless the miscarriage of Justice has been caused thereby ". Further, illegal investigation does not render statements recorded therein by Police Officer, illegal (*Bhanuprasad V. State of Gujarat,* 1968 Cri. L.J. 1505 == AIR 1968 S.C. 1323). In a case where permission to investigate was granted by the Magistrate to Inspector of Police, Anti-Corruption only on basis that case required immediate investigation and trap was laid down by Inspector and after further investigation the accused was charge-sheeted, the Special Judge directed reinvestigation by Deputy Superintendent of Police, Anti-Corruption after the stage of carrying out the trap, it was held that sanction was not invalid or conviction could not be said to be not maintainable on the ground that trap has been carried out by a Police Officer below rank of Deputy Superintendent. It was further held that to set aside conviction it must be shown that there has been miscarriage of justice as a result of irregular investigation (*Dr.M.C.Sulkunte V. State of Mysore,* 1971 Cri. L.J. 519 == AIR 1971 S.C. 508). A similar view was taken in *KhanduSonuVs. State ofr Maharashtra (*1972 Cri. L.J. 593 == AIR 1972 S.C. 958). Their Lordships of the Supreme Court have made authoritative pronouncement as under in the case of *Muni Lal V. Delhi Administration (*1971 Cri. L.J. 1153 == AIR 1971 S.C. 1525) :--

(i) That irregularity in investigation does not vitiate trial unless there is miscarriage of justice.

(ii) That investigation by officer authorized by Act after taking assistance of deputies does not make the investigation one not made by authorized officer.

Noteable case Law

71. (i) The accused, a Secretary of Gram panchayat and also talathi was alleged to have taken a certain sum as bribe from the complainant for substituting the name of the complainant as the owner of a certain plot of land in the revenue records. The accused raised the plea that the money he took from the complainant was not by way of bribery but for purchasing the Small Savings Certificates for the complainant and that he was authorized to collect the money for the purpose. It was held that the accused as rightly convicted under section 5(1)(d) and section 161 Indian Penal Code as the circumstances were found against him (J.L. *Surange V. State of Maharashtra,* 1970 Cri. L.J. 507 == AIR 1970 S.C. 356).

71. (ii) Where the witness turned hostile in court and gave a version different from one he gave to the police supporting the prosecution case, his evidence cannot be wholly discarded so as not to be available even in parts in support of the prosecution case, particularly when the witness' version is at variance with the version of the accused themselves. [*Jaswant Singh V. State of Punjab,* 1973 SCC (Cri.) 463]. In the same case it was held that in prosecution under section 5(2) and section 161, Indian Penal Code non-examination of attestor to seizure memo is not of such consequence when the evidence of complainant was otherwise corroborated.

71. (iii) The position in law is that if one makes an offer of bribe to a public servant, he would be guilty of the offence under section 165-A, Indian Penal Code. The courts are concerned only with the fact whether the person arraigned as an accused before them is guilty of the offence with which he is charged. The finding regarding the guilt of the accused cannot be affected by any consideration of the social and administrative milieu in which the offence is committed. Once the guilt is proved, the law must take its course [*Mohandas Lalwani V. The State of Madhya Pradesh, 1973 S.C.C. (Cri.) 1011].*

71. (iv) Criminal conspiracy, as defined in section 120A, Indian Penal Code, is an agreement, by two or more persons to do, or cause to be done, an illegal act, or an act which is not illegal, by illegal means. The agreement is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient. New techniques may be invented and new means may be devised for advancement of the common plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. Where different persons co-operate towards this separate ends a without any privity with each other, each combination constitute a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only (*Hussain Usman V. Dilip singhji,1970* Cri. L.J.9 ==AIR 1970 S.C. 45). On the same subject the Supreme Court in *Lennart V. director of Enforcement* – 1970 Cri. L.J. 707 == AIR 1970 S.C. 549 has held, " The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established. An agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement."

71. (v) When a police officer was convicted under section 5(2) read with section 5 (1) (d) of the Prevention of Corruption Act, 1947, and under section 161, Indian Penal Code, he was awarded a sentence of two years rigorous imprisonment on each count, the Supreme Court observed that accused in his official capacity was expected to maintain high standard of integrity and upheld maintenance of law. The sentence

imposed in the circumstance of the case was not excessive (*Shiv Raj V. Delhi Administration,* 1969 Cri. L.J. 1 == AIR 1968 S.C. 1419).

71. (vi) At times the defence counsel attacks the ethics of laying the trap. The Supreme Court said in *Som Prakash v. State of Delhi,* 1974 S.C.C. (Cri.) 215, that there was nothing wrong in intercepting the natural course of the corrupt stream by setting an invisible contraption : its ethics is above board. The technique of give and take is confidential and to prove the same beyond reasonable doubt is a tough job. Hence the only hope of tracking down the tricky officers is by laying traps and creating statutory presumption. Excathedra condemnation of all traps and associate witnesses is neither pragmatic nor just.

CHAPTER XII

PROSECUTION

Sanction to Prosecute.

72. (i) As stated in para. 60 of Chapter XI of this Manual, no prosecution for an offence punishable under section 161, 164 or 165 of the Indian Penal Code or under section 5 of the Prevention of Corruption Act, 1947, can be launched, if the accused is a public servant at the time, unless the authority competent to remove him accords sanction to such prosecution. After it is decided to prosecute, the Investigating Officer should get typed copies of the entire record of the investigation, including the F.I.R., statements of the witnesses examined during the investigation, including those at the instance of the accused, statement of the accused and panchanamas made during the investigation and other documents on which the prosecution would rely or those produced by the accused or his witnesses in his defence during the course of the investigation, the confession of the accused, if any, recorded, etc., for being forwarded to the authority concerned for according sanction. It should be remembered that a duty is cast upon the sanctioning authority to consider all facts and circumstances of the case and decide whether a *Prima facie* case has been made out against the accused and whether his prosecution should be ordered in the interests of justice and of the administration. To enable the authority to come to its own conclusion in this behalf, it is necessary that all the relevant material should be placed before it and not merely the prosecution version and the evidence in support thereof. The defence version and the evidence in support should also be considered by the sanctioning authority. The copies above referred to should be compiled in book form, paged and indexed. This compilation, each statement and document being certified to be a true copy by the investigating officer, should be submitted to the competent authority requesting for sanction. (For specimen letter *see* Appendix X). the competent authority will be requested to accord sanction in duplicate and to forward it to the investigating officer and also to return the compilation of the copies of the record of investigation. The investigating officer should scrutinize the sanction with a view to ensuring that it fulfills all the requirements set out in para 60 of Chapter XI. He may compare the sanction received with the specimens given in Appendix XI to this Manual, and if he has any doubts about the validity of the sanction in the form in which it is accorded, he may draw the attention of the Director to the same. If the Director is of the opinion that an amendment of the sanction is necessary, either as to form or contents, he will approach the competent authority and request accordingly. It should, however, be remembered that the question as to the form and contents of the sanction is matter within the discretion of the competent authority. It should not be requested to accord sanction in any particular form nor should a draft sanction be sent to it. In case of serious disagreement about the form of the sanction, the authority to which the sanctioning authority is subordinate or the Government should be approached.

72. (ii) It is not necessary in every case to examine in the court the officer according sanction to prove it. The sanction can as well be proved by leading the evidence of a subordinate of the officer provided the sanction, on the face of it, indicates that the officer had all the material before him and had applied his mind to the same before he accorded sanction. In case of any defect in the form or contents of the sanction, it would be advisable to examine the officer who signed the sanction to depose to the

fact that he had applied his mind to the facts of the case and otherwise complied with the requirements of the law. (For specimens of sanctions *see* Appendix XI.)

Charge-sheet

73. (i) A charge-sheet in the prescribed form should then be filed in the appropriate court. A charge-sheet is a very important document on which cognizance is taken by the court; it should, therefore, be complete in itself and filled in correctly. The names of all the witnesses on whose evidence the prosecution proposes to rely should be set out correctly. The officer who has accorded sanction should be mentioned by his designation and the words "or his representative" should be added.

73. (ii) Below the list of prosecution witnesses there should be the averment : "more witnesses will be examined, if necessary".

73. (iii) The charge or charges should be correctly set out, care being taken to ensure that the particulars, specially as to date, are correctly mentioned.

73. (iv) Under the name of the accused there should be an averment that sanction to prosecute him as required under section 6 of the Prevention of Corruption Act and /or section 197 of the Criminal Procedure Code has been obtained, the designation of the sanctioning authority being mentioned.

73. (v) The charge-sheet should be accompanied by a compilation duly paged and indexed of the copies of the various documents specified in section 173 (5) of the Criminal Procedure Code. If the accused has been arrested and released on bail, the bail bond should be attached to the charge-sheet and an endorsement to that effect made below the name of the accused. Articles seized by or produced before the investigating officer on which the prosecution proposes to rely should be forwarded to the court, along with the charge-sheet which should contain a note to that effect, enumerating the articles.

73. (vi) If the accused has not been arrested before the charge-sheet is sent up, the court should be requested to issue a bailable warrant for his arrest. When received, it should be executed without any delay, and a report submitted.

73. (vii) An officer lower in rank to an Assistant Commissioner of Police/Deputy Superintendent of Police is not empowered to arrest the accused in a corruption or criminal misconduct case. If during the course of an investigation, it transpires that the accused is likely to abscond, the investigating officer should obtain a warrant from a Magistrate for the arrest of the accused, or he may request the Assistant Commissioner of Police/Deputy Superintendent of Police, to whom he is subordinate, to effect the arrest.

Supply of Copies of Documents, Statements, etc.

74. (i) According to the provisions of section 173(5) of the Criminal Procedure Code, before the commencement of the trial the prosecution is required to furnish to the Magistrate, a copy of the F.I.R. and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements, confessions, if any recorded under section 164 of the Criminal Procedure Code and the statements recorded under sub-section (3) of section 161 of the Criminal Procedure Code of all the persons whom the prosecution proposes to examine as its witnesses. Therefore, the Magistrate should be furnished with the copies of the statements and documents mentioned above, as soon as a charge-sheet is sent up. The investigating officer may furnish all such copies to the accused according to section 173(7) of the Criminal Procedure Code, subject to the provisions of section 173 (6) of the Code. Before furnishing the copies, the investigating officer should ensure

that they are compared with the originals and certify them as true copies under his signature.

74. (ii) If the prosecution decides to adduce additional evidence at a large stage, the court may at its discretion allow the prosecution to examine additional witnesses on satisfying itself that the evidence of such witnesses is relevant and that the non-supply of copies of their statements before the commencement of the trial is not likely to cause prejudice to the accused.

Service of Summonses and Watch on the Progress of the Trial

75. (i) The summonses received from the court for the attendance of witnesses should be served promptly and returned to the court. The investigating officer should, however, note that his duty does not end with serving the summonses and he should, in the interest of the case, ensure that the witnesses remain present in time.

75. (ii) The investigating officer should keep himself in touch with the progress of the case in the court. He should keep himself in close touch with the Public Prosecutor in charge of the case. He should remain present in the court during the trial unless he is unable to do so on account of his pre-occupations with some other emergent work; in that event he should ensure that his subordinate remains present.

