Supreme Court of India
Dr.Subramanian Swamy vs Director, Cbi & Anr on 6 May, 1947
Author: L . R.M.
Bench: R.M. Lodha, A.K. Patnaik, Sudhansu Jyoti Mukhopadhaya, Dipak Misra, Fakkir Mohamed Kalifulla

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 38 OF 1997

Dr. Subramanian Swamy ..... Petitioner

Versus

Director, Central Bureau of Investigation & Anr. ..... Respondents

WITH

WRIT PETITION (CIVIL) NO. 21 OF 2004

Centre for Public Interest Litigation ..... Petitioner

Versus

Union of India ..... Respondent

JUDGMENT

R.M. LODHA, CJI.

Section 6-A of the Delhi Special Police Establishment Act, 1946 (for short, 'the DSPE Act'), which was inserted by Act 45 of 2003, reads as under:

> "Section 6-A. Approval of Central Government to conduct inquiry or investigation.- (1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to-
>
> (a) the employees of the Central Government of the Level of Joint Secretary and above; and
>
> (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local

> authorities owned or controlled by that Government.
>
> (2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to section 7 of the Prevention of Corruption Act, 1988 (49 of 1988)."

2. The constitutional validity of Section 6-A is in issue in these two writ petitions, both filed under Article 32 of the Constitution. Since Section 6-A came to be inserted by Section 26(c) of the Central Vigilance Commission Act, 2003 (Act 45 of 2003), the constitutional validity of Section 26(c) has also been raised. It is not necessary to independently refer to Section 26(c). Our reference to Section 6-A of the DSPE Act, wherever necessary, shall be treated as reference to Section 26(c) of the Act 45 of 2003 as well.

Reference to the Constitution Bench

3. On February 4, 2005 when these petitions came up for consideration, the Bench thought that these matters deserved to be heard by the larger Bench. The full text of the reference order is as follows:

> "In these petitions challenge is to the constitutional validity of Section 6-A of the Delhi Special Police Establishment Act, 1946 (for short, "the Act"). This section was inserted in the Act w.e.f. 12-9-2003. It, inter alia, provides for obtaining the previous approval of the Central Government for conduct of any inquiry or investigation for any offence alleged to have been committed under the Prevention of Corruption Act, 1988 where allegations relate to officers of the level of Joint Secretary and above. Before insertion of Section 6-A in the Act, the requirement to obtain prior approval of the Central Government was contained in a directive known as "Single Directive" issued by the Government. The Single Directive was a consolidated set of instructions issued to the Central Bureau of Investigation (CBI) by various Ministries/Departments regarding modalities of initiating an inquiry or registering a case against certain categories of civil servants. The said directive was stated to have been issued to protect decision-making-level officers from the threat and ignominy of malicious and vexatious inquiries/investigations and to give protection to officers at the decision-making level and to relieve them of the anxiety from the likelihood of harassment for taking honest decisions. It was said that absence of such protection to them could adversely affect the efficiency and efficacy of these institutions because of the tendency of such officers to avoid taking any decisions which could later lead to harassment by any malicious and vexatious inquiries/investigations.
>
> 2. The Single Directive was quashed by this Court in a judgment delivered on 18-12-1997 (Vineet Narain & Ors. v. Union of India & Anr. (1998) 1 SCC 226). Within a few months after Vineet Narain judgment, by the Central Vigilance Commission

Ordinance, 1998 dated 25-8-1998, Section 6-A was sought to be inserted providing for the previous approval of the Central Vigilance Commission before investigation of the officers of the level of Joint Secretary and above. On the intervention of this Court, this provision was deleted by issue of another Ordinance promulgated on 27-10-1998. From the date of the decision in Vineet Narain case and till insertion of Section 6-A w.e.f. 12-9-2003, there was no requirement of seeking previous approval except for a period of two months from 25-8-1998 to 27-10- 1998.

3. The validity of Section 6-A has been questioned on the touchstone of Article 14 of the Constitution. Learned amicus curiae has contended that the impugned provision is wholly subversive of independent investigation of culpable bureaucrats and strikes at the core of rule of law as explained in Vineet Narain case and the principle of independent, unhampered, unbiased and efficient investigation. The contention is that Vineet Narain decision frames a structure by which honest officers could fearlessly enforce the criminal law and detect corruption uninfluenced by extraneous political, bureaucratic or other influences and the result of the impugned legislation is that the very group of persons, namely, high-ranking bureaucrats whose misdeeds and illegalities may have to be inquired into, would decide whether CBI should even start an inquiry or investigation against them or not. There will be no confidentiality and insulation of the investigating agency from political and bureaucratic control and influence because the approval is to be taken from the Central Government which would involve leaks and disclosures at every stage. The very nexus of the criminal-bureaucrat-politician which is subverting the whole polity would be involved in granting or refusing prior approval before an inquiry or investigation can take place. Pointing out that the essence of a police investigation is skilful inquiry and collection of material and evidence in a manner by which the potential culpable individuals are not forewarned, the submission made is that the prior sanction of the same department would result in indirectly putting to notice the officers to be investigated before commencement of investigation. Learned Senior Counsel contends that it is wholly irrational and arbitrary to protect highly-placed public servants from inquiry or investigation in the light of the conditions prevailing in the country and the corruption at high places as reflected in several judgments of this Court including that of Vineet Narain. Section 6-A of the Act is wholly arbitrary and unreasonable and is liable to be struck down being violative of Article 14 of the Constitution is the submission of learned amicus curiae.

4. In support of the challenge to the constitutional validity of the impugned provision, besides observations made in the three-Judge Bench decision in Vineet Narain case reliance has also been placed on various decisions including S.G. Jaisinghani v. Union of India [(1967) 2 SCR 703], Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212], Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722] and Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311] to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In Mardia Chemicals case a three-Judge Bench

held Section 17(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to be unreasonable and arbitrary and violative of Article 14 of the Constitution. Section 17(2) provides for condition of deposit of 75% of the amount before an appeal could be entertained. The condition has been held to be illusory and oppressive. Malpe Vishwanath Acharya v. State of Maharashtra [(1998) 2 SCC 1], again a decision of a three-Judge Bench, setting aside the decision of the High Court which upheld the provisions of Sections 5(10)(b), 11(1) and 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 pertaining to standard rent in petitions where the constitutional validity of those provisions was challenged on the ground of the same being arbitrary, unreasonable and consequently ultra vires Article 14 of the Constitution, has come to the conclusion that the said provisions are arbitrary and unreasonable.

5. Learned Solicitor General, on the other hand, though very fairly admitting that the nexus between criminals and some elements of establishment including politicians and various sections of bureaucracy has increased and also that there is a disturbing increase in the level of corruption and these problems need to be addressed, infractions of the law need to be investigated, investigations have to be conducted quickly and effectively without any interference and the investigative agencies should be allowed to function without any interference of any kind whatsoever and that they have to be insulated from any extraneous influences of any kind, contends that a legislation cannot be struck down on the ground of arbitrariness or unreasonableness as such a ground is available only to quash executive action and orders. Further contention is that even a delegated legislation cannot be quashed on the ground of mere arbitrariness and even for quashing such a legislation, manifest arbitrariness is the requirement of law. In support, reliance has been placed on observations made in a three-Judge Bench decision in State of A.P.. v. McDowell & Co. [(1996) 3 SCC 709] that no enactment can be struck down by just saying that it is arbitrary or unreasonable and observations made in Khoday Distilleries Ltd. v. State of Karnataka [1996 (10) SCC 304] that delegated legislation can be struck down only if there is manifest arbitrariness.

6. In short, the moot question is whether arbitrariness and unreasonableness or manifest arbitrariness and unreasonableness, being facets of Article 14 of the Constitution are available or not as grounds to invalidate a legislation. Both counsel have placed reliance on observations made in decisions rendered by a Bench of three learned Judges.

7. Further contention of learned Solicitor General is that the conclusion drawn in Vineet Narain case is erroneous that the Constitution Bench decision in K. Veeraswami v. Union of India [(1991) 3 SCC 655] is not an authority for the proposition that in the case of high officials, requirement of prior permission/sanction from a higher officer or Head of the Department is permissible, the submission is that conclusion reached in para 34 of Vineet Narain decision runs

contrary to observations and findings contained in para 28 of Veeraswami case.

8. Having regard to the aforesaid, we are of the view that the matters deserve to be heard by a larger Bench, subject to the orders of Hon'ble the Chief Justice of India." Background of Section 6-A

4. We may first notice the background in which Section 6-A was inserted in the DSPE Act. In 1993, Vineet Narain approached this Court under Article 32 of the Constitution of India complaining inertia by the Central Bureau of Investigation (CBI) in matters where the accusation made was against high dignitaries. The necessity of monitoring the investigation by this Court is indicated in paragraph 1 of the judgment[1], which reads:

> "These writ petitions under Article 32 of the Constitution of India brought in public interest, to begin with, did not appear to have the potential of escalating to the dimensions they reached or to give rise to several issues of considerable significance to the implementation of rule of law, which they have, during their progress. They began as yet another complaint of inertia by the Central Bureau of Investigation (CBI) in matters where the accusation made was against high dignitaries. It was not the only matter of its kind during the recent past. The primary question was: Whether it is within the domain of judicial review and it could be an effective instrument for activating the investigative process which is under the control of the executive? The focus was on the question, whether any judicial remedy is available in such a situation? However, as the case progressed, it required innovation of a procedure within the constitutional scheme of judicial review to permit intervention by the court to find a solution to the problem. This case has helped to develop a procedure within the discipline of law for the conduct of such a proceeding in similar situations. It has also generated awareness of the need of probity in public life and provided a mode of enforcement of accountability in public life. Even though the matter was brought to the court by certain individuals claiming to represent public interest, yet as the case progressed, in keeping with the requirement of public interest, the procedure devised was to appoint the petitioners' counsel as the amicus curiae and to make such orders from time to time as were consistent with public interest. Intervention in the proceedings by everyone else was shut out but permission was granted to all, who so desired, to render such assistance as they could, and to provide the relevant material available with them to the amicus curiae for being placed before the court for its consideration. In short, the proceedings in this matter have had great educative value and it does appear that it has helped in future decision-making and functioning of the public authorities."

