Supreme Court Of India

Writ Petition (Criminal) No. 340-343 Of 1993

Judgment Date:

18-12-1997

Vineet Narain

Vs

Union Of India

Bench :

{ HON'BLE CHIEF JUSTICE MR. J.S. VERMAHON'BLE MR. JUSTICE S.P. BHARUCHAHON'BLE MR. JUSTICE S.C. SEN }

Citation :

AIR 1998 SC 889 ; 1997 (7) SCALE 656 ; (1998) 1 SCC 226 ; JT 1997 (10) SC 247 ;

Judgment

J.S. Verma, CJI.

1. 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 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.

2. We must at the outset place on record our great appreciation of the assistance rendered by the amicus curiae, Shri Anil B. Divan and the lawyers assisting him, namely, Shri Abani Kumar Sahu, Shri Anil Kumar Panda, Shri Mukul Mudgal, Shri Anil Nauriya and also Ms. Latha Krishnamurthy. We also place on record equal appreciation of the law officers and the team which has assisted them in these proceedings. At the commencement of the proceedings, the then Solicitor General Shri Dipankar P. Gupta appeared for the Union of India and the government agencies. Later after Shri Dipankar P. Gupta demitted office, the Attorney General Shri Ashok H. Desai appeared in this case throughout. The law officers and their team of assistants, namely, Shri K.N. Bhat, Additional Solicitor General, Shri Pallav Shishodia, Shri P. Parmeswaran and Ms. Anuradha Bindra, rendered very able assistance throughout and discharged the duty expected of law officers. All of them, at great personal inconvenience and expense, rose to extraordinary heights in keeping with the true traditions of the Bar. In essence, everyone of them discharged the role of amicus curiae, without, at any stage, adopting the adversarial stance. If it has been possible to achieve some success in these proceedings to improve and innovate the procedure and fructify new ideas for betterment of the polity, it is only because of the positive response of the Bar and the assistance rendered by it. We must also record our appreciation of the officers of the CBI and the Revenue Department who actively participated in these

proceedings and showed a definite improvement in their perception of the rule of law as the case progressed; and their ability to perform improved once they were assured of protection in the honest discharge of their duties.

3. This experience revealed to us the need for the insulation of these agencies from any extraneous influence to ensure the continuance of the good work they have commenced. It is this need which has impelled us to examine the structure of these agencies and to consider the necessary steps which would provide permanent insulation to the agencies against extraneous influences to enable them to discharge their duties in the manner required for proper implementation of the rule of law. Permanent measures are necessary to avoid the need of every matter being brought to the court for taking ad hoc measures to achieve the desired results. This is the occasion for us to deal with the structure, constitution and the permanent measures necessary for having a fair and impartial agency. The faith and commitment to the rule of law exhibited by all concerned in these proceedings is the surest guarantee of the survival of democracy of which rule of law is the bedrock. The basic postulate of the concept of equality: `Be you ever so high, the law is above you', has governed all steps taken by us in these proceedings.

Facts

4. A brief narration of the facts of this case is necessary: On 25th March, 1991, one Ashfak Hussain Lone, alleged to be an official of the terrorist organisation Hizbul Mujahideen, was arrested in Delhi. Consequent upon his interrogation, raids were conducted by the Central Bureau of Investigation (CBI) on the premises of Surender Kumar Jain, his brothers, relations and businesses. Along with Indian and foreign currency, the CBI seized two diaries and two note books from the premises. They contained detailed accounts of vast payments made to persons identified only by initials. The initials corresponded to the initials of various high ranking politicians, in power and out of power, and of high ranking bureaucrats. Nothing having been done in the matter of investigating the Jains or the contents of their diaries, the present writ petitions were filed on 4th October, 1993, in the public interest under Article 32 of the Constitution of India.

5. The gist of the allegations in the writ petitions is that Government agencies like the CBI and the revenue authorities had failed to perform their duties and legal obligations inasmuch as they had failed to investigate matters arising out of the seizure of the "Jain Diaries"; that the apprehension of terrorists had led to the discovery of financial support to them by clandestine and illegal means using tainted funds obtained through `havala' transactions; that this had also disclosed a nexus between politicians, bureaucrats and criminals, who were recipients of money from unlawful sources, given for unlawful consideration; that the CBI and other Government agencies had failed to investigate the matter, take it to its logical conclusion and prosecute all persons who were found to have committed an offence; that this was done with a view to protect the persons involved, who were very influential and powerful; that the matter disclosed a nexus between crime and corruption at high places in public life and it posed a serious threat to the integrity, security and economy of the nation; that probity in public life, the rule of law and the preservation of democracy required that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against every person involved, irrespective of where he was placed in the political hierarchy. The writ petitions prayed, inter alia, for the following reliefs :

"(a) that the above said offences disclosed by the facts mentioned in the petition be directed to be investigated in accordance with law;

(b) that this Hon'ble Court may be pleased to appoint officers of the police or others in whose integrity, independence and competence this Hon'ble Court has confidence for conducting and/or supervising the said investigation;

(c) that suitable directions be given by this Hon'ble Court and orders issued to ensure that the culprits are dealt with according to law;

(f) that directions be given so that such evil actions on the part of the investigating agencies and their political superiors are not repeated in future."

6. It will be seen that the reliefs sought in the writ petitions fall into two broad classes. The first class relates to investigations in the matter of the "Jain diaries". The second class [prayer (f)] relates to the

manner in which investigations of offences of a similar nature that may occur hereafter should be conducted.