Communication of the Decision of Criminal Cases

76. (i) As soon as a case is decided, the investigating officer, or, if he has been transferred from the place, the officer in charge of the Unit concerned, should submit a report at once to the Director (and copies thereof to the Deputy Superintendent of Police and the Police Inspector concerned), giving all necessary details. When an accused is convicted the officer should ascertain and report whether the former intends to go in appeal; if an accused is acquitted, the officer should report what steps he proposes to take to consider the feasibility of preferring an appeal against the order of acquittal.

76. (ii) The investigating officer should communicate the result of the case to the authority under whom the accused public servant is serving. In any case, where it is necessary to communicate the decision of the case to Government, it will be done by the Director.

Appeals

77. When a case ends in acquittal, the officer in charge of the Unit should arrange at once to obtain an uncertified copy of the judgment by deputing someone to type it out, if necessary, and submit it to the Director with his comments in consultation with the Prosecutor who conducted the case. If the Prosecutor is of the opinion that it is a fit case for preferring an appeal to the High Court, he should be requested, at the same time, to apply for a certified copy of the judgment and to take steps to move Government for filing an appeal against the order of acquittal.

Watch over the Progress of Appeals pending in the High Court

78. All officers of the Bureau should communicate to the Assistant Commissioner of Police, Anti-Corruption and Prohibition Intelligence Bureau, Greater Bombay Unit, under intimation to the Director, the details of appeals preferred in the High Court, either by the State or by the accused in cases sent up by them. The Assistant Commissioner of Police will then make arrangements to ascertain the dates of hearing of the appeals and to pass on the relevant information to the officers concerned, as and when required. The officer concerned should write to the Director well in advance with a view to enabling him to approach the Government Pleader in

the High Court with a request to call the Investigating Officer for giving him instructions at the time of the hearing of the appeal.

CHAPTER XIII

DEPARTMENTAL ACTION

79. (i) Cases enquired in to or investigated by the Bureau will be sent for departmental action to the authority competent to take such action in the circumstances indicated below:--

(a) When the evidence is considered to be insufficient for successfully prosecuting the public servant concerned in a court of law but there is adequate evidence to prove the charge in a departmental enquiry.

(G.C., P. & S. D., No. 1581/34 of 28th April 1948 see Appendix XVII)

(b) When the facts disclosed in the enquiry lead to the conclusion that the public servant concerned is guilty of misconduct or breach of departmental rules only, not amounting to a criminal offence under any law.

(c) When the public servant concerned is acquitted by a court of law and it is considered that there is sufficient evidence to institute a departmental enquiry against him, particularly when there is on record evidence which is not admissible at a trial because of the technicalities of the Indian Evidence Act, but which can be made use of in a departmental enquiry.

79. (ii) A prosecution can be launched if there is sufficient evidence to bring home the charge to the accused. The officers concerned have full discretion in the matter, and hence, filing or otherwise of a case in Court does not affect the holding of a departmental enquiry. In law, there is no constitutional bar to the holding of a departmental enquiry on the termination of a criminal proceeding in favour of the accused (public servant). The observations made in the judgment of the Gujrat High Court in *Motising Chhagasing Vaghela v. S.D. Mehta* (1966 Cri. L. J. 1001), are reproduced below :--

" A departmental enquiry is not barred by an order of acquittal recorded by a Criminal Court ; also the two proceedings – the departmental and the criminal – are entirely different in nature, they operate in different fields, and they have different objectives. The materials or the evidence in the two proceedings may or may not be the same and, in some cases, at least, materials or evidence which would be relevant or open for consideration in the departmental proceeding may absolutely be tabooed in the criminal proceeding. The rules relating to the appreciation of evidence in the two enquiries may also be different. The scope of an enquiry in a criminal trial is to determine whether a public servant has committed a misconduct or delinquency and even if the same constitutes, from one point of view, a crime, to consider the question whether the delinquent to be retained in rank or otherwise suitably dealt with for the delinquency concerned. In a criminal trial, and incriminating statement made by an accused, in certain circumstances or before certain individuals, is totally inadmissible in evidence. In a departmental proceeding, the enquiry officer is not bound by any such technical rule. The degree of proof which is necessary to record an order of conviction is different from the degree of proof which is necessary to record the commission of a delinquency. "

Their Lordships of the Supreme Court rejected in *State of Andhra Pradesh v. S. Sree Rama Rao (*AIR 1963, S.C. 1723), the view that the standard or the degree of proof in the two proceedings is identical in the following words :--

" There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him,

the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. ”

Their Lordships of the Supreme Court in *Jang Bahadur Singh v. Baig Nath (*1969 Cri. L.J. 267 – AIR 1969 S.C. 30), have held, “ An enquiry by a domestic tribunal, in good faith in exercise of the powers statutorily vested in it, into the charges of misconduct against an employee does not amount to contempt of court merely because an enquiry into the same things is pending before a Civil or Criminal Court. The initiative of and continuation of disciplinary proceedings in good faith do not obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the court for an order restraining the continuance of the disciplinary proceeding. If he obtains a stay order, a wilful violation of that order would of course amount to contempt of court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers. ” The papers of investigation or enquiry in the case in which it is decided to recommend departmental action will be forwarded to the competent authority by the Director for initiating such action. The officer of the Bureau, who conducted the investigation or inquiry, will, at the same time, be informed about it and it will be the duty of the officer concerned to follow up further action in the matter. The Investigating/Enquiry Officer concerned should ensure that the witnesses are kept present for giving evidence at the departmental enquiry whenever he is called upon to do so by the Enquiry Officer and should also see to it that the witnesses are not intimidated, harassed or suborned by interested persons.

Important Provisions regarding Departmental Enquiries

80. (i) The provisions of the Indian Evidence Act do not apply to departmental enquiries ; what is necessary is that the rules of natural justice should be followed in the conduct of such inquiries. In *Union of India v. T. R. Varma* (AIR 1957 S.C. 882), the Supreme Court observed : “ the Indian Evidence Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and, if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law. ” The court has further observed : “ the rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given an opportunity of cross-examining the witnesses examined by that party and that no material should be relied on against him without his being given an opportunity of explaining it. ”

80. (ii) Government in their G.A.D. Circular No. CDR.1165-D-1, dated the 8th June 1965, have directed that the statements recorded during the preliminary enquiry could merely be read out to the witness and could constitute his examination-in-chief ; they have laid down the following procedure for bringing such statements on the record of the departmental enquiry by the Enquiry Officer :--

“ The evidence of the witnesses examined should be personally tendered by them at the enquiry. If, however, any statements previously made by them (e.g.in the preliminary enquiry) are on record, it will be sufficient if such statements are merely

read out in their presence and if they admit them they are brought on record. In such cases it is not necessary for them to tender evidence afresh except to the extent they may wish to make further statements to supplement or modify their earlier statements and, if they so with, make further statements, the person charged should be given an opportunity to cross-examine them. ”

This procedure has been prescribed in the light of the Supreme Court Ruling in *state of Mysore v. Shivabasappa S. Makapur* (AIR 1963 S.C. 375), in which it was held that the rules of natural justice are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them. This view was further reiterated in *Divisional Commercial superintendent, S.Rly. Hubli v. K. Somayajulu* (Supreme Court Notes 1965, p.36, Note 42) in which the Supreme Court observed that if a witness’s statement is brought on the record of an enquiry and the statement is put to him and admitted by him to be correct and the public servant concerned is allowed to cross-examine him, it cannot be said that the evidence has not been recorded in his presence.

80. (iii) Government have also directed that the Enquiry Officer should not furnish to the delinquent copies of reports from the officers of the Anti-Corruption Bureau nor should any reference be made to such reports at any stage in the course of the departmental enquiry. Such reports are sent to the Enquiry Officer for his personal information and use, viz., for enabling him to appreciate the evidence properly and also to formulate his views as to the possible line on which he should conduct the enquiry.

(G.C., P. & S. D.,CDR. 1159-D, dated 30th October 1959. Also see Appendix XIX)

80. (iv) Government have further directed that in departmental enquiries instituted at the instance of the Anti-Corruption Bureau, the Enquiry Officer should call for and examine the officer of the Bureau who conducted the preliminary enquiry and also the important witnesses, whose evidence as recorded by the Bureau in the preliminary inquiry, would be material for establishing the charges against the delinquents.

(*G.C.,G.A.D., No. CDR. 1161-D, dated 14th June 1961)*

80. (v) Government have issued direction to the Heads of Departments that the officers of the Anti-Corruption Bureau should be associated with departmental enquiries into cases of corruption and that they should also be examined and cross-examined, if necessary.

(*G.C. ,H.D., No.ACB . 1355-c-508-VI, dated 17th April 1959)*

80. (vi) Ordinarily no legal practitioner is allowed to appear in a departmental enquiry. The person charged is not entitled as of right to ask for being defended by a legal practitioner. However, if the case is very complicated or difficult, or where the person charged is likely to be embarrassed, he might be allowed to have legal aid. In such a case the Director may authorize one of the Bureau officers to work as Presenting Officer. There is no prohibition on allowing a legal practitioner on either side. (See *Rama bapu Gaikwad v. State of Maharashtra* 75 Bom. L.R. 125.)

80. (vii) In a departmental enquiry against a member of the Police Force, of and below the rank of a Police Jamadar, the delinquent is permitted to avail himself of the services of a “Friend” to assist him. The “Friend” should, however, be a serving Police Officer, of and below the rank of a Sub-Inspector nominated by the officer before whom the proceedings are being held.

80. (viii) Whenever departmental enquiries are instituted at the instance of the Anti-Corruption Bureau, the authority instituting the enquiries should communicate the result of the enquiry to the Director of the Bureau as soon as final orders are passed, by forwarding to him copies of the orders passed. Further, the grounds on which the final orders are passed should be communicated to the Director of the Bureau by the authority concerned, whenever he asks for them.

(G.C., P. & S. D. No. ,CDR. 2058-D, dated 19th August 1958)

80. (ix) Section 3 of the Maharashtra Government Servants Inquiries (Evidence of Corruption) Act, 1965, provides that if in a departmental enquiry held against a Government servant for corruption it is proved that the Government servant or any person on his behalf is in possession, or has, at any time during the period of office of such servant, been in possession of pecuniary resources or property disproportionate to his known sources of income, for which such servant cannot satisfactorily account, then on such proof, the Enquiry Officer and any other authority concerned shall presume, unless the contrary is proved, that such servant is guilty of misconduct. Investigating Officers should, while making enquiries for the purpose of departmental action against Government servants, keep in mind this very helpful provision of the law specially enacted for the purpose of bringing to book corrupt Government servants, and procure evidence to attract the presumption.

80. (x) The instructions contained hereinabove are without prejudice to the normal rules of procedure for conducting departmental enquiries prescribed by Government which, it must be stated, have not been reproduced in this Manual for the sake of brevity.

Tender of Pardon in departmental Enquiries to Government Servants giving information of corruption, etc.

81. A Government servant who gives information leading to the detection of cases of corruption, misappropriation of Government money or other types of grave misconduct will be tendered pardon by Government and absolved of his responsibilities, if any, connected with the commission of the default or the offence, on the recommendation of the Director. The officers of the Bureau should, when necessary, report such cases to the Director for his consideration. While recommending a case for pardon, due care should be taken to avoid injustice and misuse of the facility.