5. In Vineet Narain1, Single Directive No.4.7(3), which contained certain instructions to CBI regarding modalities of initiating an inquiry or registering a case against certain categories of civil servants, fell for consideration. We shall refer to Single Directive No. 4.7(3) at some length a little later but suffice to say here that this Court struck down Single Directive No.4.7(3). While doing so, the Court also made certain recommendations in respect of CBI and Central Vigilance Commission (CVC). One of such recommendations was to confer statutory status to CVC.

6. Initially, the Government decided to put the proposed law in place through an Ordinance so as to comply with the directions of this Court in Vineet Narain1. Later on the Government introduced the CVC Bill, 1998 in the Lok Sabha on 7.12.1998. The CVC Bill, 1998 was referred to the Department-related Parliamentary Standing Committee on Home Affairs for examination and report, which presented its report to the Parliament on 25.2.1999 and made certain recommendations on the CVC Bill, 1998. The Lok Sabha passed the CVC Bill, 1998 as the CVC Bill, 1999 on 15.3.1999 after adopting the official amendments moved in this regard. However, before the Bill could be considered and passed by the Rajya Sabha, the 12th Lok Sabha was dissolved on 26.4.1999 and, consequently, the CVC Bill, 1999 lapsed. The CVC Bill was re-introduced with the title "The Central Vigilance Commission Bill, 2003". The Bill was passed by both the Houses of Parliament and received the assent of the President on 11.9.2003. This is how the Central Vigilance Commission Act, 2003 (for short, 'Act 45 of 2003') came to be enacted.

7. Act 45 of 2003 provides for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 (for short, 'PC Act, 1988') by certain categories of public servants of the Central Government, corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto. Section 26 of the Act 45 of 2003 provides for amendment of DSPE Act and clause (c) thereof enacts that after Section 6, Section 6-A shall be inserted in the DSPE Act.

8. Section 6-A(1) of the DSPE Act requires approval of the Central Government to conduct inquiry or investigation where the allegations of commission of an offence under the PC Act, 1988 relate to the employees of the Central Government of the level of Joint Secretary and above.

Genesis of Challenge to Section 6-A

9. On 24.2.1997, the Writ Petition (Civil) No.38/1997 came up for admission before a three-Judge Bench. On hearing the petitioner, the writ petition was entertained but it was confined to relief in paragraph 12(a) only. The notice was directed to be issued to respondent No.1 (Director, CBI) and respondent No.5 (Union of India through Cabinet Secretary) and other respondents were deleted from the array of parties. The Court on that date requested Shri Anil B. Divan, learned senior counsel to appear as amicus curiae in the case. It is not necessary to narrate the proceedings which took place on various dates. It may, however, be mentioned that on 5.4.2002 when the matter was mentioned before the Bench, learned amicus curiae expressed his concern regarding the attempt to restore the Single Directive, which was struck down in Vineet Narain1, in the proposed legislation. Thereupon, the matter was adjourned and Court requested the presence of learned Attorney General on 19.4.2002. On 19.4.2002, the matter was ordered to be listed in September, 2002. As noted above, on 11.9.2003, Act 45 of 2003 received Presidential assent and Section 6-A was inserted in the DSPE Act.

10. On 19.1.2004, Writ Petition (C) No.21/2004 was ordered to be listed along with Writ Petition (C) No.38/1997. On 23.1.2004, notice was issued in Writ Petition (C) No. 21/2004. In this writ petition,

the counter was filed by the Union on 7.4.2004 and rejoinder affidavit was filed by the petitioner.

11. We have heard Mr. Anil B. Divan, learned senior counsel and amicus curiae in Writ Petition (C) No.38/1997 and Mr. Prashant Bhushan, learned counsel for the petitioner in Writ Petition (C) No.21/2004. In one matter, Mr. L. Nageswara Rao, learned Additional Solicitor General appeared for Union of India while in the other, Mr. K.V. Viswanathan, learned Additional Solicitor General appeared on behalf of Union of India. We have heard both of them on behalf of the Union of India. We have also heard Mr. Gopal Sankaranarayanan, learned counsel for the intervenor.

Submissions of Mr. Anil B. Divan

12. Mr. Anil B. Divan, learned amicus curiae argues that Section 6- A is an impediment to the rule of law and violative of Article 14, which is part of the rule of law; that the impugned provision creates a privileged class and thereby subverts the normal investigative process and violates the fundamental right(s) under Article 14 of every citizen. He submits that if the impugned provision is replicated at the State level and provision of 'previous approval' by respective State Governments is required, then the rule of law would completely collapse in the whole of India and no high level corruption would be investigated or punished. He relies upon decision of this Court in Vineet Narain1. He also relies upon the decision in I.R. Coelho[2] in support of the proposition that Article 14 is a part of the rule of law and it is the duty of the judiciary to enforce the rule of law.

13. According to learned amicus curiae, Section 6-A directly presents an illegal impediment to the insulation of CBI and undermines the independence of CBI to hold a preliminary enquiry (PE) or investigation. Citing the judgments of this Court in Centre for Public Interest Litigation (2G Spectrum case)[3] and Manohar Lal Sharma[4] following Vineet Narain1, learned amicus curiae submits that trend of these judgments is to preserve the rule of law by insulating the CBI from executive influence which could derail and result in inaction in enforcing the criminal law against high level corruption. Learned amicus curiae highlighted that there was no requirement of previous approval as contained in the impugned provisions between 18.12.1997 (the date of Vineet Narain1 judgment striking down the Single Directive) and 11.9.2003 (when CVC Act came into force) except the period between 25.8.1998 and 27.10.1998 when the CVC Ordinance, 1998 was in force and till the deletions by CVC Amendment Ordinance, 1998. He referred to N.N. Vohra Committee report which paints a frightening picture of criminal-bureaucratic-political nexus – a network of high level corruption – and submitted that the impugned provision puts this nexus in a position to block inquiry and investigation by CBI by conferring the power of previous approval on the Central Government.

14. Mr. Anil B. Divan, learned amicus curiae wants us to take judicial notice of the fact that high level bureaucratic corruption goes hand in hand, on many occasions, with political corruption at the highest level. This very group of high ranking bureaucrats, whose misconduct and criminality, if any, requires to be first inquired into and thereafter investigated, can thwart, defeat and impair this exercise. In substance, the potential accused would decide whether or not their conduct should be inquired into. He argues that the essence of skillful and effective police investigation is by collection of evidence and material secretly, without leakage so that the potential accused is not forewarned

leading to destruction or tempering of evidence and witnesses. Such investigation is compromised by the impugned provision, viz., Section 6-A of the DSPE Act. The requirement of previous approval in the impugned provision would mean leakages as well as breach of confidentiality and would be wholly destructive of an efficient investigation. The provision, such as Section 6- A, offers an impregnable shield (except when there is a court monitored investigation) to the criminal-bureaucratic-political nexus. If the CBI is not even allowed to verify complaints by preliminary enquiry, how can the case move forward? In such a situation, the very commencement of enquiry / investigation is thwarted and delayed. Moreover, a preliminary enquiry is intended to ascertain whether a prima facie case for investigation is made out or not. If CBI is prevented from holding a preliminary enquiry, it will not be able to even gather relevant material for the purpose of obtaining previous approval.

15. Learned amicus curiae submits that for judging the validity of classification or reasonableness or arbitrariness of State action, the Court is entitled to take notice of conditions prevailing from time to time. He referred to certain portions of the N.N. Vohra Committee report, 2G Spectrum case3 and the facts of a case before Delhi High Court entitled 'Telecom Watchdog'[5] and the case of M. Gopalakrishnan, Chairman and Managing Director (CMD of Indian Bank). Learned amicus curiae also relied upon decisions of this Court in V.G. Row[6] and D.S. Nakara[7].

16. It is submitted by the learned amicus curiae that pervasive corruption adversely affects welfare and other activities and expenditures of the state. Consequently, the rights of Indian citizens not only under Article 14 but also under Article 21 are violated. In this regard, he has relied upon the observations made by this Court in Vineet Narain1, Ram Singh[8], Subramanian Swamy[9], R.A. Mehta[10], Balakrishna Dattatrya Kumbhar[11] and In re. Special Courts Bill, 1978[12].

17. Learned amicus curiae submits that Section 6-A confers on the Central Government unguided, unfettered and unbridled power and the provision is manifestly arbitrary, entirely perverse and patently unreasonable. He relies upon the decisions of this Court in Travancore Chemicals and Manufacturing Co.[13], Krishna Mohan (P) Ltd.[14], Canara Bank[15] and Nergesh Meerza[16].

18. It is vehemently contended by the learned amicus curiae that the classification as contained in Section 6-A creating a privileged class of the government officers of the level of Joint Secretary and above level and certain officials in public sector undertakings, etc. is directly destructive and runs counter to the whole object and reason of the PC Act, 1988 read with the DSPE Act and undermines the object of detecting and punishing high level corruption. In this regard, learned amicus curiae referred to protection given to Government officials under Section 197 of the Code of Criminal Procedure (Cr.P.C.) and under Section 19 of the PC Act, 1988. He argues that the well-settled two tests: (i) that classification must be founded on intelligible differentia and (ii) that differentia must have a rational relation with the object sought to be achieved by the legislation, are not satisfied by Section 6-A. A privileged class of Central Government employees has been created inasmuch as the protection offered to the category of the government officers of the level of Joint Secretary and above regarding previous approval does not extend to: (a) official / employees who are not employees of the Central Government, (b) employees of the Central Government below Joint Secretary level, (c) employees of Joint Secretary level and above in the states, (d) enquiry and

investigation of offences which are not covered by the PC Act, 1988, and (e) other individuals including ministers, legislators and private sector employees. Learned amicus curiae relies upon the decision of this Court in Vithal Rao[17].