Procedure adopted

7. We have taken the view that, given the political personalities of the people to be investigated in the "Jain diaries" case and the time already lost in commencing the investigations, it was advantageous not to hear the matter through and issue a writ of mandamus, leaving it to the authorities to comply with it, but to keep the matter pending while the investigations were being carried on, ensuring that this was done by monitoring them from time to time and issuing orders in this behalf. Our reasoned orders are dated 18.4.1995, 16.1.1996 [1996(2) Scale (SP) 42], 30.1.1996 [1996(2) SCC 199], 22.2.1996 [1996(2) Scale (SP) 84], 1.3.1996 [1997 (4) SCC 778], 13.3.1996 [1996(4) Scale (SP) 3], 1.5.1996 [1996(4) Scale (SP) 56], 26.7.1996 [1996(6) Scale (SP) 24], 9.7.1997 [1997 (5) Scale 254]. Orders in similar matters, being the orders dated 12.2.1996 [1996(3) Scale (SP) 35], 2.4.1996, 26.4.1996 [1996(4) Scale (SP) 71], 26.7.1996 [1996(6) Scale (SP) 23] and 7.10.1996 [1996(6) SCC 354] in Writ Petition (Civil No. 640 of 1995 - Anukul Chandra Pradhan v. Union of India and others - and orders dated 24.2.1997 and 18.3.1997 in Writ Petition (Civil) No. 38 of 1997 - Dr. Subramaniam Swamy v. Director, CBI & Ors., are also relevant.

8. The sum and substance of these orders is that the CBI and other Governmental agencies had not carried out their public duty to investigate the offences disclosed; that none stands above the law so that an alleged offence by him is not required to be investigated; that we would monitor the investigations, in the sense that we would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made it clear that the task of the monitoring court would end the moment a charge sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive; this was done to eliminate any impression of bias or lack of fairness or objectively and to maintain the credibility of the investigations. In short, the procedure adopted was of `continuing mandamus'.

9. Even after this matter was brought to the court complaining of the inertia of CBI and the other agencies to investigate into the offences because of the alleged involvement of several persons holding high offices in the executive, for quite some time the disinclination of the agencies to proceed with the investigation was apparent. The accusation, if true, revealed a nexus between high ranking politicians and bureaucrats who were alleged to have been funded by a source linked with the source funding the terrorists. In view of the funding also through foreign currency, some undesirable foreign elements appeared to be connected. This revealed a grave situation posing a serious threat even to the unity and integrity of the nation. The serious threat posed to the Indian polity could not be underscored. The obvious need for an expeditious and thorough probe which had already been delayed for several years could not but be countenanced. The continuing inertia of the agencies to even commence a proper investigation could not be tolerated any longer. In view of the persistence of that situation, it became necessary as the proceedings progressed to make some orders which would activate the CBI and the other agencies to at least commence a fruitful investigation. Merely issuance of a mandamus directing the agencies to perform their task would be futile and, therefore, it was decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of investigation so that monitoring by the court could ensure continuance of the investigation. It was, therefore, decided to direct the CBI and other agencies to complete the investigation expeditiously, keeping the court informed from time to time of the progress of the investigation so that the court retained siesin of the matter till the investigation was completed and the chargesheets were filed in the competent court for being dealt with, thereafter, in accordance with law.

10. The first order to this effect was made on 5.12.1994 when the CBI Director was required to personally supervise the investigations carried on by the CBI as the overall incharge and to report to the court the progress made from time to time. The true scope of the matter was indicated in an order dated 30th January, 1996 [reported in 1996(2) SCC 199] as under:

"The true scope of this writ petition has been indicated during the earlier hearings. At this stage, when some charge sheets have been filed in the Special Court and there is considerable publicity in the media regarding this matter, with some speculation about its true scope, it is appropriate to make this order to form a part of the record.

The gist of the allegations in the writ petition are that Government agencies, like the CBI and the revenue authorities have failed to perform their duties and legal obligations inasmuch as they have failed to properly invgestigate matters arising out of the seizure of the so called "Jain Diaries" in certain raids conducted by the CBI. It is alleged that the apprehending of certain terrorists led to the discovery of financial support to them by clandestine and illegal means, by use of tainted funds obtained through `havala' transactions; that this also disclosed a nexus between several important politicians, bureaucrats and criminals, who are all recipients of money from unlawful sources given for unlawful considerations; that the CBI and other Government agencies have failed to fully investigate into the matter and take it to the logical end point of the trail and to prosecute all persons who have committed any crime; that this is being done with a view to protect the persons involved, who are very influential and powerful in the present set up; that the matter discloses a definite nexus between crime and corruption in public life at high places in the country which poses a serious threat to the integrity, security and economy of the nation; that probity in public life, to prevent erosion of the rule of law and the preservation of democracy in the country, requires that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against each and every person involved, irrespective of the height at which he is placed in the power set up.

The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all Government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law : "Be you ever so high, the law is above you". Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the Government agencies.

In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law.

In case of persons against whom a prima facie case is made out and a charge sheet is filed in the competent court, it is that court which will then deal with that case on merits, in accordance with law.

However, if in respect of any such person the final report after full investigation is that no prima facie case is made out to proceed further, so that the case must be closed against him, that report must be promptly submitted to this Court for its satisfaction that the concerned authorities have not failed to perform their legal obligations and have reasonably come to such conclusion. No such report having been submitted by the CBI or any other agency till now in this Court, action on such a report by this Court would be considered, if and when that occasion arises. We also direct that no settlement should be arrived at nor any offence compounded by any authority without prior leave of this Court.

We may add that on account of the great public interest involved in this matter, the CBI and other Government agencies must expedite their action to complete the task and prevent pendency of this matter beyond the period necessary. It is needless to observe that the results achieved so far do not match the available time and opportunity for a full investigation ever since the matter came to light. It is of utmost national significance that no further time is lost in completion of the task."

11. Relevant portions of other significant orders dated 1.3.1996 [reported in 1997(4) SCC 778] and 9.7.1997 [reported in 1997(5) Scale 254] read as under :

Order dated 01.03.1996:

"... ... ...