(G.C., P. & S. D. No. ,CDR. 2053, dated 10th March 1954 and G. A. D. No. 2065/99-D-1, dated 18th December 1965)

CHAPTER XVI

PROHIBITION ENFORCEMENT

91. The responsibility of enforcing Government's policy of Prohibition is that of the Police Department. But complaints are often received that the local Police connive at the activities of certain persons who are known to be indulging in illegal activities for obvious reasons. Hence in order to ensure stricter enforcement, the following functions have been assigned to the officers of the Bureau:--

(a) Collection of intelligence regarding illicit distillation and sources of supply ; activities of known bootleggers, use of children in the liquor trade, inter district rackets, smuggling of liquor and of other articles by sea or road into the State and smuggling of liquor from military areas.

(b) Checking of connivance of the local Police at Prohibition Crime.

(c) Dealing with Government servants indulging in drinking in contravention of the Bombay Prohibition Act and the directives of the Government.

92. (i) The following instructions should be noted regarding the work of Prohibition Enforcement:--

Collection of intelligence regarding illicit distillation, etc.— As stated at the outset, the officers of the Bureau have to act where the local Police fail to take action for one reason or the other. Therefore, the officers should try to collect intelligence regarding "quality" cases involving action against notorious distillers and bootleggers and for unearthing big and organised rackets. Information of ordinary and routine type of cases received by an officer of the Bureau should be passed on to the local Police for action, and, if the latter fail to take action within a reasonable time, the officer should work out the case and then enquire into the causes of the failure of the local Police to take action. As to information regarding quality cases, the officer should work out the information himself and, after the detection of the case, hand it over to the local Police for investigation unless the local Police are suspected to connive at these activities or a Government servant is involved in the case.

92. (ii) *Connivance by Police.* --- All complaints regarding connivance at Prohibition Crime or inaction in the matter of the enforcement should be investigated thoroughly and a report of the enquiry sent to the Director as in the case of enquiries into allegations of corruption, etc. In order to ascertain the truth or otherwise of the complaints of connivance or inaction, it is necessary to consider the following factors :---

(a) Whether any evidence is available to prove corruption on the part of the local Police in any particular case.

(b) Whether any evidence is available to show that any of the members of the Police Department is either found visiting the place where illegal activities are carried on or seen in the company of any of the offenders or racketeers.

(c) Whether the local Police have taken adequate steps to curb the illegal activities of the persons concerned. This can be ascertained by obtaining information regarding the number of raids carried out against the persons concerned or in the affected area and the result of the raids. It will, however, be necessary to verify whether the action taken is genuine and not intended merely to create a record to show that necessary action has, in fact, been taken. Therefore, it is essential that one should not feel satisfied merely with the number of cases made out but should also

check up facts by going through the names of the accused persons brought to book and the quantity of contraband seized. If an officer of the Bureau makes out cases involving large quantities of contraband, the failure of the local Police or the Prohibition Police to do so would give reasonable grounds for assuming either inaction due to incapacity or indifference or positive connivance on the part of the local Police or the Prohibition Police.

92. (iii) *Action against Government Servants Indulging in Drinking.* --- To consume an intoxicant in contravention of the provisions of the Bombay Prohibition Act, 1949, is an offence under the Act, and therefore, it is objectionable that a Government servant should indulge in such illegal activities. Hence, the officers of the Bureau have been specially entrusted with the work of dealing with Government servants indulging in drinking. Whenever a case of drinking by a Government servant is picked up by an officer of the Bureau, it should be investigated by the officer concerned after registering an offence at the Police Station. Cases of drinking would fall under the following two categories:--

(a) Under section 85(1)(1) of the Act in which a person found in a public place is drunk and incapable of taking care of himself or under section 85(1)(2) of the Act behaves in a disorderly manner under the influence of **drink,etc.;** and

(b) Under section 66(1)(b) of the Act in which a person is found to have consumed an intoxicant (which is usually liquor) in contravention of the provisions of the Act or rules, etc. made thereunder.

92. (iv) *Cases under section 85(1) of the Bombay Prohibition Act, 1949.*--- The first type of cases (i.e. under section 85(1) of the Act) are not difficult to prove because what is required to be established is that the person (a) was found in a public place, (b) was drunk i.e. was under the influence of liquor, and (c) was incapable of taking care of himself or was behaving in a disorderly manner. The requirements at (a) and (c) can be proved by leading oral evidence of independent witnesses and that at (b) by medical evidence. To ensure that there is no tampering with blood samples in cases where a public servant is involved, Government have issued the following instructions:---

(a) A sample of the blood of the suspect should be taken in the presence of the investigating officer if the investigating officer so desires.

(b) The container of the sample should bear the seals of both the Medical Officer and the Police Officer concerned.

(G.L., H.D.,No. BPL. 1658/C-3447-VIII, dated 18th December 1958)

92. (v) *Cases under section 66(1)(b) of the Bombay Prohibition Act, 1949.* --- The other type of cases of consumption of liquor are those which fall under section 66(1)(b). It is rather difficult to catch a person in the act of drinking; if the Police succeed in doing this, there would not be much difficulty. But in a large majority of cases of consumption simpliciter, the only evidence available to the prosecution is the fact that the breath of the accused was smelling of alcohol and of the concentration of alcohol in his blood. In view of the recent orders of the Government providing for the free sale of beer containing 5 per cent alcohol to persons over 21 years, the percentage of alcohol in blood may well be explained by the accused pleading that he had consumed beer so available. Even then, the high concentration of alcohol in the blood would have great evidentiary value, particularly in cases in which the accused is charged under section 85 of the Act. Sub-section (2) of section 66 of the Bombay Prohibition Act provides for a presumption against the accused if

the concentration of alcohol in his blood is found to be not less than .05 per cent weight in volume.

92. (vi) The following instructions should be followed in the detection and investigation of cases under section 66(1)(b) of the Act:---

(a) Blood samples should not ordinarily be taken in cases of unauthorized use or consumption of alcohol in residential premises. However, it is not intended to impose an absolute embargo on the taking of blood samples even in cases of unauthorized consumption in private premises. Such samples may continue to be taken in exceptional cases, e.g. cases of extreme flouting of the law, causing nuisance to neighbours, etc. provided that the blood sample of the accused person found in residential premises in Greater Bombay should be taken only after obtaining prior sanction of the Director of the Bureau or the Commissioner of Police, Greater Bombay, and, of the Director of the Bureau or the District Magistrate concerned in the mofussil.

(b) When the blood sample is to be taken, it should be ensured that it is taken in the presence of the Investigating Officer and that the container of the sample bears the seal of both the Medical Officer and the Investigating Officer.

(c) If any glass used for drinking or bottle used for storing liquor is found at the scene, it would be necessary to inspect it for ascertaining the presence or otherwise of finger impressions on it.

(d) It is essential that the house of the accused is searched to ascertain whether any contraband is possessed by him. If he is caught at a place other than his residence, the place where the accused was found as well as his residence should be searched, because a person who is addicted to drinking is likely to have the contraband in his house as well.

(e) The defence usually taken by the accused person is that the alcoholic smell of his breath or concentration of alcohol found in his blood was, in fact, due to the consumption of a medicinal preparation containing alcohol, the consumption of which is not prohibited by law. Hence, to forestall any such defence which is likely to be brought forward at a later stage, the Investigating Officer should ascertain during the search whether there is any medicinal preparation containing alcohol at the place and mention such a find or the absence of it in the panchnama. When any such preparation is found, it would be necessary to make enquiries regarding the purpose for which and the person from whom it was brought, who had used it and when, and furthermore, whether it was used under a doctor's prescription. Even if no medicinal preparation containing alcohol is found, the statement of the accused giving all details should be recorded and the explanation for alcoholic smell of his breath given by the accused should be verified at once to ascertain the truth. If the accused person refuses to give his statement, a note to that effect should be made in the record of investigation.

93. In accordance with the orders contained in G.A.D. Circular No. CDR.1068-D-I, dated 3rd May 1969, the Government expects that all Government servants, should by their own conduct set an example for others with a view to successfully implementing the rationalized Prohibition policy of the Government. It is necessary that the Government servants should strictly abide by the restrictions pertaining to possession and consumption of intoxicants, within or outside Maharashtra State. Even if a Government servant is a holder of a permit the Government has directed, -

(a) He should take necessary precautions that the performance of his duties is not adversely affected due to the influence of the drinks or medicines.
(b) He should note that consumption of liquor is permissible only in a licensed permit room and in a private place and that drinking in a public place is prohibited.
(c) He should not appear in a public place under the influence of intoxicants.
(d) He should not be addicted to excessive consumption of such drinks and medicines.
A Government servant violating these instructions will render himself liable to sever disciplinary action, besides his prosecution in the Court of Law.

Institution of departmental Action against a Government Servant involved in a Prohibition Offence

94. (i) In accordance with the orders contained in G.A.D. Circular No. 1171-D-I, dated 25th May 1971, the offences under the Prohibition Act and Gambling Act are to be treated like any other offences and Government servants found guilty of these offences may be dealt with accordingly, i.e. on merits of each case with due regard to all the relevant circumstances. Therefore, in a case where the evidence is not sufficient to send it to a Court of Law, the papers of investigation should be submitted to the Director with remarks as regards the feasibility of sending the case for departmental action against the Government servant concerned.

94. (ii) It should be noted that for departmental action, it is necessary that there is evidence that the person concerned had exhibited the normal signs of intoxication, namely, the dilation of the pupils, incoherent speech or unsteady gait. Stress is laid on this factor because there have been cases in which such action was proposed even when there was no definite evidence as to any signs of intoxication. Cases of this type will not subsist merely because the officer concerned considers the persons to have been drunk or because he was behaving in a disorderly manner.

PART III
MISCELLANEOUS WORK

CHAPTER XVII
THE ANTI-SMUGGLING BRANCH

Functions

95. The main functions of this branch are to collect and collate information about smuggling and the offences under the Customs Act, 1962, and to assist the Customs and Central Excise Officers whenever they so desire. The officers of the Branch will develop their own informants and try to collect intelligence about the landings of smuggled goods and will conduct raids whenever they receive reliable information.

96. (i) Though Police Officers are " empowered and required to assist officers of the Customs Department in the execution of their duties, as provided in section 151 of Customs Act, 1962, there is no provision enabling Police Officers to exercise authority under the Customs Act. This however, does not affect the powers of a Police Officer to seize the property during the course of an investigation or on suspicion even though it may be liable to confiscation or other action under the Customs Act. Under section 102 of Criminal Procedure Code, a Police Officer can seize, inter alia, any property which may be found under circumstances which create suspicion of the commission of any offence including an offence punishable under the Customs Act, and therefore, a Police Officer can seize property which he has reason to believe to be property smuggled into or attempted to be smuggled out of the country.