Submissions of Mr. Prashant Bhushan for Centre for Public Interest Litigation (CPIL-petitioner)

19. Mr. Prashant Bhushan, learned counsel for the petitioner in the connected writ petition filed by Centre for Public Interest Litigation (CPIL) has adopted the arguments of the learned amicus curiae. He submits that Section 6-A makes criminal investigation against a certain class of public servants unworkable and it completely militates against the rule of law. He referred to the United Nations document entitled "United Nations Convention Against Corruption" and submitted that Section 6-A of the DSPE Act interdicts enquiry or investigation in respect of certain class of officers and puts direct hindrance in combating corruption and, therefore, the provision is violative of Article 14 of the Constitution.

Submissions of Mr. Gopal Sankaranarayanan (intervenor)

20. Mr. Gopal Sankaranarayanan, appearing on behalf of intervenor submits that Section 6-A of the DSPE Act breaches the basic feature of rule of law. He argues that the basic structure test can be applied to the statutes as well. By enactment of Section 6-A, the rule of law has suffered a two-fold violation: (i) resurrection of the single directive in the form of legislation without in any way removing the basis of the Vineet Narain1 judgment, and (ii) impediment of the due process (criminal investigation) by imposing a condition at the threshold. In this regard, he has relied upon decisions of this Court in State of Karnataka[18], L. Chandra Kumar[19], Kuldip Nayar[20], Madras Bar Association[21], K.T. Plantation (P) Ltd.[22], G.C. Kanungo[23], Indra Sawhney (2)[24], and I.R. Coelho2.

21. Mr. Gopal Sankaranarayanan, learned counsel for the intervenor, also submits that there is an unreasonable classification among policemen and among the accused and, in any case, the classification even if valid has no nexus with the object sought to be achieved by Section 6-A, which is apparently to protect the officers concerned. According to learned counsel, Section 6-A is also inconsistent with the Cr.P.C. In this regard, he refers to CBI Manual, Sections 19 and 22 of the PC Act, 1988 and Section 197 of Cr.P.C.

Submissions of Mr. L. Nageswara Rao, ASG.

22. Mr. L. Nageswara Rao, learned Additional Solicitor General stoutly defends Section 6-A. He submits that the rationale behind Section 6- A of the DSPE Act can be seen in the reply to the debate in Parliament on the Central Vigilance Commission Bill by the then Union Minister of Law and Justice, Mr. Arun Jaitley. The provision is defended on the ground that those who are in decision making positions, those who have to exercise discretion and those who have to take vital decisions could become target of frivolous complaints and need to be protected. Therefore, some screening mechanism must be put into place whereby serious complaints would be investigated and frivolous complaints can be thrown out. If such protection is not given to senior decision makers, anyone can

file a complaint and the CBI or the police can raid the houses of such senior officers. This may affect governance inasmuch as instead of tendering honest advice to political executives, the senior officers at the decision-making level would only give safe and non-committal advice. He argues that the object of Section 6-A is to provide screening mechanism to filter out frivolous or motivated investigation that could be initiated against senior officers to protect them from harassment and to enable them to take decision without fear. In this regard, the legal principles enunciated in K. Veeraswami[25] were strongly pressed into service by Mr. L. Nageswara Rao.

23. It is argued by the learned Additional Solicitor General that Section 6-A is not an absolute bar because it does not prohibit investigation against senior government servants as such. It only provides a filter or pre-check so that the Government can ensure that senior officers at decision-making level are not subjected to unwarranted harassment.

24. Emphasizing that the Central Government is committed to weeding out vice of corruption, learned Additional Solicitor General submits that requests for approval under Section 6-A are processed expeditiously after the Government of India had constituted a Group of Ministers to consider certain measures that could be taken by Government to tackle corruption and the Group of Ministers suggested the measures to ensure that the requests received from CBI under Section 6-A are examined on priority and with objectivity.

25. Mr. L. Nageswara Rao, learned Additional Solicitor General submits that arbitrariness and unreasonableness cannot by themselves be a ground to strike down legislation. With reference to the decision of this Court in E.P. Royappa[26] he argues that while proposing a new dimension of arbitrariness as an anti-thesis to equality in Article 14, the Court used arbitrariness to strike down administrative action and not as a ground to test legislations. He submits that in Maneka Gandhi[27] the Court has not held that arbitrariness by itself is a ground for striking down legislations under Article 14. Ajay Hasia[28], learned Additional Solicitor General contends, also does not make arbitrariness a ground to strike down legislation. Distinguishing Malpe Vishwanath Acharya[29], he submits that this Court used the classification test to hold legislation to be arbitrary and the provision of standard rent in Bombay Rent Control Act was struck down as having become unreasonable due to passage of time. Learned Additional Solicitor General also distinguished Mardia Chemicals Ltd[30]. He vehemently contends that Courts cannot strike down legislations for being arbitrary and unreasonable so as to substitute their own wisdom for that of the legislature.

26. Mr. L. Nageswara Rao submits that wisdom of legislature cannot be gone into for testing validity of a legislation and, apart from constitutional limitations, no law can be struck down on the ground that it is unreasonable or unjust. In this regard, he relies upon Kesavananda Bharati[31]. He also referred to In re. Special Courts Bill, 197812, which explained the principles enshrined in Article 14. In support of principle that legislations can be declared invalid or unconstitutional only on two grounds: (a) lack of legislative competence, and (b) violation of any fundamental rights or any provision of the Constitution, learned Additional Solicitor General relies upon Kuldip Nayar20. He also relies upon Ashoka Kumar Thakur[32] in support of the proposition that legislation cannot be challenged simply on the ground of unreasonableness as that by itself does not constitute a ground. He submits that a Constitution Bench in K.T. Plantation (P) Ltd.22 has held that plea of

unreasonableness, arbitrariness, proportionality, etc., always raises an element of subjectivity on which Court cannot strike down a statute or a statutory provision. Unless a constitutional infirmity is pointed out, a legislation cannot be struck down by just using the word 'arbitrary'. In this regard, he heavily relies upon the decisions of this Court in In re. Natural Resources Allocation[33], McDowell[34] and Rakesh Kohli[35]. The decision of the US Supreme Court in Heller[36] is also cited by the learned Additional Solicitor General in support of the proposition that Court should not sit as super legislature over the wisdom or desirability of legislative policy.

27. Mr. L. Nageswara Rao, learned Additional Solicitor General argues that rule of law cannot be a ground for invalidating legislations without reference to the Constitution. He submits that rule of law is not a concept above the Constitution. Relying upon Indira Nehru Gandhi[37], learned Additional Solicitor General argues that meaning and constituent elements of rule of law must be gathered from the enacting provisions of the Constitution; vesting discretionary powers in the Government is not contrary to the rule of law. Moreover, he submits that exceptions to the procedure in Cr.P.C. cannot be violative of Articles 14 and 21 and such exceptions cannot be termed as violating the rule of law. In this regard, learned Additional Solicitor General refers to Section 197 of Cr.P.C. and relies upon Matajog Dobey[38], wherein this Court upheld constitutional validity of Section 197 and held that the said provision was not violative of Article 14. He also referred to Section 187 of Cr.P.C., Section 6 of the Armed Forces (Special Provisions) Act, 1958 and Section 187-A of the Sea Customs Act and submitted that these provisions have been held to be constitutionally valid by this Court. Naga People's Movement of Human Rights[39] was cited by learned Additional Solicitor General wherein Section 6 of the Armed Forces (Special Provisions) Act, 1958 was held constitutional and Manhar Lal Bhogilal[40] was cited wherein Section 187-A of the Sea Customs Act was held valid. Learned Additional Solicitor General has also referred to Section 42 of the Food Safety and Standards Act, 2006, Section 50 of the Prevention of Terrorism Act, 2002, Section 12 of the Suppression of Unlawful Acts Against Safety Of Maritime Navigation And Fixed Platforms On Continental Shelf Act, 2002, Section 23 of the Maharashtra Control of Organised Crime Act, 1999, Section 45 of the Unlawful Activities (Prevention) Act, 1967, Section 20-A of the Terrorist and Disruptive Activities (Prevention) Act, 1987, Section 137 of the Customs Act, 1962, Section 11 of the Central Sales Tax Act, 1956, Section 7 of the Explosive Substances Act, 1908, Section 20 of the Prevention of Food Adulteration Act, 1954, Section 23 of Lokpal and Lokayuktas Act, 2013, Section 11 of Cotton Ginning and Pressing Factories Act, 1925, Section 12 of Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, Section 16 of Gujarat Electricity Supply Undertakings (Acquisition) Act, 1969, Section 24 of Karnataka Control of Organized Crimes Act, 2000 and Section 9 of Bihar Non-Government Educational Institution (Taking Over) Act, 1988 to demonstrate that there are large number of provisions where permission of the Government is required before taking cognizance or for institution of an offence.

28. Learned Additional Solicitor General submits that Section 6-A satisfies the test of reasonable classification. The public servants of the level of Joint Secretary and above take policy decisions and, therefore, there is an intelligible differentia. As they take policy decisions, there is a need to protect them from frivolous inquiries and investigation so that policy making does not suffer. Thus, there is rational nexus with the object sought to be achieved. In this regard, learned Additional Solicitor General has relied upon the decisions of this Court in Ram Krishna Dalmia[41], Union of India[42]

and Re: Special Courts Bill, 197812. He also referred to the proceedings of the Joint Parliamentary Committee, Law Minister's Speech, the Government of India (Transaction of Business) Rules and the Central Secretariat Manual of Procedure.

29. Mr. L. Nageswara Rao submits that conferment of unbridled / un- canalized power on the executive cannot be a ground for striking down legislation as being violative of Article 14. Mere possibility of abuse of power cannot invalidate a law. He cited the judgments of this Court in Re Special Courts Bill, 197812, N.B. Khare[43], Mafatlal Industries[44] and Sushil Kumar Sharma[45].

30. Learned Additional Solicitor General submits that conferment of power on high authority reduces the possibility of its abuse to minimum. In support of this submission, learned Additional Solicitor General relies upon the decision of this Court in Maneka Gandhi27, Matajog Dubey38, V.C. Shukla[46] and V.C.Shukla (IInd)[47]. He also submits that absence of guidelines can only make the exercise of power susceptible to challenge and not the legislation. In this regard, Pannalal Binjraj[48] and Jyoti Pershad[49] are cited by him.