V. Criminal Misc. Petition Nos. 1153-56/1996 :

We have heard Shri Anil Diwan and the learned Solicitor General. Insofar as the larger relief of suitable guidelines is sought therein, that matter is deferred from consideration at the appropriate later stage of these proceedings. As for the interim relief claimed in the application, it is sufficient for us to direct as stated hereafter.

To eliminate any impression of bias and avoid erosion of credibility of the investigations being made by the C.B.I. and any reasonable impression of lack of fairness and objectivity therein, it is directed that the C.B.I. would not take any instructions from, report to, or furnish any particulars thereof to any authority personally interested in or likely to be affected by the outcome of the investigations into any accusation. This direction applies even in relation to any authority which exercises administrative control over the C.B.I. by virtue of the office he holds, without any exception. We may add that this also accords with what the learned Solicitor General has very fairly submitted before us about the mode of functioning of the C.B.I. in this matter.

We also place on record the further statement made by the learned Solicitor General on instructions from the C.B.I. Director that neither the C.B.I. Director nor any of his officers has been reporting to any authority about any particulars relating to these investigations. No further direction in this behalf is necessary at this stage."

Order dated 09.07.1997:

"The question pertaining to interference with or shifting of any of the officer in any of the investigative teams of the C.B.I. or any other connected investigative agency such as the Enforcement Directorate in the several matters under investigation by them which are being monitored by this Court and some of the High Courts, is under consideration by this Court in this matter which is being heard by a 3-Judge Bench and for this reason the same question even though raised in some other pending matters in this Court is not being considered therein. It is, therefore, inappropriate that the same question or any question connected with it in any manner be entertained or dealt with by any other court including any High Court in any of the matters before it. It has become necessary to say so in view of the fact that we are informed that the same question in different forms is being raised in some other courts including High Courts by different persons. The question being comprehensively dealt with by this 3 Judge Bench in this matter by this Court, we make it clear that no other court including any High Court will entertain or deal with the same in any direct or indirect manner. Such a course is essential in public interest....."

12. It is significant that the machinery of investigation started moving as a result of these orders and after investigation of the allegations made against several persons on the basis of the contents of the Jain Diaries, chargesheets were filed in the competent court in the first instance against 14 persons, as reported to the court on 22.2.1996. Chargesheets against many other persons were filed in the competent court thereafter as reported later from time to time. In all, 34 chargesheets against 54 persons have been filed on this basis. Thus, as indicated earlier, the purpose of these proceedings to the extent of the complaint of inertia of the investigating agencies came to an end with the filing of these chargesheets, since the merits of the accusation against each individual has, thereafter, to be considered and dealt with by the competent court at the trial, in accordance with law. Trial in the competent court is now a separate proceeding.

13. After the commencement of these proceedings, some other matters of a similar nature came to this Court in which the inaction of the investigating agencies to investigate into some serious offences was alleged. Two such significant matters are Writ Petition (Civil) No. 640 of 1995 - Anukul Chandra Pradhan v. Union of India and others - and Writ Petition (Civil) No. 38 of 1997 - Dr. Subramaniam Swamy v. Director, CBI & Ors. These cases revealed a serious situation eroding the rule of law, where the accusation was against persons holding high offices and wielding power. Relevant portions of some significant orders made in the above two cases read as under :-

Anukul Chandra Pradhan

Order dated 12.02.1996 [reported in 1996(3) Scale (SP) 35]:

"We do not consider it appropriate to permit any intervention in this matter. Shri Anil Diwan has been requested by us to appear as Amicus Curiae in this matter. He has kindly agreed to do so. It is open to anyone who so desires, to assist Shri Anil Diwan and to make available to him whatever material he chooses to rely on in public interest to enable Shri Diwan to effectively and properly discharge functions as Amicus Curiae. Except for this mode of assistance to the learned Amicus Curiae, we do not permit any person either to be impleaded as party or to appear as an intervenor. In our opinion, this is necessary for expeditious disposal of the matter and to avoid the focus on the crux of the matter getting diffused in the present case by the appearance of many persons acting independently in the garb of public interest....."

Order dated 02.04.1996

"... ... ...Learned S.G. as well as Shri Anil Diwan, learned counsel, are heard. The Secretary, Revenue Shri Sivaraman, the C.B.I. Director - Shri K. Vijay Rama Rao and the Commissioner of Police - Shri Nikhil Kumar are also present. We direct that from now each of these three officers would be overall incharge of the investigations which are being carried on by their respective departments pertaining to the matters within the scope of this Writ Petition. Learned S.G. on instructions prayed for deferring the further hearing to enable the above officers to report the progress made in the investigations by these agencies on the next date."

Order dated 07.10.1996 [reported in 1996(6) SCC 354]:

"... ... ...In accordance with the directions so given, it has been reported to us that chargesheets have been filed by the C.B.I. in two cases and the Delhi Police in one case which they were investigating. These cases are :

1) St. Kitts' Forgery Case.

(Chargesheet filed by C.B.I.)

2) Lakhubhai Pathak Cheating case.

(Chargesheet filed by C.B.I.)

3) Rajendra Jain case

(Chargesheet filed by Delhi Police)

In view of the fact that chargesheet has been filed under Section 173 Criminal Procedure Code in each of the above three cases in the competent court, it is that court which is now to deal with the case on merits, in accordance with law. Any direction considered necessary for further investigation, if any, or to proceed against any other person who also appears to have committed any offence in that transaction, is within the domain of the concerned court according to the procedure prescribed by law. The purpose of this proceeding is to command performance of the duty under law to properly investigate into the accusation of commission of the crime and to file a chargesheet in the competent court, if a prima facie case is made out. This purpose has been served in the above three cases, in respect of which no further action in this proceeding is called for.

Accordingly, this proceeding has come to an end, in so far as it relates to the above three criminal cases. For the remaining part, it is to continue till the end result prescribed by law is achieved. The concerned court in which the chargesheet has been filed has to proceed entirely in accordance with law without the slightest impression that there is any parallel proceeding in respect of the same matter pending in this court.