96 (ii) In Krishnan Sukumaran v. Enforcement Officer (1968 Cri. L. J. 936), the Kerala High Court held, "A Police Officer is required to assist the Enforcement Officer in the enforcement of the Foreign Exchange Regulation Act, 1947. Section 25A of the Act and section 550 of the Criminal Procedure Code also empower a Police Officer to seize any property which may be found in circumstances which create a suspicion of the commission of any offence. Therefore, seizure of currency notes by a Police Officer thinking that some offence is committed by the person from whom they were seized is legal in view of section 25A of the Act and section 550 of the Criminal Procedure Code."

96 (iii) It may be pointed out that section 102 of the Criminal Procedure Code, 1973 corresponds to section 550 of the old Code, 1898. In a recent ruling of the Supreme Court reported in 1975 Cri. L. J. 256 (Champaklal Ganeshmal v. State of Maharashtra) it was held that smuggled goods are goods fraudulently imported and if a smuggler who imports such goods is charged under section 124 of the Bombay Police Act, the goods found with him would be property "fraudulently obtained". In view of this legal position, whenever, an officer of the Bureau has occasion to deal with cases of smuggling he should observe the following procedure:--

(a) According to the provisions of section 123 of the Customs Act, 1962, (which corresponds to section 178-A if the repealed Sea Customs Act VIII of 1878), when goods are seized under the said Act, in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods lies on the person from whom the goods are seized. Hence, the presumption would be available only when the seizure is made under the provisions of the Customs Act, 1962, and not when the goods are first seized by the Police and then handed over to the

Customs Authorities [Gian Chand and others v. State of Punjab – 1962 (1) Cri. L.J. 485 : AIR 1962 S.C. 498]. Hence efforts should be made to secure the presence of a Customs Officer at the time of the seizure and to arrange that the seizure is made by the Customs Officer under the Customs Act, 1962, to enable the prosecution to claim the benefit of the presumption under section 123 of that Act.

(b) If the goods which appear to be liable to be dealt with under the Customs Act, 1962, are seized by an office of the Bureau under section 124 of the Bombay Police Act, he should report the fact of the seizure to the nearest Customs House and on the conclusion of the trial, request the Court, to forward the property to the nearest Customs House for being dealt with according to the Customs Act, 1962.

(c) If the enquiries made by the Officer of the Bureau reveal an offence punishable under any law other than the Customs Act, he should send the goods to the Court taking cognizance of the offence. If, however, the enquiries made thereafter do not lead to prosecution, he should hand over the goods at the nearest Customs House for being dealt with under the Customs Act.

(G.L.,H.D., No. ACB 1267/20366-V, dated the 14th July 1967)

Jurisdiction

97. The Anti-Smuggling Branch of the Bureau has jurisdiction over the State of Maharashtra including Greater Bombay and its Officers exercise the powers and the privileges of Police Officers throughout the State.

Duties

98. (i) Duties of the Deputy Commissioner of Police/Superintendent of Police, Anti-Smuggling Unit :

(a) To make enquiries into allegations pertaining to smuggling and allied malpractices against Government servants as desired by the Director.
(b) To supervise the day-to-day administration of the Anti-Smuggling Branch.
(c) To issue orders on the reports submitted by the Officers attached to the Branch and to prepare reports for submission to the Government in cases of seizure of smuggled goods worth more than Rs. 3 lakhs.
(d) To scrutinise the pending investigation and enquiries.
(e) To attend meeting arranged by the officers of the Central Excise and Customs, and to maintain close liaison with them and officers of Directorate of Revenue intelligence and Income-Tax.
(f) To attend to any other work which may be entrusted to him by the Director.

98. (ii) Duties of the Assistant Commissioner of Police/Deputy Superintendent of Police, Police Inspectors, Assistant Police Inspectors, Police Sub-Inspectors and other :

(a) To collect information about smuggling activities and contact the Deputy Commissioner of Police/Superintendent of Police for obtaining his guidance and instructions for carrying out the raids and to develop informants.
(b) To conduct raids and seize smuggled goods.
(c) To conduct the Excise and Customs authorities as soon as smuggled articles are seized and request them to send some officer to the spot.
(d) To make and entry regarding the details of the raid in the Station Diary maintained in the Anti-Smuggling Branch soon after the raid is completed.

(e) To contact the Assistant Collector of Customs, in-charge of the concerned area and request him to send a Customs Officer with a warrant to search the place, if it is necessary to search any place to which the public do not have access.

(f) To ensure security and safety of the goods seized till they are taken charge of by the Central Excise and Customs Authorities.

(g) To prepare reports to be sent to Central Excise and Customs authorities.

99. (i) The informant's statement should be recorded immediately after the information is given and in any case within 24 hours. The statement of the informant should be put in a sealed cover and forwarded to the Director, Anti- Corruption and Prohibition Intelligence Bureau along with a covering letter. If the informant is not available within 24 hours a chit bearing his name and address should be forwarded to the Director in a sealed cover and a Station Diary entry should be made to that effect.

99. (ii) It is the duty of the Police to keep the identity of the informant a closely guarded secret as otherwise is life may be in danger.

99 (iii) When the reward amount is received from the Customs or Central Excise the informant should be produced before the Director, Anti-Corruption Bureau for payment of the rewarded money. The officer concerned will identify the informant before the Director. A copy of the disbursement certificate should be given to the informant.

General

100. The officers of this Branch, being officers of the Bureau should abide by the instruction contained in the Manual with respect to maintenance of record and submission of reports etc., also.

CHAPTER XVIII

THE MARKETING FEDERATION CELL

Functions

101. The main functions of this Cell are to detect and investigate the offences of malpractices and corruption committed by the official and non-official workers and office-bearers of the Maharashtra State Co-operative Marketing Federation Limited and to make enquiries into complaints about the working of the Cotton Monopoly in Co-operation with the Vigilance Officer of the Co-operation Department and collect and collate the information regarding the corrupt activities of the employees of the Federation.

Powers

102. The Officers of the Cell belong to the Anti-Corruption Bureau and therefore they enjoy all the powers and privileges conferred on the officers of the Bureau. In addition they may have to investigate the offences under the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971. All these offences are cognizable but according to section 44 of the said Act no court shall take cognizance of any offence punishable under this Act except with the previous sanction of the State Government or any officer authorised by it in this behalf.

Jurisdiction

103. The officers of the Cell have the jurisdiction all over the State of Maharashtra including Greater Bombay.

Duties

104. Duties of the Assistant Commissioner of Police/Deputy Superintendent of Police :

(a) To maintain close liaison with the Chairman, Managing Director, Members of the Federation, the Vigilance Officer and the concerned Officers of the Sachivalaya with a view to collecting information about the working of the Federation and about corruption or malpractices in the organisation.

(b) To enquire into complaints, applications or information about the malpractices in the Federation after seeking orders from the Director.

(c) To supervise the work of the Inspectors and sub-Inspectors and staff attached to the Cell.

(d) To attend to any other work entrusted by the Director.

General

105. The officers of this Cell being officers of the Bureau should abide by all the instructions contained in the Manual especially with respect to maintenance of record, submission of reports and returns etc.

CHATER XIX

THE CO-OPERATIVE SOCIETIES CELL

Functions

106. The main functions of the officers of the Cell are to investigate the cases of misappropriation in the Co-operative Societies. Normally the Cell should take up cases, where the amounts involved exceed Rupees five lakhs as also cases of special importance, even though the amount misappropriated may be less, if so recommended by the Registrar of Co-operative Societies or so ordered by the Director.

Powers

107. The officers of the Cell being officers attached to the Bureau enjoy all the powers and privileges enjoyed by the officers of the Bureau.

Jurisdiction

108. The Officers of the Cell will have jurisdiction all over the State of Maharashtra including Greater Bombay.

Duties

109. (i) Duties of the Deputy Superintendent of Police :

(a) To maintain close liaison with the Registrar of Co-operative Societies, M.S., Pune to decide the cases which should be undertaken for investigation.

(b) To exercise close supervision over the work of Inspectors, Sub-Inspectors and the staff and to issue final orders for the prosecution of the accused persons or otherwise in consultation with the Police Prosecutor and the Auditor of the Unit.

(c) To seek Orders of the Director, in important cases whenever he finds it necessary.

(d) To furnish information regarding progress of investigation of the cases taken up by the Cell and about the results of such investigation to the Director.

(e) To take up important cases personally for investigation as ordered by the Director.

(f) To submit reports to the Registrar, Co-operative Societies as decided from time to time.

(g) To attend to any other work entrusted by the Director.

109. (ii) Duties of the Police Inspectors and Police Sub-Inspectors:-

(a) To maintain liaison with the District Deputy Registrars of the Co-operative Societies with a view to selecting cases which ought to be taken up for investigation.

(b) To submit reports to the Deputy Superintendent of Police and to investigate such cases promptly and thoroughly.

109. (iii) Duties of the Legal Adviser :

(a) To scrutinise the papers of enquiries and investigation in the cases of misappropriation taken up by the officers of the Cell and to give legal opinion in respect of these matters.

(b) To guide the investigating officers on legal points.

(c) To scrutinise the judgments of the misappropriation cases with a view to studying the Judicial comments and interpretations of law points for proposing suggestions for improving the quality of investigation.

(d) To examine the feasibility of appeals in cases ending in acquittals and revision applications for enhancement of sentences.

(e) To conduct cases of misappropriation sent by the Officers of the Cell, whenever possible. In the cases which are not conducted by him, he should instruct or assist the local prosecuting agency.

(f) To perform any other functions and duties allotted to him by the Director or the Deputy Superintendent of Police Cell.

109. (iv) Duties of the Auditor attached to the Cell :

(a) To examine the account matters involved in the misappropriation cases as and when called upon by the Investigating Officers.

(b) To guide the Investigating Officers of the Cell in account matters and in the modes of malpractices and misconduct of the officials of the Co-operative Societies.

(c) To perform any other duties allotted to him by the Deputy Superintendent of Police Cell.

Legal Provisions

110. For important legal provisions and judicial interpretations the officers should refer to paragraph 58 of Chapter XI of the Manual.

111. The Officers of this Cell being officers of the Bureau should abide by all the instructions contained in the Manual, especially with respect to maintenance of record, submission of reports and returns also.