Submissions of Mr. K.V. Viswanathan, ASG

31. Mr. K.V. Viswanathan, learned Additional Solicitor General submits that there is presumption of constitutionality and mutual respect inherent in doctrine of separation of powers. He relies upon Bihar Distillery Ltd.[50].

32. Mr. K.V. Viswanathan, learned Additional Solicitor General referred to Sections 7, 11 and 13 of the PC Act, 1988 in order to show that all these provisions relate to discharge of official functions. The officers above the Joint Secretary level are bestowed with crucial decision making responsibilities. Citing Kripalu Shankar[51] and the speech of the then Minister of Law and Justice, he submits that people in decision making process need to be given an environment to take decisions without any undue extraneous pressure. He relies upon P. Sirajuddin[52] to highlight the observations of this Court that lodging of FIR against a government official especially, one who occupies top position in a department, even if baseless, would do incalculable harm not only to the officer in particular, but to the department he belongs to, in general.

33. Mr. K.V. Viswanathan has highlighted that corruption has two aspects: (a) aspect related to decision making – abuse of position, pecuniary loss to the Government etc. and (b) aspect of illegal pecuniary gain – bribery etc. That abuse of position in order to come within the mischief of corruption must necessarily be dishonest so that it may be proved that the officer caused deliberate loss to the department. Mere violation of codal provisions, or ordinary norms of procedural behaviour does not amount to corruption. He cites decisions of this Court in S.P. Bhatnagar[53], Major S. K. Kale[54], C. Chenga Reddy[55] and Abdulla Mohammed Pagarkar[56].

34. Learned Additional Solicitor General submits that the State is the first victim of corruption and the executive is in the best position to adjudge whether it has been a victim of corruption. Section 6-A has been enacted to protect the decision making process of the executive from undue harassment and exercise of police powers by CBI. He cites the judgment of this Court in A.R.

Antulay[57].

35. Mr. K.V. Viswanathan has referred to other provisions under law providing for the aggrieved authority to take a decision whether the offence has been made out or not. In this regard, he has invited our attention to Section 195 of Cr.P.C. and the decision of this Court in Patel Laljibhai Somabhai[58]. He also referred to Section 340 of Cr.P.C. which allows the court to adjudge whether perjury was committed, and if it was, then whether it required prosecution. He relies upon the decision of this Court in Iqbal Singh Marwah[59].

36. Citing Manohar Lal Sharma4, learned Additional Solicitor General submits that even in a court monitored investigation, the concerned officer could approach the concerned court for an opportunity to be heard. Moreover, in Manohar Lal Sharma4, this court has noticed the office memorandum dated 26.09.2011 approving the recommendations made by the Group of Ministers which provides inter alia for the concerned authority to give reasons for granting/rejecting sanction under Section 6-A. He submits that when there is denial of sanction order under Section 6-A, such order of the Central Government could be challenged in a writ petition before a High Court. He says that United Nations recognizes such a protection as Section 6-A in Article 30 of the UN Convention against corruption.

Principles applicable to Article 14

37. Article 14 reads:

> "14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

38. The first part of Article 14, which was adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination of favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances12.

39. Article 14 of the Constitution incorporates concept of equality and equal protection of laws. The provisions of Article 14 have engaged the attention of this Court from time to time. The plethora of cases dealing with Article 14 has culled out principles applicable to aspects which commonly arise under this Article. Among those, may be mentioned, the decisions of this Court in Chiranjit Lal Chowdhuri[60], F.N. Balsara[61], Anwar Ali Sarkar[62], Kathi Raning Rawat[63], Lachmandas Kewalram Ahuja[64], Syed Qasim Razvi[65], Habeeb Mohamed[66], Kedar Nath Bajoria[67] and innovated to even associate the members of this Court to contribute their V.M. Syed Mohammad & Company[68]. The most of the above decisions were considered in Budhan Choudhry[69]. This Court exposited the ambit and scope of Article 14 in Budhan Choudhry69 as follows:

> "It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely,
>
> (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

40. In Ram Krishna Dalmia41, the Constitution Bench of five Judges further culled out the following principles enunciated in the above cases -

> "(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
>
> (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
>
> (c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;
>
> (d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
>
> (e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and
>
> (f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

41. In Ram Krishna Dalmia41, it was emphasized that the above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of laws.

42. Having culled out the above principles, the Constitution Bench in Ram Krishna Dalmia41, further observed that statute which may come up for consideration on the question of its validity under Article 14 of the Constitution may be placed in one or other of the following five classes:

> "(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law.
>
> (ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination.
>
> (iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law.

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification.

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, then in such a case the executive action but not the statute should be condemned as unconstitutional."

43. In Vithal Rao17, the five-Judge Constitution Bench had an occasion to consider the test of reasonableness under Article 14 of the Constitution. It noted that the State can make a reasonable classification for the purpose of legislation and that the classification in order to be reasonable must satisfy two tests: (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. The Court emphasized that in this regard object itself should be lawful and it cannot be discriminatory. If the object is to discriminate against one section of the minority, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

44. The constitutionality of Special Courts Bill, 1978 came up for consideration in re. Special Courts Bill, 197812 as the President of India made a reference to this Court under Article 143(1) of the Constitution for consideration of the question whether the "Special Courts Bill" or any of its provisions, if enacted would be constitutionally invalid. The seven Judge Constitution Bench dealt with the scope of Article 14 of the Constitution. Noticing the earlier decisions of this Court in Budhan Choudhry69, Ram Krishna Dalmia41, C.I. Emden[70], Kangsari Haldar[71], Jyoti Pershad49 and Ambica Mills Ltd.[72], in the majority judgment the then Chief Justice Y.V. Chandrachud, inter alia, exposited the following propositions relating to Article 14:

"(1) xxx xxx xxx (2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well- defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

(9) If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject- matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the Legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not

disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

(10) Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

(11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

(12) Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

(13) A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination."

45. In Nergesh Meerza16, the three-Judge Bench of this Court while dealing with constitutional validity of Regulation 46(i)(c) of Air India Employees' Service Regulations (referred to as 'A.I. Regulations') held that certain conditions mentioned in the Regulations may not be violative of Article 14 on the ground of discrimination but if it is proved that the conditions laid down are entirely unreasonable and absolutely arbitrary, then the provisions will have to be struck down. With regard to due process clause in the American Constitution and Article 14 of our Constitution, this Court referred to Anwar Ali Sarkar62, and observed that the due process clause in the American Constitution could not apply to our Constitution. The Court also referred to A.S. Krishna[73] wherein Venkatarama Ayyar, J. observed: "The law would thus appear to be based on the due process clause, and it is extremely doubtful whether it can have application under our Constitution."

46. In D.S. Nakara7, the Constitution Bench of this Court had an occasion to consider the scope, content and meaning of Article 14. The Court referred to earlier decisions of this Court and in para 15 (pages 317-

318), the Court observed:

> "Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

47. In E.P. Royappa26, it has been held by this Court that the basic principle which informs both Articles 14 and 16 are equality and inhibition against discrimination. This Court observed in para 85 (page 38 of the report) as under:

> "....From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies;

one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment." Court's approach

48. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognized by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognized and these are (i) discrimination, based on an impermissible or invalid classification and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders – if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is.

Consideration

49. Several objections have been raised against this provision in the context of Article 14. First, we shall consider the challenge against the validity of classification which Section 6-A(1) makes and the lack of relationship between the basis of that classification and the object which it seeks to achieve.

50. The impugned provision, viz., Section 6-A came to be enacted after the decision of this Court in Vineet Narain1. It is important to bear in mind that the three-Judge Bench of this Court in Vineet Narain1 was directly concerned with constitutional validity of the Single Directive No. 4.7(3), which to the extent relevant for the present purposes, reads:

> "4.7(3)(i) In regard to any person who is or has been a decision- making level officer (Joint Secretary or equivalent or above in the Central Government or such officers as are or have been on deputation to a Public Sector Undertaking; officers of the Reserve Bank of India of the level equivalent to Joint Secretary or above in the Central Government, Executive Directors and above of the SEBI and Chairman & Managing Director and Executive Directors and such of the bank officers who are one level below the Board of Nationalised Banks), there should be prior sanction of the Secretary of the Ministry/Department concerned before SPE takes up any enquiry (PE or RC), including ordering search in respect of them. Without such sanction, no enquiry shall be initiated by the SPE.
>
> (ii) xxx xxx xxx
> (iii) xxx xxx xxx
> (iv) xxx xxx xxx."
>
> 51. The above provision contained in Single Directive 4.7(3)(i) was sought to be justified by the learned Attorney General in Vineet Narain1 on the ground that the officers at the decision making level need the protection against malicious or vexatious investigations in respect of honest decisions taken by them. Learned Attorney General in Vineet Narain1 submitted that such a structure to regulate the grant of sanction by a high authority together with a time-frame to avoid any delay was sufficient to make the procedure reasonable and to provide for an objective decision being taken for the grant of sanction within the specified time. It was urged that refusal of sanction would enable judicial review of that decision in case of any grievance.

52. This Court in Vineet Narain1 took notice of the report submitted by IRC, which recorded:

> "In the past several years, there has been progressive increase in allegations of corruption involving public servants. Understandably, cases of this nature have attracted heightened media and public attention. A general impression appears to have gained ground that the Central investigating agencies concerned are subject to extraneous pressures and have been indulging in dilatory tactics in not bringing the guilty to book. The decisions of higher courts to directly monitor investigations in certain cases have added to the aforesaid belief."