We may also observe that the concerned court dealing with the above matters has to bear in mind that utmost expedition in the trial and its early conclusion is necessary for the ends of justice and credibility of the judicial process. Unless prevented by any dilatory tactics of the accused, all trials of this kind involving public men should be concluded most expeditiously, preferably within three months of commencement of the trial. This is also the requirement of speedy trial read into Article 21.

A note of caution may be appropriate. No occasion

should arise for an impression that the publicity attaching to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial. This requirement, undoubtedly has to be kept in view during the entire trial. It is reiterated that any observation made by this Court for the purpose of the proceedings pending here has no bearing on the merits of the accusation, and is not to influence the trial in any manner. Care must be taken to ensure that the credibility of the judicial process is not undermined in any manner.

This proceeding is to continue in respect of the remaining matters only which are incomplete.

... ...“

Dr. Subramaniam Swamy

Order dated 24.02.1997:

“... ... ...It is also made clear to the petitioner that the petition having been entertained as a public interest litigation in view of the public interest involved, the locus of the petitioner is confined only to assisting the court through amicus curiae appointed by the court and that the petitioner has no independent or additional right in the conduct or hearing of the proceedings hereafter.

We request Shri Anil B. Divan, Sr. Advocate to appear as amicus curiae in this case.....“

Order dated 18.03.1997:

“... ... ...In accordance with the practice followed by the Court in other similar pending matters, we also direct that any person wishing to bring any material or point before this Court for consideration in this behalf may do so by furnishing the same to Shri Anil B. Divan, the learned amicus curiae, who would take the necessary steps in accordance with the need and relevance thereof, to place it before this Court in this proceeding.“

In-camera proceedings

14. During the monitoring of the investigations, the Solicitor General/Attorney General, from time to time, reported the progress made during the course of investigation, in order to satisfy us that the agencies were not continuing to drag their feet and the “continuing mandamus“ was having the effect of making the agencies perform their statutory function. The procedure adopted by us was merely to hear what they had to report or the CBI Director and the Revenue Secretary had to tell us to be satisfied that the earlier inaction ws not persisting. We maintained this stance throughout. We also ensured that no observation of any kind was made by us nor was any response given which may be construed as our opinion about the merits of the case or the accusation against any accused. We also did not identify or name any accused during performance of this task. At the very outset, the then Solicitor General Shri Dipankar P. Gupta requested that a part of the proceedings be held `in camera' to enable him to state certain facts and, if necessary, place before us material, the secrecy of which was required to be maintained for integrity of the investigation and also to avoid any prejudice to the concerned accused. In these circumstances, such a procedure was adopted only to the extent necessary for this purpose, in the interest of justice, and that is how a part of some hearings was held in camera. This innovation in the procedure was made, on request, to reconcile the interest of justice with that of the accused.

15. It is settled that the requirement of a public hearing in a court of law for a fair trial is subject to the need of proceedings being held in camera to the extent necessary in public interest and to avoid prejudice to the accused. We consider it appropriate to mention these facts in view of the nature of these proceedings wherein innovations in procedure were required to be made from time to time to sub-serve the public interest, avoid any prejudice to the accused and to advance the cause of justice. The medium of “continuing mandamus“, was a new tool forged because of the peculiar needs of this matter.

16. Inertia was the common rule whenever the alleged offender was a powerful person. Thus, it became necessary to take measures to ensure permanency in the remedial effect to prevent reversion to inertia of the agencies in such matters.

17. Everyone against whom there is reasonable suspicion of committing a crime has to be treated

equally and similarly under the law and probity in public life is of great significance. The constitution and working of the investigating agencies revealed the lacuna of its inability to perform whenever powerful persons were involved. For this reason, a close examination of the constitution of these agencies and their control assumes significance. No doubt the overall control of the agencies and responsibility of their functioning has to be in the executive, but then a scheme giving the needed insulation from extraneous influences even of the controlling executive, is imperative. It is this exercise which became necessary in these proceedings for the future. This is the surviving scope of these writ petitions.

Point for consideration

18. As a result of the debate in these proceedings and the experience gained thereby the Union of India came to realise that an in-depth study of the selection of personnel of these agencies, particularly the CBI and the Enforcement Directorate of the Revenue Department, and their functioning is necessary. The Government of India, sharing this perception, by an Order No. S/7937/SS(ISP)/93 dated 9th July, 1993 constituted a Committee headed by the then Home Secretary Shri N.N. Vohra to take stock of all available information about the activities of crime syndicates/mafia organisations which had developed links with, and were being protected by, government functionaries and political personalities. It was stated that on the basis of recommendations of the Committee the Government shall determine the need, if any, to establish a special organisation/agency to regularly collect information and pursue cases against such elements. The Committee was headed by the then Home Secretary Shri N.N. Vohra and had as its Members - Secretary (Revenue), Director, Intelligence Bureau, Director, CBI, Joint Secretary (PP), Ministry of Home Affairs. The Committee gave its recommendations dated 5.10.1993. It has made scathing comments and has painted a dismal picture of the existing scene. It has said that the network of the mafia is virtually running a parallel government pushing the State apparatus into irrelevance. The Committee recommended the creation of a nodal agency under the Ministry of Home Affairs for the collation and compilation of all information received from Intelligence Bureau (IB), Central Bureau of Investigation (CBI) and Research and Analysis Wing (R&AW) and the various agencies under the Department of Revenue. The report is significant for the dismal picture of the existing scenario which discloses a powerful nexus between the bureaucracy and politicians with the mafia gangs, smugglers and the underworld. The report of the Vohra Committee is the opinion of some top bureaucrats and it confirmed our worst suspicious focusing the need of improving the procedure for constitution and monitoring the functioning of intelligence agencies. There is, thus, no doubt that this exercise cannot be delayed further.