PART IV

APPENDICES I TO XXIII

AND

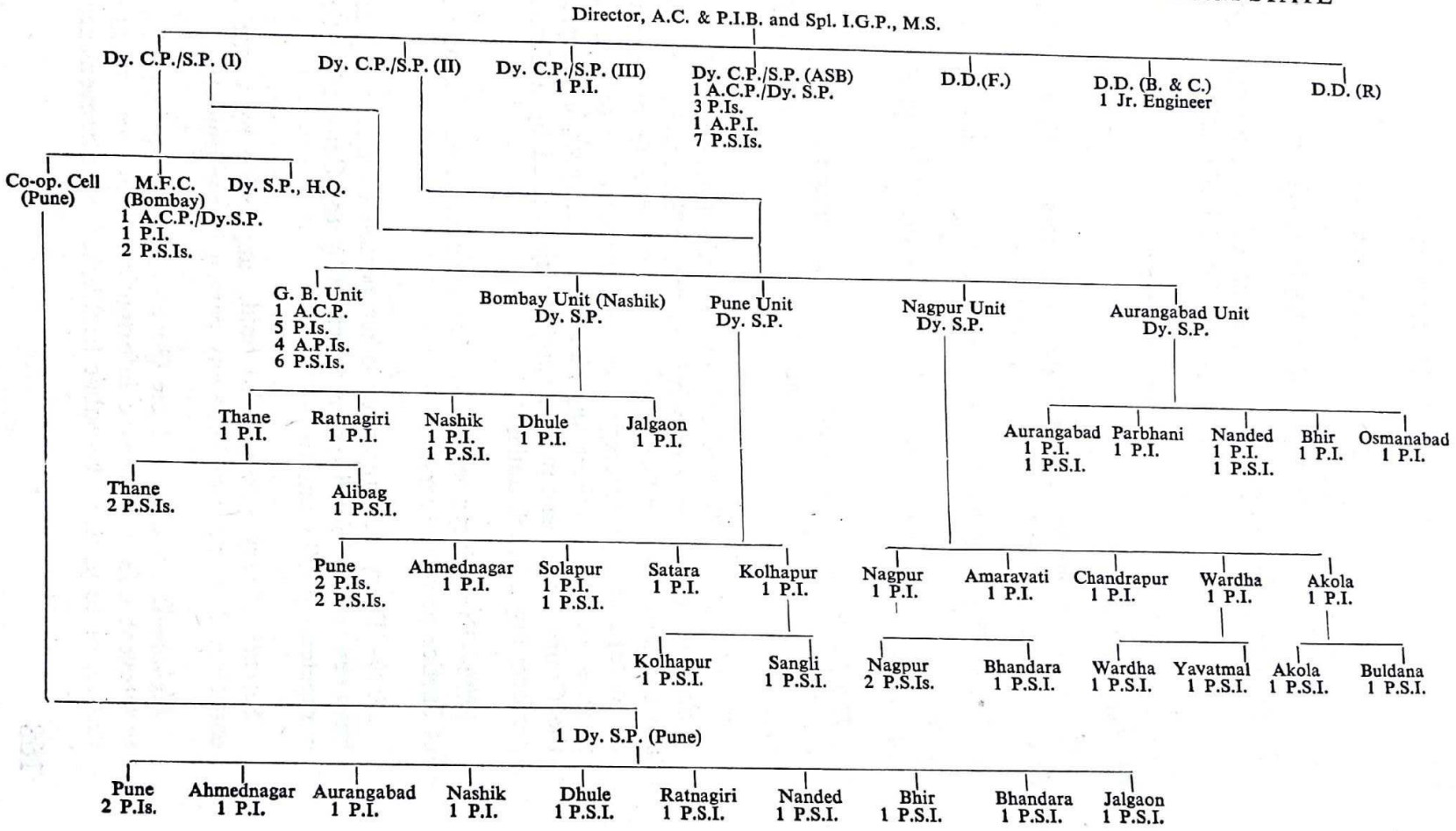
INDEX

APPENDIX I

(Chapter I—Para 2)

Organization and Structure

ANTI-CORRUPTION AND PROHIBITION INTELLIGENCE BUREAU, MAHARASHTRA STATE



APPENDIX II

[Chapter II- Para 3 (iii)]

Definition of "Public Servant"

[Section 21 of the Indian Penal Code as amended by the Anti-Corruption Laws (Amendment) Act, XI of 1964]

Section 21 I.P.C.

The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:-

First – (Repealed by Adaptation of Laws Order, 1950) :

Second–Every Commissioned Officer in the Military, Naval or Air Forces of India ;

Third – Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of person any adjudicatory functions;

Fourth – Every officer of a Court of Justice (including a liquidator, receiver or Commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties ;

Fifth – Every juryman, assessor, or member of panchayat assisting a Court of Justice or public servant ;

Sixth – Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or any other competent public authority;

Seventh – Every person who holds any office by virtue of which he is empowered to place or keep any person in conferment;

Eighth – Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth – Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment, or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth- Every office whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to leavy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh- Every person who holds any office, in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth – Every Person-

(a) in the service or pay of the Government remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government Company as defined in section 617 of the Companies Act 1956.

Illustration

A Municipal Commissioner is a public servant.

Explanation 1.- Persons failing under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2. – Wherever the words "public servant" occurs, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3.- The word ' election ' denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

Public Servants under other Statutes

Besides the persons mentioned in section 21 of the Indian Penal Code, several other persons have been declared as public servants within the meaning of this section by several Central and Local Acts as under

Serial No. 1	Name of the Act 2	Section defining Public servants 3
	Central Acts	
1	Banking Regulation Act, 1949	46A
2	Cattle Trespass Act 1971	6
3	Census Act, 1948	5
4	Drugs and Cosmetics Act, 1940	21(4)
5	Prevention of Cruelty to Animals Act. 1960	39
6	Prevention of Food Adulteration Act, 1954	9(2)
7	Registration of Births and Deaths Act 1969	26
8	Road Transport Corporation Act, 1950	43
	STATE ACTS	
1	Maharashtra Co-operative Societies Act 1960	161
2	Maharashtra ZillaParishads& Panchayat Samitis Act, 1961	278
3	Maharashtra Industrial Development Act 1961	66
4	Bombay Money Lenders Act, 1946	37
5	Bombay Provincial Municipal Corporations Act 1949	482
6	Maharashtra Municipalities Act, 1965	302
7	Bombay Public Trust Act, 1950	78
8	Bombay Shops and Establishment Act, 1948	50
9	Bombay Children's Act, 1948	107
10	Maharashtra Agricultural Produce Marketing (Regulation) Act, 1964	54
11	Maharashtra Gramdan Act, 1964	40

APPENDIX III
[Chapter II-Para 3 (i)]
Legal Provisions relating to bribery and Corruption under the Indian Penal Code
[Sections 161 to 165A of the Indian Penal Code as amended by the
Anti-Corruption Laws (Amendment) Act, XL of 1964]

Secction 161 I.P.C.

Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself and for any other person, any gratification, whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government Company referred to in section 21, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

Explanations- "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

Gratification – The word " gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

Legal remuneration – The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand but include all remuneration which he is permitted by the Government, which he serves, to accept.

A motive or reward for doing – A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Section 162 I.P.C.

Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification, whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any local authority, corporation or Government Company referred to in section 21, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

Section 163 I.P.C.

Whoever accepts or obtains or agree to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central or any State Government or Parliament or the Legislature of any State, or with any local

authority, corporation or Government Company referred to in section 21 or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Section 164 I.P.C.

Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 165 I.P.C.

Whoever, being a public servant accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested or related to the person so concerned,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 165A I.P.C.

Whoever abets any offence punishable under section 161 or section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

APPENDIX IV

[Chapter II – Para 3(i)]

THE PREVENTION OF CORRUPTION ACT, 1947 No. II OF 1947

[11th March 1947]

An Act for the more effective prevention of bribery and Corruption.

WHEREAS it is expedient to make more effective provision for the prevention of bribery and corruption :

It is hereby enacted as follows :-

1. *Short title and extent* – (1) This Act may be called the Prevention of Corruption Act, 1947.

(2) It extends to the whole of India except the State of Jammu and Kashmir ; and it applies also to all citizens of India outside India.

2. *Interpretation* - For the purposes of this Act, "Public servant" means a public servant as defined in section 21 of the Indian Penal Code.

3. Offences under section 165A of the Penal Code to be cognizable offences-

An offence punishable under section 165A of the Indian Penal Code, shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure, 1898, notwithstanding anything to the contrary contained therein.

4. *Presumption where public servant accepts gratification other than legal remuneration* - (1) Where in any trial of an offence punishable under section 161 or section 165 of the Indian Penal Code or of an offence referred to in clause (a) or clause (b) of sub-section (1) of section 5 of this Act punishable under sub-section (2) thereof, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 165A of the Indian Penal Code, or under clause (ii) of sub-section (3) of section 5 of this Act. It is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by accused person, it shall be presumed unless the contrary is proved that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 161 of the Indian Penal Code or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

5. *Criminal misconduct in discharge of official duty* – (1)A public servant is said to commit the offence of criminal misconduct –

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than

legal remuneration) as a motive or reward such as is mentioned in section 161 of the Indian Penal Code, or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or

(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or

(e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine :

Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.

(3) Whoever habitually commits –

(i) an offence punishable under section 162 or section 163 of the Indian Penal Code or,

(ii) an offence punishable under section 165A of the Indian Penal Code, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.

(3A) Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3B) Where a sentence of fine is imposed under sub-section (2) or sub-section (3), the court in fixing the amount of fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1), the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

(4) The provisions of this section shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him.

5A. *Investigation into cases under this Act* - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police officer below the rank-

(a) in the case of Delhi Special Police Establishment, of an Inspector of Police;
(b) in the presidency-towns of Calcutta and Madras, of an Assistant Commissioner of Police;
(c) in the presidency-town of Bombay, of a Superintendent of Police; and
(d) elsewhere, of a Deputy Superintendent of Police,

shall investigate any offence punishable under section 161, section 165 or section 165A of Indian Penal Code or under section 5 of this Act without the order of Presidency Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of presidency Magistrate, or a Magistrate of the first class, as th case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 5 shall not be investigated without the order of a Police officer not below the rank of Superintendent of Police.

(2) If, from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under sub-section (1) and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the person suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this sub-section:

Provided that no power under this sub-section in relation to the accounts of any person shall be exercised by a police officer below the rank of Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation – In this sub-section, the expressions "bank" and "bankers' books" shall have the meanings assigned to them in the Bankers' Books Evidence Act, 1891.

6. *Previous sanctionnecessary for prosecution* – (1) No court shall take cognizance of an offence punishable under section 161 or section 164 or section 165 of the Indian Penal Code, or under sub-section (2) or sub-section (3A) of section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction –

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of the Central Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of the State Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

6A. *Particulars in a charge in relation to an offence under section 5(1) (c)* – Notwithstanding anything contained in the Code of Criminal Procedure, 1898, when an accused is charged with an offence under clause (c) of sub-section (1) of section 5, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234 of the said Code:

Provided that the time included between the first and the last of such dates shall not exceed one year.

7. *Accused person to be competent witness* - Any person charged with an offence punishable under section 161 of section 165 or section 165A of the Indian Penal Code, or under section 5 of this Act shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that –

(a) he shall not be called as a witness except on his own request;

(b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charge, or is of bad character, unless-

(i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charge, or

(ii) he has personally or by his pleader asked questions of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or

(iii) he has given evidence against any other person charged with the same offence.

7A. *Code of Criminal Procedure, 1898, to apply subject to certain modifications* - The provisions of the Code of Criminal Procedure, 1898. Shall, in their application to any proceeding in relation to an offence punishable under section 161, section 165 or section 165A of the Indian Penal Code or under section 5 of this Act, have effect as if, -

(a) in sub-section (8) of section 251A, for the words " The accused shall then be called upon", the words " The accused shall then be required to give in writing at once or within such time as the Magistrate may allow, a list of the persons (if any) whom he proposes to examine as his witness and of the documents (if any) on which he proposes to rely, and he shall then be called upon" had been substituted;

(b) in sub-section (1A) of section 344, after the second proviso, the following proviso had been inserted, namely :-

" Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 435 has been made by a party to the proceeding."