53. The Court then discussed the earlier decisions of this Court in J.A.C. Saldanha[74] and K. Veeraswami25 and also the provisions of the DSPE Act and held that: "Powers of investigation which are governed by the statutory provisions and they cannot be curtailed by any executive instruction." Having said that, this Court stated that the law did not classify offenders differently for

treatment thereunder, including investigation of offences and prosecution for offences, according to their status in life. Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. The Single Directive is applicable only to certain persons above the specified level who are described as decision- making officers. Negativing that any distinction can be made for them for the purpose of investigation of an offence of which they are accused, this Court in paragraphs 45 and 46 held as under:

> "45. Obviously, where the accusation of corruption is based on direct evidence and it does not require any inference to be drawn dependent on the decision-making process, there is no rational basis to classify them differently. In other words, if the accusation be of bribery which is supported by direct evidence of acceptance of illegal gratification by them, including trap cases, it is obvious that no other factor is relevant and the level or status of the offender is irrelevant. It is for this reason that it was conceded that such cases, i.e., of bribery, including trap cases, are outside the scope of the Single Directive. After some debate at the Bar, no serious attempt was made by the learned Attorney General to support inclusion within the Single Directive of cases in which the offender is alleged to be in possession of disproportionate assets. It is clear that the accusation of possession of disproportionate assets by a person is also based on direct evidence and no factor pertaining to the expertise of decision-making is involved therein. We have, therefore, no doubt that the Single Directive cannot include within its ambit cases of possession of disproportionate assets by the offender. The question now is only with regard to cases other than those of bribery, including trap cases, and of possession of disproportionate assets being covered by the Single Directive.
>
> 46. There may be other cases where the accusation cannot be supported by direct evidence and is a matter of inference of corrupt motive for the decision, with nothing to prove directly any illegal gain to the decision-maker. Those are cases in which the inference drawn is that the decision must have been made for a corrupt motive because the decision could not have been reached otherwise by an officer at that level in the hierarchy. This is, therefore, an area where the opinion of persons with requisite expertise in decision-making of that kind is relevant and, may be even decisive in reaching the conclusion whether the allegation requires any investigation to be made. In view of the fact that the CBI or the police force does not have the expertise within its fold for the formation of the requisite opinion in such cases, the need for the inclusion of such a mechanism comprising of experts in the field as a part of the infrastructure of the CBI is obvious, to decide whether the accusation made discloses grounds for a reasonable suspicion of the commission of an offence and it requires investigation. In the absence of any such mechanism within the infrastructure of the CBI, comprising of experts in the field who can evaluate the material for the decision to be made, introduction therein of a body of experts having expertise of the kind of business which requires the decision to be made, can be appreciated. But then, the final opinion is to be of the CBI with the aid of that advice

and not that of anyone else. It would be more appropriate to have such a body within the infrastructure of the CBI itself."

54. This Court, accordingly, declared Single Directive 4.7(3)(i) being invalid.

55. Section 6-A replicates Single Directive 4.7(3)(i), which was struck down by this Court. The only change is that executive instruction is replaced by the legislation. Now, insofar as the vice that was pointed out by this Court that powers of investigation which are governed by the statutory provisions under the DSPE Act and they cannot be estopped or curtailed by any executive instruction issued under Section 4(1) of that Act is concerned, it has been remedied. But the question remains, and that is what has been raised in these matters, whether Section 6-A meets the touchstone of Article 14 of the Constitution.

56. Can classification be made creating a class of the government officers of the level of Joint Secretary and above level and certain officials in public sector undertakings for the purpose of inquiry/investigation into an offence alleged to have been committed under the PC Act, 1988? Or, to put it differently, can classification be made on the basis of the status/position of the public servant for the purpose of inquiry/investigation into the allegation of graft which amounts to an offence under the PC Act, 1988? Can the Legislature lay down different principles for investigation/inquiry into the allegations of corruption for the public servants who hold a particular position? Is such classification founded on sound differentia? To answer these questions, we should eschew the doctrinaire approach. Rather, we should test the validity of impugned classification by broad considerations having regard to the legislative policy relating to prevention of corruption enacted in the PC Act, 1988 and the powers of inquiry/investigation under the DSPE Act.

57. The Constitution permits the State to determine, by the process of classification, what should be regarded as a class for purposes of legislation and in relation to law enacted on a particular subject. There is bound to be some degree of inequality when there is segregation of one class from the other. However, such segregation must be rational and not artificial or evasive. In other words, the classification must not only be based on some qualities or characteristics, which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial.

58. It seems to us that classification which is made in Section 6-A on the basis of status in the Government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations

amounting to an offence under the PC Act, 1988.

59. Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences. In the words of Mathew, J. in Ambica Mills Ltd.72, "The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify..... A reasonable classification is one which includes all who are similarly situated and none who are not". Mathew, J., while explaining the meaning of the words, 'similarly situated' stated that we must look beyond the classification to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good. The classification made in Section 6-A neither eliminates public mischief nor achieves some positive public good. On the other hand, it advances public mischief and protects the crime-doer. The provision thwarts an independent, unhampered, unbiased, efficient and fearless inquiry / investigation to track down the corrupt public servants.

60. The essence of police investigation is skilful inquiry and collection of material and evidence in a manner by which the potential culpable individuals are not forewarned. The previous approval from the Government necessarily required under Section 6-A would result in indirectly putting to notice the officers to be investigated before commencement of investigation. Moreover, if the CBI is not even allowed to verify complaints by preliminary enquiry, how can the case move forward? A preliminary enquiry is intended to ascertain whether a prima facie case for investigation is made out or not. If CBI is prevented from holding a preliminary enquiry, at the very threshold, a fetter is put to enable the CBI to gather relevant material. As a matter of fact, the CBI is not able to collect the material even to move the Government for the purpose of obtaining previous approval from the Central Government.

61. It is important to bear in mind that as per the CBI Manual, (Paragraph 9.10) a preliminary enquiry relating to allegations of bribery and corruption should be limited to the scrutiny of records and interrogation of bare minimum persons which being necessary to judge whether there is any substance in the allegations which are being enquired into and whether the case is worth pursuing further or not. Even this exercise of scrutiny of records and gathering relevant information to find out whether the case is worth pursuing further or not is not possible. In the criminal justice system, the inquiry and investigation into an offence is the domain of the police. The very power of CBI to enquire and investigate into the allegations of bribery and corruption against a certain class of public servants and officials in public undertakings is subverted and impinged by Section 6-A.

62. The justification for having such classification is founded principally on the statement made by the then Minister of Law and Justice that if no protection is to be given to the officers, who take the decisions and make discretions, then anybody can file a complaint and an inspector of the CBI or the police can raid their houses any moment. If this elementary protection is not given to the senior decision makers, they would not tender honest advice to political executives. Such senior officers then may play safe and give non-committal advice affecting the governance. The justification for

classification in Section 6-A is also put forth on the basis of the report of the Joint Parliamentary Committee to which CVC Bill, 1999 was referred particularly at the question relating to Clause 27 regarding amendment of the DSPE Act (the provision which is now Section 6-A). The Joint Parliamentary Committee, in this regard noted as follows:

> "The Committee note that many witnesses who appeared before the Committee had expressed the need to protect the bonafide actions at the decision making level. At present there is no provision in the Bill for seeking prior approval of the Commission or the head of the Department etc. for registering a case against a person of the decision making level. As such, no protection is available to the persons at the decision making level. In this regard, the Committee note that earlier, the prior approval of the Government was required in the form of a 'Single Directive' which was set aside by the Supreme Court. The Committee feel that such a protection should be restored in the same format which was there earlier and desire that the power of giving prior approval for taking action against a senior officer of the decision making level should be vested with the Central Government by making appropriate provision in the Act. The Committee, therefore, recommend that Clause 27 of the Bill accordingly amended so as to insert a new section 6A to the DSPE Act, 1946, to this effect."

63. As a matter of fact, the justification for Section 6-A which has been put forth before us on behalf of the Central Government was the justification for Single Directive 4.7(3)(i) in Vineet Narain1 as well. However, the Court was unable to persuade itself with the same. In Vineet Narain1 in respect of Single Directive 4.7(3)(i), the Court said that every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. We are in agreement with the above observation in Vineet Narain1, which, in our opinion, equally applies to Section 6-A. In Vineet Narain1, this Court did not accept the argument that the Single Directive is applicable only to certain class of officers above the specified level who are decision making officers and a distinction can be made for them for the purpose of investigation of an offence of which they are accused. We are also clearly of the view that no distinction can be made for certain class of officers specified in Section 6-A who are described as decision making officers for the purpose of inquiry/investigation into an offence under the PC Act, 1988. There is no rational basis to classify the two sets of public servants differently on the ground that one set of officers is decision making officers and not the other set of officers. If there is an accusation of bribery, graft, illegal gratification or criminal misconduct against a public servant, then we fail to understand as to how the status of offender is of any relevance. Where there are allegations against a public servant which amount to an offence under the PC Act, 1988, no factor pertaining to expertise of decision making is involved. Yet, Section 6-A makes a distinction. It is this vice which renders Section 6-A violative of Article 14. Moreover, the result of the impugned legislation is that the very group of persons, namely, high ranking bureaucrats whose misdeeds and illegalities may have to be inquired into, would decide whether the CBI should even start an inquiry or investigation against them or not. There will be no confidentiality and insulation of the investigating agency from political and bureaucratic control and influence because the approval is to be taken from the Central Government which would involve leaks and disclosures at every stage.

64. It is true that sub-Section (2) of Section 6-A has taken care of observations of this Court in Vineet Narain1 insofar as trap cases are concerned. It also takes care of the infirmity pointed out by this Court that in the absence of any statutory requirement of prior permission or sanction for investigation, it cannot be imposed as a condition precedent for initiation of investigation, but, Section 6-A continues to suffer from the other two infirmities which this Court noted concerning Single Directive, viz.; (a) where inference is to be drawn that the decision must have been for corrupt motive and direct evidence is not there, the expertise to take decision whether to proceed or not in such cases should be with the CBI itself and not with the Central Government and (b) in any event the final decision to commence investigation into the offences must be of the CBI with the internal aid and advice and not of anybody else. Section 6-A also suffers from the vice of classifying offenders differently for treatment thereunder for inquiry and investigation of offences, according to their status in life. Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone.

65. Way back in 1993, the Central Government constituted a Committee under the Chairmanship of the former Home Secretary (Shri N.N. Vohra) to take stock of all available information about the activities of the crime syndicates/mafia organizations, which had developed links with and were being permitted by Government functionaries and political personalities. In para 14.3 of the report, the Committee has observed that linkages of crime syndicate with senior Government functionaries or political leaders in the States or at the Centre could have a destabilizing effect on the functioning of the Government. The report paints a frightening picture of criminal-bureaucratic-political nexus – a network of high level corruption. The impugned provision puts this nexus in a position to block inquiry and investigation by CBI by conferring the power of previous approval on the Central Government.