19. The same perception of the Government of India led it to constitute another Committee by Order No. 226/2/97-AVD-II dated 8th September, 1997 comprising of Shri B.G. Deshmukh, former Cabinet Secretary, Shri N.N. Vohra, Principal Secretary to the Prime Minister and Shri S.V. Giri, Central Vigilance Commissioner, called the Independent Review Committee (IRC). The order reads as under :

"WHEREAS the Government of India is of the opinion that it is necessary to set up a Committee for going into the matters mentioned hereinafter;

2. NOW, THEREFORE, a Committee of the following is hereby set up :-

(i) Shri B.G. Deshmukh,

former Cabinet Secretary

(ii) Shri N.N. Vohra,

Principal Secretary to the Prime Minister

(iii) Shri S.V. Giri

Central Vigilance Commissioner

Shri N.N. Vohra shall act as Convenor.

3. The terms of reference of the Committee are as under :-

(i) To monitor the functioning of the nodal agency established by the Ministry of Home Affairs in pursuance of the recommendations of the Vohra Committee Report.

(ii) To examine the present structure and working of the Central Bureau of Investigation (CBI), the

Enforcement Directorate and related agencies to suggest the changes, if any, needed to ensure :

[a] that offences alleged to have been committed by any person, particularly those in positions of high authority, are registered, investigated and prosecuted fairly and expeditiously, ensuring against, inter alia, external pressure, arbitrary withdrawals or transfers of personnel etc., and ensuring adequate protection to the concerned functionaries to effectively discharge their duties and responsibilities;

[b] that there are sufficient checks and balances to ensure that the powers of investigation and prosecution are not misused;

[c] that there are no arbitrary restrictions to the initiation of investigations or launching of prosecutions.

4. The Committee should give its report with regard to the items mentioned in paragraph 3(ii) above within a period of 3 months."

20. Before we refer to the report of the Independent Review Committee (IRC), it would be appropriate at this stage to refer to the Single Directive issued by the Government which requires prior sanction of the designated authority to initiate the investigation against officers of the Government and the Public Sector Undertakings (PSUs), nationalised banks above a certain level. The Single Directive is a consolidated set of instructions issued to the CBI by the various Ministries/Departments in this behalf. It was first issued in 1969 and thereafter amended on many occasions. The Single Directive contains certain instructions to the CBI regarding modalities of initiating an inquiry or registering a case against certain categories of civil servants. Directive No. 4.7(3) in its present form is as under :-

"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) All cases referred to the administrative Ministries/Departments by CBI for obtaining necessary prior sanction as aforesaid, except those pertaining to any officer of the rank of Secretary or Principal Secretary, should be disposed of by them preferably within a period of two months of the receipt of such a reference. In respect of the officers of the rank of Secretary or Principal Secretary to Government, such references should be made by the Director, CBI to the Cabinet Secretary for consideration of a Committee consisting of the Cabinet Secretary as its Chairman and the Law Secretary and the Secretary (Personnel) as its members. The Committee should dispose of all such references preferably within two months from the date of receipt of such a reference by the Cabinet Secretary.

(iii) When there is any difference of opinion between the Director, CBI and the Secretary of the Administrative Ministry/Department in respect of an officer up to the rank of Additional Secretary or equivalent, the matter shall be referred by CBI to Secretary (Personnel) for placement before the Committee referred to in Clause (ii) above. Such a matter should be considered and disposed of by the Committee preferably within two months from the date of receipt of such a reference by Secretary (Personnel).

(iv) In regard to any person who is or has been Cabinet Secretary, before SPE takes any step of the kind mentioned in (i) above the case should be submitted to the Prime Minister for orders."

21. We were informed that the above Directive, in its application, is limited to officials at decision making levels in the Government and certain other public institutions like the RBI, SEBI, nationalised banks, etc. and its scope is limited to official acts. The stated objective of the Directive is to protect decision making level officers from the threat and ignominy of malicious and vexatious inquiries/investigations. It is said that such protection to officers at the decision making level is essential to protect them and to relieve them of the

anxiety from the likelihood of harassment for taking honest decisions. It was also stated that absence of any 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. It was made clear that the Directive does not extend to any extraneous or non-official acts of the goverment functionaries and a time frame has been prescribed for grant of sanction in such cases to prevent any avoidable delay.

22. Two questions arise in relation to Directive No. 4.7(3) of the Single Directive, namely, its propriety/legality and the extent of its coverage, if it be valid.

23. The learned Attorney General categorically stated in response to our repeated query that the Single Directive acts as a restriction only on the CBI but is inapplicable against the general power of the State Police to register and investigate any such offence under the general law, i.e., Code of Criminal Procedure. He added that it is also not an inhibition against a complaint being lodged under the Cr.P.C. before the competent court for any such offence. The Single Directive was sought to be supported by the Attorney General on the ground that the CBI being a special agency created by the Central Government, it was required to function according to the mandate of the Central Government which has constituted this special agency for specified purpose. The desirability of the Single Directive was supported by the learned Attorney General on the ground that the officers at the decision- making level need this protection against malicious or vexatious investigations in respect of honest decisions taken by them. We are also informed that during hearing of this matter when this aspect was being debated, the Ministry of Finance has set up a High Power Board of experts in finance and a retired High Court Judge to examine the merits in every case for the purpose of grant of sanction to the CBI for recording the information and investigating into any such offence, and a time frame for the decision has also been specified. Similarly, in the case of government servants, the authority for grant of sanction with a provision for appeal in case the sanction is declined has been provided. It was submitted that such a structure to regulate the grant of sanction by a high authority together with a time frame to avoid any delay is 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 with reasons would enable judicial review of that decision in case of any grievance against refusal of the sanction. Reliance was placed by the learned Attorney General on the decisions of this Court in K. Veeraswami v. Union of India and others, 1991(3) SCC 655 and State of Bihar and Another etc. v. J.A.C. Saldanha and Others, 1980(1) SCC 554 to support the argument of legality of the Single Directive. We shall advert to this aspect later.