(c) in sub-section (1) of section 435, before the Explanation, the following proviso had been inserted, namely :-

"Provided that where the powers under this sub-section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceeding-

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceeding may be made from the certified copies thereof;

and in any case, the proceedings, before the inferior Court, shall not be stayed except for reasons to be recorded in writing".;

(d) after sub-section (2) of section 540A, the following sub-section had been inserted namely :-

" (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the judge or Magistrate may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination."

8. *Statement by bribe giver not to subject him to prosecution* – Notwith-standing anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant for an offence under section 161 or section 165 of the Indian Penal Code, or under sub-section (2) or sub-section (3A) of section 5 of this Act, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to prosecution under section 165A of the said Code.

APPENDIX V

[Chapter II- Para 3 (i)]

THE ANTI-CORRUPTION LAWS (AMENDMENT) ACT, 1967

No. XVI OF 1967

[25th June 1967]

An Act further to amend the anti-corruption laws.

BE it enacted by Parliament in the Eighteenth Year of the Republic of India, as follows :-

1. *Short title and commencement* – (1) This Act may be called the Anti-Corruption Laws (Amendment) Act, 1967.

(2) It shall be deemed to have come into force on the 5th day of May, 1967.

2. Amendment of anti-corruption law in relation to certain pending trials –

(1) Notwithstanding –

(a) the substitution of new provision for sub-section (3) of section 5 of the Prevention of Corruption Act, 1947 (hereinafter referred to as the 1947 Act) by section 6(2) (c) of the Anti-Corruption Laws (Amendment) Act, 1964 (hereinafter referred to as the 1964 Act), and

(b) any judgment or order of any court,

The said sub-section (3) as it stood immediately before the commencement of the 1964 Act, shall apply and shall be deemed always to have applied to and in relation to trials of offences punishable under sub-section (2) of section 5 of the 1947 Act, pending before any court immediately before such commencement as if no such new provisions had been substituted for the said sub-section (3).

(2) The accused person in any trial to and in relation to which sub-section (1) applies may, at the earliest opportunity available to him after the commencement of this Act, demand that the trial of the offence should proceed from the stage at which it was immediately before the commencement of the 1964 Act and on any such demand being made the court shall proceed with the trial from that stage.

(3) For the removal of doubt it is hereby provided that any court –

(i) before which an appeal or application for revision against any judgment, order or sentence passed or made in any trial to which sub-section (1) applies is pending immediately before the commencement of this Act, or

(ii) before which an appeal or application for revision against any judgment, order or sentence passed or made before the commencement of this Act in any such trial, is filed after such commencement.

3. *Repeal and saving* – (1) The Anti-Corruption Laws (Amendment) Ordinance, 1967, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

Military, Naval and Air Force are not affected *vide* section 11 inserted in the Criminal Law Amendment Act by India Act 22 of 1966.

(Page 52 of the Journal Section in the December 1966 issue of the *Criminal Law Journal.*)

APPENDIX VI
(Chapter VII – Para 41)
THE CRIMINAL LAW AMENDMENT ORDINANCE, 1944
ORDINANCE NO XXXVIII OF 1944

[23rd August 1944]

(Amended up to 18th December 1964 by No. 40 of 1964)

An Ordinance to prevent the disposal or concealment of property procured By means of certain offences.

WHEREAS an emergency has arisen which makes it necessary to provide for preventing the disposal or concealment of money or other property procured by means of certain offences punishable under the Indian Penal Code;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5, c.2), the Governor General is pleased to make and promulgate the following Ordinance :-

1. *Short title, extent and commencement.*- (1) This Ordinance may be called the Criminal Law Amendment Ordinance, 1944.

(2) It extends to the whole of India (except the State of Jammu and Kashmir and applies as to citizens of India outside India).

(3) It shall come into force at once.

2. *Interpretation*- (1) In this Ordinance, "scheduled offence" means an offence specified in the Schedule to this Ordinance,

(2) For the purpose of this Ordinance the date of the termination of criminal proceedings shall be deemed to be-

(a) where such proceedings are taken to the High Court, whether in appeal or on revision, the date on which the High Court passes its final orders in such appeal or revision, or

(b) Where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last judgment or order of a criminal Court in the proceedings.

(3) The functions of District Judge under this Ordinance shall in a presidency town be exercised by the Chief Judge of the Small Cause Court.

3. *Application for attachment of property.*- (1) Where the (State) Government has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the (State) Government may whether or not any Court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on his business, for the attachment under this Ordinance of the money or other property which the (State) Government believes the said person to have procured by means of the offence, or if such money or other property cannot for any reason be attached, of other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) The provisions of order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908) shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the (Government).

(3) An application under sub-section (1) shall be accompanied by one or more affidavits stating the grounds on which the belief that the said person has committed

any scheduled offence is founded and the amount of money or the value of other property believed to have been procured by means of the offence : the application shall also furnish-

(a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, or other property of the said person;

(b) the names and addresses of any other persons believed to have or to be likely to claim any interest or title in the property of the said person.

4. *An interim attachment.*- (1) Upon receipt of an application under section 3, the District Judge shall, unless for reasons to be recorded in writing he is of opinion that there exist no *prima facie* grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property, pass without delay an *ad interim* order attaching money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment such other property of the said person of equivalent value as the District Judge may think fit :

Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order, examine the person or persons making the affidavits accompanying the application.

(2) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the person whose money or other property is being attached a notice accompanied by copies of the order, the application and affidavits and of the evidence, if any recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

(3) The District Judge shall also issue notices, accompanied by copies of the documents accompanying the notice under sub-section (2) to all persons represented to him as having, or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section, calling upon each such person to appear on the same date as that specified in the notice under the sub-section and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any other person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the District Judge at any time before an order is passed under sub-section (1) or sub-section (3), as the case may be, of section 5.

5. *investigation of objection to attachment.*- (1) If no cause is shown and no objections are made under section 4 on or before the specified date, the District Judge shall forthwith pass an order making an ad interim order of attachment absolute.

(2) If cause is shown or any objections are made aforesaid, the District Judge shall proceed to investigate the same, and in so doing, as regards the examination of the parties and in all other respects he shall, subject to the provisions of this Ordinance, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908 (Act V of 1908); and any person making an objection under section 4 shall be required to adduce evidence to show that on the date of attachment he had some interest in the property attached.

(3) After investigation under sub-section (2) the District Judge shall pass an order either making the *ad interim* order of attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order :

Provided that the District Judge shall not-

(a) release from attachment any interest which he is satisfied that the person believed to have committed a scheduled offence has in the property, unless he is also satisfied that there will remain under attachment an amount of the said person's property of value not less than that of the property believed to have been procured by the said person by means of the offence, or

(b) withdraw the order of attachment unless he is satisfied that the said person has not by means of the said offence procured any money or other property.

6. *Attachment of property of mala fide transferees.*- (1) Where the assest available for attachment of a person believed to have committed a scheduled offence are found to be less than the amount or value which he believed to have procured by means of such offence, and where the District Judge is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said person has, after the date on which the offence is alleged to have been committed, transferred (whether after the commencement of this Ordinance or not) any of his property otherwise than in good faith and for consideration, the District Judge may by notice require any transferee of such property (whether or not he received the property directly from the said person) to appear on the date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in sub-section (2) of section 5, the District Judge is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the District Judge shall order the attachment of so much of the said transferee's property as is in the opinion of the District Judge equivalent to the proper value of the property transferred.

7. *Execution of orders of attachment.*- An order of attachment of property under this Ordinance shall be carried into effect so far as may be practicable in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908), for the attachment of property in execution of a decree.

8. *Security in lieu of attachment.*- Any person whose property has been or is about to be attached under this Ordinance may at any time apply to the District Judge to be permitted to give security in lieu of such attachment, and where the security offered and given is in the opinion of the District Judge satisfactory and sufficient, he may withdraw or, as the case may be, refrain from passing, the order of attachment.

9. *Administration of attached property.*- (1) The District Judge may, on the application of any person interested in any property attached under this Ordinance and after giving the agent of the (State) Government an opportunity of being heard, make such orders as the District Judge considers just and for reasonable for –

(a) Providing from such of the attached property as the applicant claims an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for the expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in any Court for a scheduled offence ;

(b) Safeguarding so far as may be practicable the interests of any business affected by the attachment, and in particular, the interests of any partners in such business.

(2) Where it appears to the District Judge to be just and convenient, he may by order appoint a receiver to manage any property attached under this Ordinance in accordance with such instructions as the District Judge may from time to time think fit to give; and where a receiver is so appointed, the provisions of rules 2,3,4 and 5 of Order XL of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), shall be applicable.

(3) Administration of attached property where Court ordering attachment has ceased to exercise jurisdiction in India-Where any property has been attached under the Ordinance by order of a District Judge made before the 15th day of August 1947, and such District Judge has after that date ceased to exercise jurisdiction to the territories to which this Ordinance extends, that order of attachment shall be deemed to be an order made by the District Judge within the local limits of whose jurisdiction the Court taking cognizance of the scheduled offence is situate, and all functions of the District Judge under the Ordinance in regard to the attached property shall be exercised by the District Judge.

10. *Duration of attachment.*- An order of attachment of property under this Ordinance shall, unless it is withdrawn earlier in accordance with the provisions of this Ordinance, continue in force-

(a) where no Court has taken cognizance of the alleged scheduled offence at the time when the order is applied for, three months from the date of the order under sub-section (1) of section 4 or sub-section (2) of section 6, as the case may be, unless cognizance of such offence is in the meantime so taken, or unless the District Judge on application by the agent of the (State) Government thinks it proper and just that the period should be extended and passes an order accordingly; or

(b) where a Court has taken cognizance of the alleged scheduled offence, whether before or after the time when the order was applied for until orders are passed by the District Judge in accordance with the provisions of this Ordinance after the termination of the criminal proceedings.

11. *Appeals.*- (1) The (State) Government or any person who has shown cause under section 4 or section 6 or has made an objection under section 4 or has made an application under section 8 or section 9, if aggrieved by an order of the District Judge under any of the foregoing provisions of this Ordinance, may appeal to the High Court within thirty days from the date on which the order complained against was passed.

(2) Upon any appeal under this section the High Court may after giving such parties as it thinks proper an opportunity of being heard, pass such orders as it thinks fit.

(3) Until an appeal under this section is finally disposed of by the High Court, no Court shall, otherwise than in accordance with provisions of section 8 or section 13, order the withdrawal or suspensation of any order of attachment to which the appeal relates.

(*Vide* A.I.R. 1946 Lah. 406 = P.L.R. 77)

12. *Criminal Courts to evaluate property by scheduled offences.* – (1) Where before judgment is pronounced in any criminal trial for a scheduled offence it is represented to the Court that an order of attachment of property has been passed

under this Ordinance in connection with such offence, the Court shall, if it is convicting the accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence.

(2) In any appeal or revisional proceedings against such convictions, the appellate or revisional Court shall, unless it sets aside the conviction, either confirm such finding or modify it in such manner as it thinks proper.

(3) In any appeal or revisional proceedings against an order of acquittal passed in a trial such as is referred to in sub-section (1), the appellate or revisional court, if it convicts the accused, shall record a finding such as is referred to in that sub-section.