66. A class of Central Government employees has been created in Section 6-A inasmuch as it offers protection to a class of the Government officers of the level of Joint Secretary and above to whom DSPE Act applies but no such protection is available to the officers of the same level, who are posted in various States. This position is accepted by CBI. Mr. Sidharth Luthra, learned Additional Solicitor General placed before us the following questions and answers to clarify the legal position:

> "Question No.1 : Whether an officer of the public sector bank / public sector undertaking of Central Govt. in the rank of Joint Secretary and above while posting in the State and alleged to have committed an offence under P.C. Act, can be investigated by State Police or CBI?
>
> Answer No.1 : Yes, both State Police and CBI have jurisdiction under P.C. Act over such officers. The jurisdiction of CBI is, however, subject to Section 6(A) of DSPE Act and consent of the State Govt. u/s 6 of the DSPE Act, 1946.
>
> Question No.2 : Whether an employee of All India Service i.e. IPS, IAS and Indian Forest Services while posted in the State Govt. at the JS level and above can claim protection under 6(A)?

Answer No.2 : No, as the very wording of Section 6(A) mentions only the employees of the Central Govt.

Question No.3 : Whether in a Union Territory, the State Police and the CBI will have concurrent jurisdiction over employees of Central Govt. for PC Act offences?

Answer No.3 : Yes, both the State UT Police and CBI have jurisdiction over Central Govt. employees under P.C. Act. Section 6(A) of DSPE Act is operative for CBI for officers of the level of JS and above.

Question No.4 : What will be the position regarding employees of the Central Govt. in the Allied / Central Civil Services such as Indian Revenue Service, Postal Service etc. Who are working in the territory of the State but not posted in the State?

Answer No.4 ; Yes, both State Police and CBI have jurisdiction under P.C. Act over such officers. The jurisdiction of CBI is, however, subject to Section 6(A) of DSPE Act and consent of the State Govt. u/s 6 of the DSPE Act, 1946."

67. Can it be said that the classification is based on intelligible differentia when one set of bureaucrats of Joint Secretary level and above who are working with the Central Government are offered protection under Section 6-A while the same level of officers who are working in the States do not get protection though both classes of these officers are accused of an offence under PC Act, 1988 and inquiry / investigation into such allegations is to be carried out. Our answer is in the negative. The provision in Section 6-A, thus, impedes tracking down the corrupt senior bureaucrats as without previous approval of the Central Government, the CBI cannot even hold preliminary inquiry much less an investigation into the allegations. The protection in Section 6-A has propensity of shielding the corrupt. The object of Section 6-A, that senior public servants of the level of Joint Secretary and above who take policy decision must not be put to any harassment, side-tracks the fundamental objective of the PC Act, 1988 to deal with corruption and act against senior public servants. The CBI is not able to proceed even to collect the material to unearth prima facie substance into the merits of allegations. Thus, the object of Section 6-A itself is discriminatory. That being the position, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

68. The signature tune in Vineet Narain1 is, "However high you may be, the law is above you." We reiterate the same. Section 6-A offends this signature tune and effectively Article 14.

69. Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory. Every public servant against whom there is reasonable suspicion of commission of crime or there are allegations of an offence under the PC Act, 1988 has to be treated equally and similarly under the

law. Any distinction made between them on the basis of their status or position in service for the purposes of inquiry / investigation is nothing but an artificial one and offends Article 14.

70. Office of public power cannot be the workshop of personal gain. The probity in public life is of great importance. How can two public servants against whom there are allegations of corruption or graft or bribe- taking or criminal misconduct under the PC Act, 1988 can be made to be treated differently because one happens to be a junior officer and the other, a senior decision maker.

71. Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision making power does not segregate corrupt officers into two classes as they are common crime doers and have to be tracked down by the same process of inquiry and investigation.

72. It is argued on behalf of the Central Government that now office memorandum (dated 26.09.2011) approving the recommendations made by the Group of Ministers has been issued which provides inter alia for quick consideration of the request by the CBI for approval and also to give reasons for granting / rejecting sanction under Section 6-A. It is submitted that delay in disposal of the requests by the CBI is now taken care of and if there is denial of sanction order under Section 6-A, such order of the Central Government can be challenged in a writ petition before the High Court. Such protection, it is submitted, is even recognized by United Nations in Article 30 of the UN Convention against corruption. This aspect has been considered by this Court in Manohar Lal Sharma4 to which we shall refer appropriately a little later.

73. The PC Act, 1988 is a special statute and its preamble shows that it has been enacted to consolidate and amend the law relating to the prevention of corruption and for the matters connected therewith. It is intended to make the corruption laws more effective by widening their coverage and by strengthening the provisions. It came to be enacted because Prevention of Corruption Act, 1947 as amended from time to time was inadequate to deal with the offences of corruption effectively. The new Act now seeks to provide for speedy trial of offences punishable under the Act in public interest as the legislature had become aware of corruption amongst the public servants.

74. Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society but also harmful to the national economy and national interest, as the persons occupying high posts in the Government by misusing their power due to corruption can cause considerable damage to the national economy, national interest and image of the country[75].

75. The PC Act, 1988 has also widened the scope of the definition of the expression ‘public servant’ and incorporated offences under Sections 161 to 165A of the Indian Penal Code (IPC). By Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014), further amendments have been made therein. The penalties relating to the offences under Sections 7, 8, 9, 12, 13 and 14 have been enhanced by these

amendments.

75.1 Section 7 makes taking gratification by a public servant other than legal remuneration in respect of an official act as an offence and provides penalties for such offence. The expressions 'gratification' and 'legal remuneration' have been explained in clauses (b) and (c) of the Explanation appended to Section 7. Taking gratification by corrupt or illegal means to influence public servant is an offence under Section 8 while under Section 9, taking gratification for exercise of personal influence with a public servant is an offence. Section 10 provides for punishment for abetment by public servant of offences defined in Section 8 or 9. Section 11 provides for an offence where a public servant obtains valuable thing without consideration from person concerned in proceeding or business transacted by such public servant. The punishment for abetment of offences defined in Section 7 or 11 is provided in Section 12.

75.2 Section 13 is a provision relating to criminal misconduct by a public servant. It reads as follows:

> "13. Criminal misconduct by a public servant.- (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 7; 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,-
>
> (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; 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.

Explanation.-For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine." 75.3 Section 17 authorizes only certain level of police officers to investigate the offences under the PC Act, 1988. An investigation into such offences by any other police officer can be carried out only after having proper authorization from the competent court or competent authority as provided therein.

75.4 Section 19 mandates that no Court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant except with the previous sanction as provided in that section. Section 19 does not permit any court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 of the PC Act, 1988 without previous sanction from the competent authority where the offence has been committed by a public servant who is holding the office and by misusing or abusing the powers of the office, he has committed the offence. Section 19, thus, provides to every public servant, irrespective of his position in service, protection from frivolous and malicious prosecution.

76. The menace of corruption has been noticed by this Court in Ram Singh8. The court has observed:

"Corruption, at the initial stages, was considered confined to the bureaucracy which had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large amounts of government surplus stores were required to be disposed of by the public servants. As a consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them a wide discretion with the result of luring them to the glittering shine of wealth and property."

77. This Court in Shobha Suresh Jumani[76], took judicial notice of the fact that because of the mad race of becoming rich and acquiring properties overnight or because of the ostentatious or vulgar

show of wealth by a few or because of change of environment in the society by adoption of materialistic approach, there is cancerous growth of corruption which has affected the moral standards of the people and all forms of governmental administration.

78. The PC Act, 1988 enacts the legislative policy to meet corruption cases with a very strong hand. All public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences.[77]

79. The two-Judge Bench of this Court observed in Sanjiv Kumar[78] that the case before them had brought to the fore the rampant corruption in the corridors of politics and bureaucracy.

80. In a comparatively recent decision of this Court in Subramanian Swamy9, this court was concerned with the question whether a complaint can be filed by a citizen for prosecuting the public servant for an offence under the PC Act, 1988 and whether the authority competent to sanction prosecution of a public servant for offences under that Act is required to take appropriate decision within the time specified in Clause (I)(15) of the directions contained in paragraph 58 of the judgment of this Court in Vineet Narain1 and the guidelines issued by the Central Government, Department of Personnel and Training and the Central Vigilance Commission. In the supplementing judgment, A.K. Ganguly, J. while concurring with the main judgment delivered by G.S. Singhvi, J. observed:

> "Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our Preambular vision.

Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption……." Dealing with Section 19 of the PC Act, 1988 which bars a court from taking cognizance of the cases of corruption against a public servant under Sections 7, 10, 11, 13 and 15 of the PC Act, 1988, unless the Central or the State Government, as the case may be, has accorded sanction observed that this provision virtually imposes fetters on private citizens and also on prosecutors from approaching court against corrupt public servants. Public servants are treated as a special class of persons enjoying the said protection so that they can perform their duties without fear and favour and without threats of malicious prosecution but the protection against malicious prosecution which is extended in public interest cannot become a shield to protect corrupt officials.

81. In Balakrishna Dattatrya Kumbhar11, this Court observed that corruption was not only a punishable offence but also, "undermines human rights, indirectly violating them, and systematic corruption, is a human rights' violation in itself, as it leads to systematic economic crimes".

82. In R.A. Mehta10, the two-Judge Bench of this Court made the following observations about corruption in the society:

> "Corruption in a society is required to be detected and eradicated at the earliest as it shakes "the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society". Liberty cannot last long unless the State is able to eradicate corruption from public life. Corruption is a bigger threat than external threat to the civil society as it corrodes the vitals of our polity and society. Corruption is instrumental in not proper implementation and enforcement of policies adopted by the Government. Thus, it is not merely a fringe issue but a subject-matter of grave concern and requires to be decisively dealt with."