24. The provision made for deciding the question of grant of sanction in the cases of officers to whom the Single Directive applies is, as under :-

OFFICE MEMORANDUM DATED FEBRUARY 17, 1997 OF THE RESERVE BANK OF INDIA, CENTRAL OFFICE, DEPARTMENT OF ADMINISTRATION & PERSONNEL MANAGEMENT

“Advisory Board on bank frauds

It has been decided to set-up an `Advisory Board on bank frauds' to advise the Bank on the cases referred by the Central Bureau of Investigation either directly or through the Ministry of Finance for investigation/registration of cases against bank officers of the rank of General Manager and above. The constitution of the Board will be as under :-

25. Another action taken by the Government of India is, as under :-

Letter No. I 11011/33/95-IS DI(B) dated 1st/2nd August, 1995 of Ministry of Home Affairs, Government of India

“Government had through its Order Nos. 7937/SS(ISP)/93 dated 9th July, 1993 constituted a Committee under the Chairmanship of former Home Secretary (Shri N.N. Vohra) to take stock of all available information about the activities of the crime syndicates/mafia organisations which had developed links with and were being protected by Government functionaries and political personalities. The Vohra

Committee in its Report submitted to the Government recommended a Nodal Set-up directly under the Home Secretary to which all existing intelligence and enforcement agencies of the Government shall promptly pass on any information which they may come across, relating to links of crime syndicates with functionaries of the Government and political personalities.

2. Accordingly, Government have now decided to set up a Group under the Chairmanship of the Home Secretary to act as a Nodal Set-up to collect and collate the information and to decide on the action that is required to be taken to ensure that the nexus of criminals with businessmen, politicians or bureaucrats is broken.

3. The Group shall comprise: (i) Home Secretary,, Chairman (ii) Secretary (Revenue) Member (iii) Director,, IB Member (iv) Director,, CBI Member (v) Secretary,, R&AW Member

4. It is felt that it would be necessary for this Group to interact with various State Governments in order to both make use of such information as may be available with the States as well as to utilise the expertise of the relevant agencies of the State Governments. For this purpose, the above Group would interact appropriately from time to time with Chief Secretaries and other senior functionaries of the State Governments.

5. All the Intelligence and enforcement agencies under the Government like the Intelligence Bureau, the CBI and various bodies functioning under the Department of Revenue shall forthwith report to the Home Secretary whenever substantive information/evidence of collusion of officials/politicians with criminal syndicates comes to their knowledge in the course of their working. The Group shall meet periodically to decide upon the action required to be taken and identify an agency or agencies to take up further investigations. The Nodal Group would also review the information in the above context already available with the various agencies and decide upon the follow up action that is required to be taken.

6. This issues with the approval of Home Minister."

Report of IRC

26. The IRC has in its report accepted the legality of the Single Directive placing reliance on the decision of this Court in K. Veeraswami (supra). After considering the functions of the CBI and the Directorate of Enforcement, it has made certain recommendations which are as under :-

"MEASURES FOR SPEEDY INVESTIGATIONS AND TRIALS

4.1 The Committee recommends that the following measures should be taken to ensure speedy investigations and trials :

a) Special Courts should be got established at identified stations to deal exclusively with FERA offences so that cases can be decided speedily.

(b) To ensure against delays in investigations abroad, the Revenue Secretary should be the competent authority to approve filing of applications for Letters Rogatory.

(c) The Directorate of Enforcement should be delegated powers to appoint special counsels for conducting trials, who may also act as legal advisers for the Department in respect of the cases entrusted to them.

(d) In many of the major cases of the Directorate, the suspects have been able to abuse the process of law by stalling the investigations at the initial stages through litigation at various levels, obtaining stay orders from High Courts and injunctions on flimsy grounds. In consultation with the Attorney General, the Revenue Department may examine the possibility of making a representation to the Apex Court to consider issuing appropriate directions so that the pace and progress of cases is not thwarted by interlocutory procedures or stay orders issued by the Courts below.

(e) Taking into account the instances in which suspected persons have been able to stall investigations on alleged health grounds, the Revenue Department should approach the Ministry of Health to establish standing medical boards in identified cities to examine such persons. Such boards should comprise outstanding medical experts of unimpeachable integrity. The Courts can be requested to refer the prayer of the accused for staying proceedings on health grounds to such medical boards before passing

judgment."

"CHECKS AND BALANCES

5.1 The Directorate must be provided adequate financial and administrative delegations to enable it to exercise autonomy in the conduct and pursuit of investigations without let or hindrance. Side by side, it is necessary to provide appropriate checks and balances to ensure against miscarriage of justice. In this context, the Committee recommends the following :

a) The Revenue Department should undertake regular review of the progress of cases before the Directorate. To enable this, the Directorate should regularly furnish information regarding the number of cases instituted, progress of investigations, cases settled in adjudication and those put to Courts. The Committee note that while such information is already being supplied in reply to Parliament Questions, information to be placed before the Parliamentary Committee/Standing Committee, etc., there is no established procedure for the Directorate to furnish relevant information in a well devised format.

b) The present system of the Directorate furnishing fortnightly reports providing statistical information and brief outline of the cases taken up for investigation should be further fine tuned. These reports should be carefully examined by the Revenue Department to ensure that the Directorate is performing its functions efficiently. The Revenue Secretary should hold regular review meetings with the Director Enforcement, also involving the Director Revenue Intelligence and other concerned officers.

c) Guidelines relating to interrogation, prosecution, adjudication, time frame for completion of investigation, etc., have been issued by the Directorate from time to time. These guidelines should be comprehensively reviewed and, based thereon, a circular should be released for the information of the public at large, to enable all concerned to know the systems and procedures followed by the Directorate. This shall contribute to greater transparency. This effort should be concluded within 2-3 months."