(4) Where the accused is convicted of a scheduled offence other than one specified in item 1 of the schedule to this Ordinance and where it appears that the offence has caused loss to more than one Government referred to in the said schedule or local authority, the finding referred to in this section shall indicate the amount of loss sustained by each such Government or local authority.

(5) Where the accused is convicted at the same trial of one or more offences specified in item 1 of the schedule to this Ordinance and one or more offences specified in any of the other items of the said schedule, the finding referred to in this section shall indicate separately the amounts procured by means of the two scheduled offences.

13. Disposal of attached property upon termination of criminal proceedings.-

(1) Upon the termination of any criminal proceedings for any scheduled offence in respect of which any order of attachment of property has been made under this Ordinance or security given in lieu thereof, the agent of the (State) Government shall without delay inform the District Judge, and shall where criminal proceedings have been taken in any Court, furnish the District Judge with a copy of the judgment or order of the trying Court and with copies of the judgments or orders, if any of the appellate or revisional Courts thereon.

(2) Where it is reported to the District Judge under sub-section (1) that cognizance of the alleged scheduled offence has not been taken or where the final judgment or order of the criminal Courts is one of acquittal, the District Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned.

(3) Where the final judgment or order of the criminal Courts is one of conviction, the District Judge shall order that from the property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to (the Government) such amount or value as is found in the final judgment or order of the Criminal Courts in pursuance of section 12 to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge and where the final judgment or order of the Criminal Courts has imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment.

(4) Where the amounts ordered to be forfeited or recovered under sub-section (3) exceed the value of the property of the convicted person attached, and where the property of any transferee of the convicted person has been attached under section 6,

the District Judge shall order that the balance of the amount ordered to be forfeited under sub-section (3) together with the costs of attachment of the transferee's property as determined by the District Judge shall be forfeited to (the Government) from the attached property of the transferee or out of the security given in lieu of such attachment; and the District Judge may order, without prejudice to any other mode of recovery, that any fine referred to in sub-section (3) or any portion thereof not recovered under that sub-section shall be recovered from the attached property of the transferee or out of the security given in lieu of such attachment.

(5) If any property remains under attachment in respect of any scheduled offence or any security given in lieu of such attachment remains with the District Judge after his orders under sub-section (3) and (4) have been carried into effect, the order of attachment in respect of such property remaining shall be forthwith withdrawn or as the case may be, the remainder of the security returned, under the orders of the District Judge.

(6) Every sum ordered to be forfeited under this section in connection with any scheduled offence other than one specified in item 1 of the Schedule to this Ordinance shall, after deduction of the costs of attachment as determined by the District Judge, be credited to the Government (being a Government referred to in the said Schedule) or local authority to which the offence has caused loss or where there is more than one such Government or local authority, the sum shall, after such deduction as aforesaid, be distributed among them in proportion to the loss sustained by each.

14. *Bar to other proceedings.*- Save as provided in section 11 and notwith-standing anything contained in any other law,-

(a) no suit or other legal proceeding shall be maintainable in any Court-

(i) in respect of any property ordered to be forfeited under section 13 or which has been taken in recovery of fine in pursuance of an order under that section, or

(ii) while any other property is attached under this Ordinance, in respect of such other property,

By any person upon whom a notice has been served under section 4 or section 6 or who has made an objection under sub-section (4) of section 4; and

(b) no Court shall, in any legal proceedings or otherwise, pass any decree or order, other than a final decree in a suit by a person not being a person referred to in clause (a), which shall have the effect of nullifying or affecting in any way any subsisting order of attachment of property under this Ordinance, or the right of the District Judge to hold security in lieu of any such order of attachment.

15. *Protection of action taken.*- No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Ordinance.

THE SCHEDULE

(See section 2)

Offences in connection with which property is liable to be attached

ORDINANCE NO XXXVIII OF 1944

1. An offence punishable under section 161 or section 165 of the Indian Penal Code (or any conspiracy to commit, or any attempt to commit or any abetment of such offence).

2. An offence punishable under section 406 (or section 408) or section 409 of the Indian Penal Code, where the property in respect of which the offence is committed is property entrusted by His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or a (State) Government or a department of any such Government or a local authority or a person acting on behalf of any such Government or department or authority.

3. an offence punishable under section 414 of Indian Penal Code, where the stolen property in respect of which the offence is committed is property such as is described in the preceding item and in respect of which an offence punishable under section 406 (or section 408) or section 409 of the said Code has been committed.

4. An offence punishable under section 417 or section 420 of Indian Penal Code, where the person deceived is His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or a (State) Government or department of any such Government or a local authority or a person acting on behalf of any such Government or department or authority.

4A. An offence punishable under section 5 of the Prevention of Corruption Act, 1947. (Amended by No.40 of 1964).

5. Any conspiracy to commit or any attempt to commit or any abetment of any of the offences (specified in items 2,3 and 4).

All Ordinances made during the period beginning with the date of the passing of the India and Burma (Emergency Provisions) Act, 1940, (3 and 4 Geo. 6 Ch. 33 i.e. 27th June 1940) and ending on 1st April 1946 vide Order of King's Excellent Majesty in Council published in Gazette of India Extraordinary, dated 1st April 1946 shall have effect without restriction as regards the time limit of 6 months. This view is confirmed in Hansraj Muljee V. State of Bombay 1957 S.C.R. 634 = AIR 1957 S.C. 497.

APPENDIX VII

[Chapter II – Para 3 (i)]

THE CRIMINAL LAW (AMENDMENT) ACT, 1952

No. XLVI OF 1952

Short title

Section 1.- This Act may be called the Criminal Law (Amendment) Act, 1952.

Section 2.- Amendment of Section 165 of the Indian Penal Code (Act XLV of 1860).

Section 3.– Insertion of Section 165A in the Indian Penal Code (Act XLV of 1960).

Section 4.- Amendment of Section 164 of the Code of Criminal Procedure (Act V of 1898).

Section 5.- Amendment of Section 337 of Code of Criminal Procedure (Act V of 1898).

Amendments and insertion of the above sections in the Indian Penal Code and Code of Criminal Procedure were repealed by Repealing and Amending Act, 1957 (Act 36 of 1957), Section 2 and Schedule II.

Power to appoint Special Judges

Section 6.- (1) The state Government may, by notification in the *Official Gazette,* appoint as many Special Judges as may be necessary for such area or areas as may be specified in the notification to try the following offences, namely :-

(a) An offence punishable under section 161, section 162, section 163, section 164, section 165 or section 165-A of the Indian Penal Code or section 5 of the Prevention of Corruption Act, 1947 (Act II of 1947).

(b) Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a Special Judge under this Act unless he is, or has been Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898 (Act V of 1898).

Cases triable by Special Judges

Section 7.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) or in any other law, the offences specified in sub-section (1) of section 6 shall be triable by Special Judges only.

(2) Every offence specified in sub-section (1) of section 6 shall be tried by the Special Judge for the are within which it was committed, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government.

(3) When trying any case, a Special Judge may also try any offence, other than an offence specified in section 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial.

Procedure and power of Special Judge

Section 8. – (1) A Special Judge may take cognizance of offences without the accused being committed to him for trial and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898 (Act V of 1898), for the trial of warrant cases by Magistrates.

(2) A Special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every

other person concerned whether as principal or abettor, in a commission thereof; and any pardon so tendered shall, for the purpose of section 339 and 339A of the Code of Criminal Procedure, 1898, be deemed to have been tendered under section 338 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2) the provisions of the Code of Criminal Procedure, 1898, shall so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge; and for the purposes of the said provisions, the Court of a Special Judge shall be deemed to be a Court of Session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before Special Judge shall be deemed to be a public prosecutor.

(3A) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 350 and 549 of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to the proceedings before a Special Judge and for the purposes of the said provisions a Special Judge shall be deemed to be a Magistrate.

(4) A Special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

Appeal and Revision

Section 9.- The High Court may exercise, so far as they may be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898 (Act V of 1898) on a High Court as if the Court of the Special Judge were a Court of Session trying cases without a Jury within the local limits of the jurisdiction of the High Court.

Note

The Court of the Special Judge would be competent to try offences committed even by persons who are not public servants, provided they fall within clauses (a) and (b) of section 6(1) of the Criminal Law Amendment Act, 1952 (*State of Andhra Pradesh v. K. Subbaiah* A.I.R. 1961 SC. 1241).

Under provisions of section 6, 7 and 8 of this Act all offences of bribery and corruption are exclusively triable by a Special Judge, who is also authorised to take cognizance of the offence specified under section 6 of this Act without the accused being committed to him for trial.

Transfer of certain pending cases

Section 10.- All cases triable by a Special Judge under section 7, which, immediately before the commencement of this Act, were pending before any Magistrate shall, on such commencement, be forwarded for trial to the Special Judge having jurisdiction over such cases.

Military, Naval and Air Force Laws not to be affected

Section 11.- (1) Noting in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any Court or other authority under any military, naval or air force law.

(2) For the removal of doubts, it is hereby declared that for the purpose of any such law as is referred to in sub-section (1) the Court of the Special Judge shall be deemed to be a Court of ordinary criminal justice.

APPENDIX VIII

[Chapter II – Para 3 (i)]

(Section 13 of the Maharashtra Lokayukta and Upa-Lokayukta Act, 1971)

13. (1) The Lokayukta may appoint, or authorise an Upa-Lokayukta or any Officer subordinate to the Lokayukta or an Upa-Lokayukta to appoint officers and other employees to assist the Lokayukta and the Upa-Lokayukta in the discharge of their functions under this Act.

(2) Ther categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Lokayukta and Upa-Lokayuktas shall be such as may be prescribed, after consultation with the Lokayukta.

(3) Without prejudice to the provisions of sub-section (1), the Lokayukta or an Upa-Lokayukta may for the purpose of conducting investigations under this Act utilize the services of –

(i) any officer or investigation agency of the State or Central Government with the concurrence of that Government; or

(ii) any other person or agency.

APPENDIX XIV

[Chapter Xi – Para 69 (ii)]

Prosecutions :

Institution of – against persons making false complaints about misconduct of Government officials.

GOVERNMENT OF BOMBAY
POLITICAL AND SERVICES DEPARTMENT
Circular No. 1581/34
Bombay Castle, 16th January 1949

CIRCULAR

In modification of the Orders contained in Government Circular, Political and Services Department, No. 1581/34, dated the 6th May 1940, Government is pleased to direct that prosecutions under section 182, Indian Penal Code against persons from whom complaints have been received should not be undertaken without the sanction of Government, pending further orders.

By order of the Governor of Bombay.
(signed) M. D. Bhat,
Chief Secretary to the Government of Bombay
Political and Services Department.

To
All Collectors and District Magistrates.