83. Now we turn to the recent decision of this Court in Manohar Lal Sharma4. A three-Judge Bench of this Court in that case leaving the question of constitutional validity of Section 6-A untouched and touching upon the question whether the approval of the Central Government is necessary under Section 6-A in a matter where the inquiry/investigation into the crime under the PC Act, 1988 is being monitored by the Court, speaking through one of us (R.M. Lodha, J., as he then was) on the inquiry into allegations of corruption observed that for successful working of the democracy it was essential that public revenues are not defrauded and public servants do not indulge in bribery and corruption and if they do, the allegations of corruption are to be inquired into fairly, properly and promptly and those who are guilty are brought to book. It was observed:

> "Abuse of public office for private gain has grown in scope and scale and hit the nation badly. Corruption reduces revenue; it slows down economic activity and holds back economic growth. The biggest loss that may occur to the nation due to corruption is loss of confidence in the democracy and weakening of the rule of law."
> 83.1 Madan B. Lokur, J. in his supplementing judgment dealt with Office Memorandum dated 26th September, 2011. The relevant extract of the Office Memorandum has been quoted in paragraph 74 of the judgment, which reads:
>
> "The undersigned is directed to state that the provision of section 6-A of the DSPE Act, 1946 provides for safeguarding senior public officials against undue and vexatious harassment by the investigating agency. It had been observed that the requests being made by the investigating agency under the said provision were not being accorded due priority and the examination of such proposals at times lacked objectivity. The matter was under consideration of the Group of Ministers constituted to consider measures that can be taken by the Government to tackle Corruption.
>
> The Government has accepted the following recommendation of the Group of Ministers, as reflected in para 25 of the First Report of the Group of Ministers, as reflected in para 25 of the first report of the Group of Ministers:-
>
> (a). The competent authority shall decide the matter within three months of receipt of requests accompanied with relevant documents.

(b). The competent authority will give a speaking order, giving reasons for its decision.

(c) In the event a decision is taken to refuse permission, the reasons thereof shall be put up to the next higher authority for information within one week of taking the decision.

(d) Since Section 6-A specifically covers officers of the Central Government, above the rank of Joint Secretary, the competent authority in these cases will be the Minister in charge in the Government of India. In such cases, intimation of refusal to grant permission along with reasons thereof, will have to be put up to the Prime Minister.

The above decision of the Government is brought to the notice of all Ministries/Departments for due adherence and strict compliance." 83.2 The above office memorandum has not been found to be efficacious in Manohar Lal Sharma4 as it does not effectively prevent possible misuse of law. There is no guarantee that the time schedule prescribed in the office memorandum shall be strictly followed. In any case, what can CBI do if the time schedule provided in the office memorandum is not maintained. Even otherwise, office memorandum is not of much help in adjudging the constitutional validity of Section 6-A.

84. Learned amicus curiae highlighted that there was no requirement of previous approval as contained in the impugned provisions between 18.12.1997 (the date of Vineet Narain1 judgment striking down the Single Directive) and 11.9.2003 (when Act 45 of 2003 came into force) except the period between 25.8.1998 and 27.10.1998 when the CVC Ordinance, 1998 was in force and till the deletions by the CVC Amendment Ordinance, 1998. It is not the stand of the Central Government before us nor any material is placed on record by it to suggest even remotely that during the period when the Single Directive was not in operation or until Section 6-A was brought on the statute book, CBI harassed any senior government officer or investigated frivolous and vexatious complaints. The high-pitched argument in justification of Section 6-A that senior government officers may be unduly and unnecessarily harassed on frivolous and vexatious complaints, therefore, does not hold water.

85. Criminal justice system mandates that any investigation into the crime should be fair, in accordance with law and should not be tainted. It is equally important that interested or influential persons are not able to misdirect or highjack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law. These are important facets of rule of law. Breach of rule of law, in our opinion, amounts to negation of equality under Article 14. Section 6-A fails in the context of these facets of Article 14. The argument of Mr. L. Nageswara Rao that rule of law is not above law and cannot be a ground for invalidating legislations overlooks the well settled position that rule of law is a facet of equality under Article 14 and breach of rule of law amounts to breach of equality under Article 14 and, therefore, breach of rule of law may be a ground for invalidating the legislation being in negation of Article 14.

86. Section 156 of the Cr.P.C. enables any officer in charge of a police station to investigate a cognizable offence. Insofar as non- cognizable offence is concerned, a police officer by virtue of Section 155 of Cr.P.C. can investigate it after obtaining appropriate order from the Magistrate having power to try such case or commit the case for trial regardless of the status of the officer concerned. The scheme of Section 155 and Section 156 Cr.P.C. indicates that the local police may investigate a senior Government officer without previous approval of the Central Government. However, CBI cannot do so in view of Section 6-A. This anomaly in fact occurred in Centre for PIL[79]. That was a matter in which investigations were conducted by the local police in respect of senior Government official without any previous approval and a challan filed in the court of Special Judge dealing with offences under the PC Act, 1988. Dealing with such anomaly in Centre for PIL79, Madan B. Lokur, J. in Manohar Lal Sharma4 observed, "It is difficult to understand the logic behind such a dichotomy unless it is assumed that frivolous and vexatious complaints are made only when the CBI is the investigating agency and that it is only CBI that is capable of harassing or victimizing a senior Government official while the local police of the State Government does not entertain frivolous and vexatious complaints and is not capable of harassing or victimizing a senior government official. No such assumption can be made." The above clearly indicates that Section 6-A has brought an anomalous situation and the very object of the provision to give protection to certain officers (Joint Secretary and above) in the Central Government has been rendered discriminatory and violative of Article 14.

87. It is pertinent to notice that in Subramanian Swamy9 this Court noted that as per supplementary written submissions tendered by the learned Attorney General, 126 cases were awaiting sanction for prosecution from the Central Government for periods ranging from one year to few months. Moreover, in more than one-third of the cases of requests for prosecution in corruption cases against public servants, sanctions have not been accorded. Whether an enactment providing for special procedure for a certain class of persons is or is not discriminatory and violative of Article 14 must be determined in its own context. A practical assessment of the operation of the law in particular circumstances is necessary and the court can take judicial notice of existing conditions from time to time. The scenario noted in Subramanian Swamy9 and the facts in Telecom Watchdog5

- to illustrate the few – show that differentia in Section 6-A is directly destructive and runs counter to the object and reason of the PC Act, 1988. It also undermines the object of detecting and punishing high level corruption.

88. Mr. K.V. Viswanathan, learned Additional Solicitor General has strongly relied upon the observations made by this Court in P. Sirajuddin52 that if baseless allegations are made against senior Government officials, it would cause incalculable harm not only to the officer in particular but to the department that he belonged to, in general. He, particularly, referred to the following observations in P. Sirajuddin52 (para 17, page 601 of the report):

> ".....Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case 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 like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general."

89. In our opinion, P. Sirajuddin52 also emphasizes equality before law. This decision, in our opinion, cannot be read as laying down the proposition that the distinction can be made for the purposes of inquiry / investigation of an offence of which public servants are accused based on their status.

90. It is pertinent to notice that in Manohar Lal Sharma4, the learned Attorney General made a concession to the effect that in the event of CBI conducting an inquiry, as opposed to an investigation into the conduct of a senior government officer, no previous approval of the Central Government is required since the inquiry does not have the same adverse connotation that an investigation has. To that extent, Section 6-A, as it is, does not survive. Insofar as investigation is concerned, an investigation into a crime may have some adverse impact but where there are allegations of an offence under the PC Act, 1988 against a public servant, whether high or low, whether decision-maker or not, an independent investigation into such allegations is of utmost importance and unearthing the truth is the goal. The aim and object of investigation is ultimately to search for truth and any law that impedes that object may not stand the test of Article 14.

91. In the referral order, the contention of learned Solicitor General has been noted with regard to inconsistency in the two judgments of this Court in Vineet Narain1 and K. Veeraswami25.

92. In K. Veeraswami25, this Court in para 28 (pages 693-694 of the report) observed:

> "28. ... Section 6 is primarily concerned to see that prosecution for the specified offences shall not commence without the sanction of a competent authority. That does not mean that the Act was intended to condone the offence of bribery and corruption by public servant. Nor it was meant to afford protection to public servant from criminal prosecution for such offences. It is only to protect the honest public servants from frivolous and vexatious prosecution. The competent authority has to examine independently and impartially the material on record to form his own opinion whether the offence alleged is frivolous or vexatious. The competent authority may refuse sanction for prosecution if the offence alleged has no material to support or it is frivolous or intended to harass the honest officer. But he cannot refuse to grant sanction if the material collected has made out the commission of the offence alleged against the public servant. Indeed he is duty-bound to grant sanction if the material collected lend credence to the offence complained of. There seems to be another reason for taking away the discretion of the investigating agency to prosecute or not to prosecute a public servant. When a public servant is prosecuted for an offence which challenges his honesty and integrity, the issue in such a case is not only between the prosecutor and the offender, but the State is also vitally concerned with it as it affects the morale of public servants and also the administrative interest of the State. The discretion to prosecute public servant is

> taken away from the prosecuting agency and is vested in the authority which is competent to remove the public servant. The authority competent to remove the public servant would be in a better position than the prosecuting agency to assess the material collected in a dispassionate and reasonable manner and determine whether sanction for prosecution of a public servant deserves to be granted or not."

93. In Vineet Narain1, the above observations in K. Veeraswami25 have been considered in paras 34 and 35 of the report (pages 259-260) and the three-Judge Bench held that the position of Judges of High Courts and the Supreme Court, who are constitutional functionaries, is distinct, and the independence of judiciary, keeping it free from any extraneous influence, including that from executive, is the rationale of the decision in K. Veeraswami25. The Court went on to say: "…. In strict terms the Prevention of Corruption Act, 1946 could not be applied to the superior Judges and, therefore, while bringing those Judges within the purview of the Act yet maintaining the independence of judiciary, this guideline was issued as a direction by the Court. The feature of independence of judiciary has no application to the officers covered by the Single Directive. The need for independence of judiciary from the executive influence does not arise in the case of officers belonging to the executive….."

94. The observations in K. Veeraswami25, as noted above, were found to be confined to the Judges of the High Courts and the Supreme Court, who are constitutional functionaries, and their position being distinct and different from the Government officers. In our opinion, the Constitution Bench decision in K. Veeraswami25 has no application to the senior public servants specified in Section 6-A. We have, therefore, no hesitation in holding that the conclusion reached in para 34 in Vineet Narain1, in no manner, can be said to be inconsistent with the findings recorded in para 28 of K. Veeraswami25.