5.2 It is important that the Directorate lays down a clearly spelt out time frame for the completing of investigation, launching of prosecution and completion of adjudication proceedings and for the Director to ensure that the prescribed time limits are strictly adhered to. The Committee are of the view that the Directorate would be able to more efficiently discharge its functions if immediate steps are taken to upgrade the level and quality of its in-house legal advice mechanism. At our request, the Cabinet Secretary convened a meeting with the Revenue Department, Enforcement Directorate and other concerned officers to consider various proposals for strengthening the Directorate. The Committee hope that the various decisions taken at the Cabinet Secretary's level shall witness implementation within 6-8 weeks.

5.3 The Committee recommends that the Directorate should take time-bound steps to establish a grievances redressal mechanism to promptly deal with complaints received from the public against actions of the Enforcement Directorate. Insofar as complaints of arbitrary action by senior officers of the Directorate are concerned, the Committee recommends that these should be looked into by a Committee headed by the Central Vigilance Commissioner and comprising Revenue Secretary, Director General Revenue Intelligence, Enforcement Director and a senior representative of the Ministry of Law.

5.4 As regards the pursuit of cases which appear to have a politico- beaurocrat-criminal nexus, the Home Secretary agreed with the Committee's suggestion that the Nodal Agency in the Home Ministry (chaired by Home Secretary) shall also include Member (Investigation) of the Central Board of Direct Taxes, Director General Revenue Intelligence and the Director Enforcement as members.

5.5 The Committee recommends that the Annual Report of the Department of Revenue should have a section devoted exclusively to the functioning of the Enforcement Directorate. This report should highlight the number of cases taken up for investigation by ED, raids and searches conducted, amount of Indian and foreign currency seized, etc. The report should also indicate the number of persons arrested, prosecutions launched and convictions ordered by the Courts. The Committee feels that enhanced public knowledge about the work being done by the Directorate shall demystify its operations and contribute to improved public confidence."

"SUMMARY OF RECOMMENDATIONS

I. CBI AND CVC

1. CVC to be conferred statutory status; appointment of Central Vigilance Commissioner to be made under the hand and seal of the President (para 4.2)

2. Constitution of a Committee for selection of CVC (para 4.3)

3. CVC to overview CBI's functioning (para 5)

4. CBI's reporting to Government to be streamlined without diluting its functional autonomy (para 3.3)

5. CVC to have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it (para 6)

6. Constitution of a Selection Committee for identifying a panel of names for selection of Director CBI; final selection to be made by ACC from such panel (para 8.2)

7. Central Government to pursue with the State Governments to set up credible mechanism for selection of Police Chief (para 8.3)

8. Director CBI to have a minimum tenure of 2 years (para 8.4)

9. Transfer of incumbent Director CBI would need endorsement of the Selection Committee (para 8.5)

10. Director CBI to ensure full freedom for allocation of work within the Agency, including constitution of investigation teams (para 8.6)

11. Selection/extension of tenure of officers upto to the level of Joint Director (JD) to be decided by a Board under Central Vigilance Commissioner; JD and above would need the approval of ACC (para 8.7)

12. Change in the existing Tenure Rules not recommended (para 8.8)

13. Proposals for improvement of infrastructure, methods of investigation, etc., to be decided urgently (para 8.9.2)

14. No need for creation of a permanent core group in the CBI (para 8.9.3)

15. Severe disciplinary action against officers who deviate from prescribed investigation procedures (para 9.1)

16. Director CBI to be responsible for ensuring time limits for filing charge sheets in courts (para 9.2)

17. Document on CBI's functioning to be published within three months (para 9.4)

18. Essential to protect officers at the decision-making levels from vexatious enquiries/prosecutions (para 10.6)

19. Secretaries to adhere strictly to prescribed time frames for grant of permission for registration of PE/RC. CBI to be free to proceed if decision not conveyed within the specified time (para 10.9)

20. Secretary of Administrative Ministry to convey a decision regarding registration of PE/RC within 2 months of receipt of request. If not satisfied with decision, Director CBI free to make fresh reference to the Committee headed by Cabinet Secretary within a period of four weeks and the latter to decide thereon within a period of four weeks (para 10.10)

21. Protection under the Single Directive not to cover offences like bribery, when prima-facie established in a successful trap (para 10.12)

22. Cases of disproportionate assets of Central Government and All India Services Officers to be brought within the ambit of the Single Directive (para 10.13)

23. Time limit of 3 months for sanction for prosecution. Where consultation is required with the Attorney General or the Solicitor General, additional time of one month could be allowed (paras 10.14 and 10.15)

24. Government to undertake a review of the various types of offences notified for investigation by the CBI to retain focus on anti-corruption activities which is its primary objective (para 11.1)

25. Cases falling within the jurisdiction of the State Police which do not have inter-state or inter-national ramifications should not be handed over to CBI by States/Courts (para 11.2)

26. Government to establish Special Courts for the trial of CBI cases (11.3)

27. Severe action against officials found guilty of high-handedness; prompt action against those officials chastised by the Courts (para 11.4)

28. Director CBI to conduct regular appraisal of personnel to weed out the corrupt and inefficient, and maintain strict discipline within the organisation (para 11.5)

II. ENFORCEMENT DIRECTORATE

1. Selection Committee headed by Central Vigilance Commissioner to recommend panel for appointment of Director Enforcement by the ACC (para 2.2)

2. Director Enforcement to have minimum tenure of 2 years. For his premature transfer, the Selection Committee headed by Central Vigilance Commissioner to make suitable recommendations to the ACC (para 2.3)

3. Post of Director Enforcement to be upgraded to that of Additional Secretary/Special Secretary to the Government (para 2.4)

4. Officers of the Enforcement Directorate handling sensitive assignments to be provided adequate security for enabling fearless discharge of their functions (para 2.5)