APPENDIX XVI

[Chapter V – Para 18 (e)]

CONFIDENTIAL

Traps arranged by the Anti-Corruption and Prohibition Intelligence Bureau :

Co-operation of Government servants with The Anti-Corruption and Prohibition Intelligence Bureau in connection with the-

GOVERNMENT OF MAHARASHTRA
GENERAL ADMINISTRATION DEPARTMENT
Circular No CDR-1064-D
Sachivalaya, Bombay-32 BR, 16th May 1964

CIRCULAR OF GOVERNMENT

It has been the experience of Government that some of the cases involving charges of corruption fail in courts of law or in departmental enquiries, because the panchas, who are the most important witnesses to the traps arranged by the Anti-Corruption and Prohibition Intelligence Bureau in such cases, turn hostile. It is the established policy of Government to eradicate the evil of corruption. The need for successful investigation of the cases involving corruption cannot be over emphasized. Government, therefore, desires that all Government servants, particularly gazetted officers, should co-operate with the Anti-Corruption and Prohibition Intelligence Bureau whenever they are approached by the Bureau for assistance in or witnessing of traps. The Anti-Corruption and Prohibition Intelligence

Bureau is requested to show a copy of this circular to officers whom they approach for such assistance.

2. These orders are not applicable to Judicial Officers and Magistrates. The Anti-Corruption and Prohibition Intelligence Bureau should not therefore approach them for assistance in or witnessing the traps.

(Signed).....
Under Secretary to the Government of Maharashtra,
General Administration Department.

APPENDIX XVII

[Chapter XIII – Para 79 (i)]

Government Servants' Conduct :
Need for Government Servants to be
Above reproach.

GOVERNMENT OF BOMBAY
POLITICAL AND SERVICES DEPARTMENT
Circular No. 1581/34
Bombay Castle, 28th April 1948
CIRCULAR OF GOVERNMENT

Numerous complaints are being received about dishonest and corrupt practices being followed by Government servants and while Government is satisfied that many of these complaints are highly exaggerated and contain gross distortion of truth, it feels that some of them are based on representation of true facts. In many cases for want of adequate evidence it may not, however, be possible to establish a charge of dishonesty or corruption with the result that a really guilty person escapes punishment. As trustees of the people, Government is anxious to maintain as high a standard of purity as possible in its administration and therefore attaches great importance to integrity among its servants. Government is determined to eradicate the evils of dishonesty and corruption and do that end has decided that the general reputation of a Government servant should be given due weight in his official career. It therefore, desires to impress on all Government servants that it is their duty to uphold the honour of Government and discharge the trust reposed in them by observing the highest code of rectitude in their dealings with the public and by conducting themselves at all times in an irreproachable manner. Government has also decided that in granting promotions or allowing Government servants to cross the efficiency bar the general reputation of the Government servants in respect of integrity should be taken into account. Heads of departments and offices are, therefore, requested to note that along with ability, industry, etc., the general reputation of the Government servant in regard to integrity should also be considered as a criterion for granting promotion to him as well as for deciding whether or not he should be allowed to cross the efficiency bar.

2. In many cases a Government servant may be really guilty of dishonest or corrupt practice, but the evidence available may not be sufficient to convict him in a court of law. Also in a departmental enquiry it is not always necessary that the guilt of the person should be established to the same degree of conclusiveness as in a court of law. Government is therefore pleased to direct that in conducting departmental enquiries, Enquiry Officers need not apply the same high standard for assessing the evidence produced before them as that applied in a court of law. A lower standard which ensures that evidence is not rejected which but for technical objections is acceptable may be deemed as adequate.

3. There are cases in which a Government servant is charged with several offences about which the Criminal Investigation Department or any other agency has carried out investigations, but for one reason or another, the Government servant is prosecuted in a court of law for only some of these offences. In such cases if the Government servant concerned is acquitted in the court, it may be possible to hold a department enquiry against him, either on the charges on which he is acquitted and the remaining charges or on the remaining charges alone. With a view to reducing

the delay which such an enquiry is bound to involve Government is pleased to direct that when the Government servant is being prosecuted on some of the several charges against him, an order should at the same time be recorded by a competent authority, stating the other charges against the Government servant, the evidence in brief in respect thereof, and the further action which has been kept pending until the disposal of the trial in court. As soon as the decision of the court acquitting the Government servant is known, necessary departmental enquiry either on the charges on which he has been prosecuted and the other charges which have been recorded or on the latter alone, should be instituted without delay, according to whether the court has given the Government servant a clean bill or not on the charges for which he was prosecuted. In case the Government servant concerned is convicted by the court it is not necessary to hold any further enquiry on the charges which were recorded but the person concerned should be dealt with on the basis of the conviction.

4. Government has also received complaints that the general instructions issued to Government servants (i) that they should behave courteously towards members of the public approaching them on official business and that (ii) they should not make use of free conveyance or complimentary passes for public entertainment etc., which have been reiterated more than once are being generally violated. Government, therefore, desires to warn all Government servants that it will take a very serious view if any breach of these instructions is committed hereafter.

By order of the Governor of Bombay,
(Signed) M. D. BHAT,
Chief Secretary to Government of Bombay,
Political and Services Department

APPENDIX XVIII

[Chapter II – Para 6 (ii)]

GOVERNMENT OF MAHARASHTRA
HOME DEPARTMENT
Sachivalaya, Bombay-32, 23rd October 1961

Order

No. ACB-3059-V.- In exercise of the powers conferred by section 5 of the Bombay Police Act, 1951 (Bom. XXII of 1951), the Government of Maharashtra hereby directs that whenever any officer of and above the rank of a Police Sub-Inspector of the Anti-Corruption and Prohibition Intelligence Bureau of the Maharashtra State investigates, at any place in the State, any offence, he shall be deemed to be an officer in the charge of the Police Station within the limits of which such place is situate.

By order and in the name of Governor of Maharashtra,
(Signed) B. B. PAYMASTER,
Secretary to Government,
Home Department.

APPENDIX XIX

[Chapter IV – Para 16 and Chapter XIII – Para 80 (iii)]

Reports of the Central Bureau of Investigation and the Anti-Corruption and Prohibition Intelligence Bureau : Making a reference to the – in the Affidavits etc.

GOVERNMENT OF MAHARASHTRA

GENERAL ADMINISTRATION DEPARTMENT

Circular No. CDR-1171/C-6436-D-I

Sachivalaya, Bombay-32, dated 12th July 1971

CIRCULAR OF GOVERNMENT

The reports of the Central Bureau of Investigation and the Anti-Corruption and Prohibition Intelligence Bureau, Maharashtra State are confidential documents for which privilege can be claimed in the Court of Law under sections 123 and 162 of the Evidence Act. A direct reference in the affidavit filed in reply to writ petition of a Government servant to any material or view contained in the report of the Central Bureau of Investigation or the Anti-Corruption and Prohibition Intelligence Bureau will make it difficult to claim privilege for production of the document in a Court of Law. Government is, therefore, pleased to direct that all departments of the Secretariat and the Heads of Departments should ensure that a direct reference to the report of the Central Bureau of Investigation or the Anti-Corruption and Prohibition Intelligence Bureau, Bombay, is not made in the statement/affidavits filed by them in the Court of Law. Whenever a reference has to be made to any material available in the report of the Central Bureau of Investigation or the Anti-Corruption and Prohibition Intelligence Bureau the reference should be restricted to the material contained in the charge-sheet and the statement of allegation served on the Government servant. In case a reference to the report of the Central Bureau of Investigation or the Anti-Corruption and Prohibition Intelligence Bureau becomes inevitable, they should consult the Central Bureau of Investigation or Anti-Corruption and Prohibition Intelligence Bureau, Bombay, as the case may be, before quoting the contents of their reports in the documents.

By order and in the name of the Governor of Maharashtra.

M. K. GUPTE,

Under Secretary to the Government of Maharashtra.

APPENDIX XXIII

[Chapter II – Para 3 (i) (a)]

A note regarding offences, other than those punishable under the Prevention of Corruption Act, against the Public servants and provisions of conduct rules relating thereto.

Sections 161 to 165-A, Indian Penal Code, which deal with ofences of the offer or acceptance of gratification by public servant or relating to public servants from part of Chapter ix of the Indian Penal Code. These have been included in Appendix III of this Manual. Chapter IX also contains sections 166 to 169 inclusive which deal with other offences by public servants.

These sections are set out herein below :-

Section 166.-Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both.

Section 167.-Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 168.- Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Section 169.- Whoever being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

The offence punishable under section 167, Indian Penal Code is cognizable while those under the other three sections are non-cognizable. All the four are triable by a Magistrate of the First Class. It should, however, be remembered that if an offence under any of these sections is to be tried along with an offence specified in section 6 of the Criminal Law Amendment Act, 1952, the trial will have to be before a Special Judge appointed under that Act. The authority for this proposition is sub-section (3) of section 7 of that Act which is published at Appendix VII of this Manual.

The word “trade”, as used in section 168, must be construed in a wider sense so as to cover every kind of trade, business, profession or occupation (Mulshankar Maganlal 52 BLR 648). In this case the accused who was an Engineer in the Government Public Health Engineer’s Office, whose duty it was to handle schemes for water works and drainage, had received payment for plans and estimates which he had prepared for those schemes. The High Court held that he was guilty under this section.

The clause “being legally bound as such public servant not to engage in trade” should be particularly noted. It is the duty of the prosecution to prove that ingredient

affirmatively. Some Acts specifically contain such a prohibition while rules of conduct framed under other enactments also prohibit a public servant from engaging in trade. Rule 21 of the B. C. S. Conduct, Discipline and Appeal Rules may be referred to. It reads as under :-

Rule 21.- A Government servant shall not, without the previous sanction of Government, engage in any trade or undertake any employment while on duty or on leave, other than his public duties or carry on, whether directly or indirectly, any business or undertaking or use his position as a Government servant to help such business or undertaking. A Government servant will be held responsible for any act in this connection done by his wife or any other member of his family living with or in any way dependant on him.

In this connection the following note below rule 21 in the compilation of the rules published by the Government may please be borne in mind :-

Note. - The Secretaryship of a club does not constitute employment in the sense of this rule provided that it does not occupy so much an officer's time as to interfere with his public duties and that it is an honorary office, that is to say, that it is not remunerated by any payment in cash or any equivalent thereof other than the customary concessions of free quarters and personal exemption from messing charges only. An officer proposing to become honorary secretary of a club should inform his immediate departmental superior who will decide with reference to this rule and note whether the matter should be reported for the orders of Government.

The Bombay Civil Services Conduct, Discipline and Appeal Rules govern all servants of Government of Maharashtra including the Police. Chapter XII of Police Manual, Volume I, may be referred to with advantage.

Section 169 refers to the public servant " being bound as such public servant not to purchase or bid for certain property". Care must be taken to prove this prohibition affirmatively. Where departmental rules contain such a prohibition, they should be brought on record. In this connection section 19 of the Cattle Trespass Act should also be referred to.

It is to be noted that an accused convicted of an offence under section 5 (2) of the Prevention of Corruption Act cannot seek the benefit of the Probation of Offenders' Act, 1958 (India Act XX of 1958), section 18 of the said Act reads as under :-

"Nothing in this Act shall affect the provisions of section 31 of the Reformatory Schools Act, 1897 or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 or the Suppression of Immoral Traffic in Women and Girls Act….".

N.B.

In view of several changes with regard to the Prevention of Corruption Act 1988 and Amendment of 2018, as also changes in the administrative hierarchy and subsequent Government instructions / Government Resolutions, the Anti Corruption Bureau has undertaken an exercise of revising the Manual.

The revised Manual will be uploaded on the website of Anti Corruption Bureau once the work is completed.