95. Various provisions under different statutes were referred to by Mr. L. Nageswara Rao where permission of the government is required before taking cognizance or for institution of an offence. Section 197 of Cr.P.C. was also referred to, which provides for protection to Judges and public servants from prosecution except with the previous sanction by the competent authority. It may be immediately stated that there is no similarity between the impugned provision in Section 6-A of the DSPE Act and Section 197 of Cr.P.C. Moreover, where challenge is laid to the constitutionality of a legislation on the bedrock or touchstone of classification, it has to be determined in each case by applying well- settled two tests: (i) that classification is founded on intelligible differentia and (ii) that differentia has a rational relation with the object sought to be achieved by the legislation. Each case has to be examined independently in the context of Article 14 and not by applying any general rule.

96. A feeble attempt was made by Mr. K.V. Viswanathan, learned Additional Solicitor General that Section 6-A must at least be saved for the purposes of Section 13(1)(d)(ii) and (iii) of the PC Act, 1988. In our opinion, Section 6-A does not satisfy the well-settled tests in the context of Article 14 and is not capable of severance for the purposes of Section 13(1)(d)(ii) and (iii).

97. Having considered the impugned provision contained in Section 6- A and for the reasons indicated above, we do not think that it is necessary to consider the other objections challenging the impugned provision in the context of Article 14.

98. In view of our foregoing discussion, we hold that Section 6- A(1), which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the PC Act, 1988 where such allegation relates to (a) the employees of the Central Government of the level of Joint Secretary and above and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the provision contained in Section 26 (c) of the Act 45 of 2003 to that extent is also declared invalid.

99. Writ petitions are allowed as above.

.....CJI.

(R.M. Lodha) .....J.

(A.K. Patnaik) .....J.

(Sudhansu Jyoti Mukhopadhaya) .....J.

(Dipak Misra) .....J. (Fakkir Mohamed Ibrahim Kalifulla) NEW DELHI MAY 06, 2014.

---

[1] Vineet Narain & Ors. v. Union of India & Anr.; [(1998) 1 SCC 226] [2] I.R. Coelho v. State of Tamil Nadu; [(2007) 2 SCC 1]. [3] Centre for Public Interest Litigation & Ors. v. Union of India & Ors.; [(2012) 3 SCC 1].

[4] Manohar Lal Sharma v. Principal Secretary & Ors.; [(2014) 2 SCC 532].

[5] Telecom Watchdog v. Union of India; (Delhi High Court W.P.(C) No. 9338/2009).

[6] State of Madras v. V.G. Row; [1952 SCR 597].
[7] D.S. Nakara and Ors. v. Union of India; [(1983) 1 SCC 305].
[8] State of M.P. and Ors. v. Ram Singh; [(2000) 5 SCC 88].
[9] Subramanian Swamy v. Manmohan Singh and Anr.; [(2012) 3 SCC 64].

[10] State of Gujarat and Anr. v. Justice R.A. Mehta(Retd.) and Ors.; [(2013) 3 SCC 1].

[11] State of Maharashtra v. Balakrishna Dattatrya Kumbhar; [(2012) 12 SCC 384].

[12] Special Courts Bill, 1978, In re,; [(1979) 1 SCC 380]. [13] State of Kerala and Ors. v. Travancore Chemicals and Manufacturing Co. and Anr.; [(1998) 8 SCC 188].

[14] Krishna Mohan (P) Ltd. v. Municipal Corporation of Delhi and Ors.; [(2003) 7 SCC 151].

[15] District Registrar and Collector, Hyderabad and Anr. v. Canara Bank and Ors.; [(2005) 1 SCC 496].

[16] Air India v. Nergesh Meerza and Ors.; [(1981) 4 SCC 335]. [17] Nagpur Improvement Trust and Anr. v. Vithal Rao and Ors.; [(1973) 1 SCC 500].

[18] State of Karnataka v. Union of India and Anr.; [(1977) 4 SCC 608]. [19] L. Chandra Kumar v. Union of India and Ors.; [(1997) 3 SCC 261]. [20] Kuldip Nayar and Ors. v. Union of India and Ors.; [(2006) 7 SCC 1]. [21] Union of India v. R. Gandhi, President, Madras Bar Association; [(2010) 11 SCC 1].

[22] K.T. Plantation (P) Ltd. & Anr. v. State of Karnataka; [(2011) 9 SCC 1].

[23] G.C. Kanungo v. State of Orissa; [(1995) 5 SCC 96]. [24] Indra Sawhney (2) v. Union of India and Ors.; [(2000) 1 SCC 168]. [25] K. Veeraswami v. Union of India and Ors.; [(1991) 3 SCC 655]. [26] E.P. Royappa v. State of T.N. and Anr.; [(1974) 4 SCC 3] [27] Maneka Gandhi v. Union of India and Anr.; [(1978) 1 SCC 248]. [28] Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors.; [(1981) 1 SCC 722].

[29] Malpe Vishwanath Acharya and Ors. v. State of Maharashtra and Anr.; [(1998) 2 SCC 1] [30] Mardia Chemicals Ltd. and Ors. v. Union of India and Ors.; [(2004) 4 SCC 311].

[31] His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr.; [(1973) 4 SCC 225].

[32] Ashoka Kumar Thakur v. Union of India and Ors.; [(2008) 6 SCC 1]. [33] Natural Resources Allocation, In re, Special Reference No. 1 of 2012; [(2012) 10 SCC 1].

[34] State of A.P. and Ors. v. McDowell & Co. and Ors.; [(1996) 3 SCC 709].

[35] State of M.P. v. Rakesh Kohli and Anr.; [(2012) 6 SCC 312]. [36] Heller v. Doe; [509 U.S. 312 (1993)].

[37] Indira Nehru Gandhi v. Raj Narain [1975 (Suppl.) SCC 1] [38] Matajog Dobey v. H. C. Bhari; [(1955) 2 SCR 925] [39] Naga People's Movement of Human Rights v. Union of India;[(1998) 2 SCC 109] [40] Manhar Lal Bhogilal Shah v. State of Maharashtra; [(1971) 2 SCC 119] [41] Ram Krishna Dalmia v. Justice S.R. Tendolkar & Ors.; [1959 SCR 279] [42] Union of India & Ors. v. No.664950 IM Havildar/ Clerk SC Bagari; [(1999) 3 SCC 709] [43] N.B.Khare (Dr.) v. State of Delhi;[1950 SCR 519] [44] Mafatlal Industries Ltd. & Ors. v. Union of India & Ors.; [(1997) 5 SCC 536] [45] Sushil

Kumar Sharma v. Union of India & Ors.; [(2005) 6 SCC 281] [46] V.C. Shukla v. State through CBI; [1980 Supp SCC 92] [47] V.C. Shukla v. State (Delhi Administration); [1980 Supp SCC 249] [48] Pannalal Binjraj & Anr. etc., etc. v. Union of India & Ors.; [1957 SCR 233] [49] Jyoti Pershad v. Administrator for the Union Territory of Delhi & Ors. [(1962) 2 SCR 125] [50] State of Bihar & Ors. v. Bihar Distillery Ltd. & Ors.;[(1997) 2 SCC 453] [51] State of Bihar & Ors. v. Kripalu Shankar & Ors.; [(1987) 3 SCC 34] [52] P. Sirajuddin, etc. v. State of Madras, etc.; [(1970) 1 SCC 595] [53] S.P. Bhatnagar v. State of Maharashtra; [(1979) 1 SCC 535] [54] Major S. K. Kale v. State of Maharashtra; [(1977) 2 SCC 394] [55] C. Chenga Reddy & Ors. v. State of A.P.; [(1996) 10 SCC 193] [56] Abdulla Mohammed Pagarkar v. State (UT of Goa, Daman & Diu); [(1980) 3 SCC 110] [57] R.S. Nayak v. A.R. Antulay; [(1984) 2 SCC 183] [58] Patel Laljibhai Somabhai v. State of Gujarat [(1971) 2 SCC 376] [59] Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.; [(2005) 4 SCC 370] [60] Chiranjit Lal Chowdhuri v. Union of India & Ors.; [(1950) SCR 869] [61] State of Bombay & Anr. v. F. N. Balsara; [(1951) SCR 682] [62] State of West Bengal v. Anwar Ali Sarkar[(1952) SCR 284] [63] Kathi Raning Rawat v. State of Saurashtra [1952 SCR 435] [64] Lachmandas Kewalram Ahuja v. State of Bombay [1952 SCR 710] [65] Syed Qasim Razvi v. State of Hyderabad & Ors. [(1953) 4 SCR 589) [66] Habeeb Mohamed v. State of Hyderabad [1953 SCR 661] [67] Kedar Nath Bajoria v. State of West Bengal [(1954) SCR 30] [68] V.M. Syed Mohammad & Company v. State of Andhra Pradesh [(1954) SCR 1117] [69] Budhan Choudhry & Ors. v. State of Bihar [(1955) 1 SCR 1045] [70] C.I. Emden v. State of U.P.; [(1960) 2 SCR 592] [71] Kangsari Haldar & Anr. v. State of West Bengal; [(1960) 2 SCR 646] [72] State of Gujarat & Anr. v. Shri Ambica Mills Ltd., Ahmedabad & Anr.; [(1974) 3 SCR 760] [73] A.S. Krishna v. State of Madras; [1957 S.C.R. 399] [74] State of Bihar & Anr. v. J.A.C. Saldanha & Ors.; [(1980) 1 SCC 554] [75] J. Jayalalitha v. Union of India & Anr.; [(1999) 5 SCC 138] [76] Shobha Suresh Jumani v. Appellate Tribunal, forfeited Property and Anr; [(2001) 5 SCC 755] [77] State of A.P. v. V. Vasudeva Rao [(2004) 9 SCC 319] [78] Sanjiv Kumar v. State of Haryana and Ors. [(2005) 5 SCC 517] [79] Centre for PIL and Anr. v. Union of India and Anr.; [(2011) 4 SCC 1]