5. Extension of tenures up to the level of Joint Directors in the Enforcement Directorate to be decided by a Committee headed by Central Vigilance Commissioner (para 2.6)

6. Proposals for foreign visits to conduct investigations to be cleared by the Revenue Secretary and the Financial Adviser (para 2.7)

7. While enjoying full internal autonomy Enforcement Directorate to be made accountable. Responsibility of Government to ensure efficient and impartial functioning (para 3.1)

8. Premature media publicity to be ensured against (para 3.3)

9. Adjudication proceedings/prosecution to be finalised by the Enforcement Directorate within a period of one year (para 3.4)

10. Director Enforcement to monitor speedy completion of investigation and launching of adjudications/prosecution. Revenue Secretary to review regularly (para 3.4)

11. The Director Enforcement to keep close watch against vexatious search; action against functionaries who act without due care (para 3.5)

12. Special Courts to be established to deal with FERA offences for speedy completion of trials [para 4.1(a)]

13. For speedy conduct of investigations abroad, Revenue Secretary be authorised to approve filing of applications for Letters Rogatory [para 4.1(b)]

14. The Enforcement Directorate to be delegated powers to appoint Special Counsels for trials [para 4.1(c)]

15. The Revenue Department to consult Attorney General regarding measures against conclusion of cases being thwarted by stay orders, etc. [para 4.1(d)]

16. Revenue Department to approach Health Ministry to establish Standing Medical Boards in identified cities for examination of accused persons seeking deferment of proceedings on health grounds [para 4.1(c)]

17. Revenue Department to undertake regular reviews of cases pending with the Directorate [paras 5.1(a) and (b)]

18. Comprehensive circular to be published by the Directorate to inform public about procedures/systems of its functioning [para 5.1 (c)]

19. In-house legal advice mechanism to be strengthened (para 5.2)

20. Proposals for strengthening the Directorate to be implemented within 8 weeks (para 5.2)

21. Directorate to establish a grievance redressal mechanism (para 5.3)

22. Committee headed by Central Vigilance

Commissioner to decide complaints of arbitrary action by Directorate officials (para 5.3)

23. Nodal Agency headed by Home Secretary on politico-beaurocrat-criminal nexus to include Member Investigation CBDT, Director General Revenue Intelligence and Director Enforcement as members (para 5.4)

24. Annual Report of the Department of Revenue to contain an exhaustive section on the working of the Enforcement Directorate (para 5.5)

25. Suitable incentives to be provided to functionaries of Enforcement Directorate at various levels, to attract best material, to be decided within two months (para 6.1)

III. NODAL AGENCY ON CRIMINAL NEXUS

1. Requirements of inter-agency co-ordination at field unit level to be evolved by Home Secretary (para 2.1)

2. NA's functioning to be watched for some time before considering need for structural changes (para 3)

3. Home Secretary will hold meeting of NA every month (para 3)"

27. The reference to paragraphs within brackets at the end of each recommendation is to the paragraphs of the report containing discussion pertaining to the Central Bureau of Investigation (CBI) and the Central Vigilance Commission (CVC) in Part I and Directorate of Enforcement in Part II of the report. These recommendations have, therefore, to be read along with the discussion in the corresponding paras in Part I and Part II of the report.

Need for Court's intervention

28. The IRC is a body constituted by the Central Government itself as a result of its perception that the constitution and functioning of the CBI, CVC and Directorate of Enforcement require a close scrutiny in the background of the recent unsatisfactory functioning of these agencies with a view to improve their functioning. The view taken by the IRC is a reaffirmation of this belief shared by everyone. The preface to the report indicates the reason for the constitution of the IRC and says that:

"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 concerned Central investigating agencies 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."

There can thus be no doubt that there is need for the exercise we were called upon to perform and which has occasioned consideration of this crucial issue by this Court in exercise of its powers conferred by the Constitution of India. The conclusions reached by the IRC and the recommendations it has made for improving the functioning and thereby the image of these agencies is a further reaffirmation of this general belief. There can also be no doubt that the conclusions reached by the IRC and its recommendations are the minimum which require immediate acceptance and implementation in a bid to arrest any further decay of the polity. It follows that the exercise to be performed now by this Court is really to consider whether any modifications/additions are required to be made to the recommendations of the IRC for achieving the object for which the Central Government itself constituted the IRC. We are informed by the learned Attorney General that further action on the report of the IRC could not be taken so far because of certain practical difficulties faced by the Central Government but there is no negative reaction to the report given by the Central Government.

29. The only caveat entered by the Attorney General is on the basis of a note by an individual Minister in the Central Cabinet in which emphasis has been laid that the ultimate responsibility for the functioning of these agencies to the Parliament is that of the concerned Minister and this aspect may be kept in mind. It has been specifically mentioned that the Minister would remain the final disciplinary authority and would have the power to refer complaints against the agency or its officers to an appropriate authority for necessary action. There can be no quarrel with the Minister's

ultimate responsibility to the Parliament for the functioning of these agencies and he being the final disciplinary authority in respect of the officers of the agency with power to refer complaints against them to the appropriate authority. Some other specific powers of the Minister were indicated as under :-

1. The Minister has the power to review the working of the agencies which are under his Department.

2. The Minister has the power to give broad policy directions regarding investigation and prosecution of classes or categories of cases.

3. The Minister has the power to appraise the quality of the work of the Head of the agency as well as other senior officers of the agency.

4. The Minister has the power to call for information regarding progress of cases.

30. It is sufficient to say that the Minister's general power to review the working of the agency and to give broad policy directions regarding the functioning of the agencies and to appraise the quality of the work of the Head of the agency and other officers as the executive head is in no way to be diluted. Similarly, the Minister's power to call for information generally regarding the cases being handled by the agencies is not to be taken away. However, all the powers of the Minister are subject to the condition that none of them would extend to permit the Minister to interfere with the course of investigation and prosecution in any individual case and in that respect the concerned officers are to be governed entirely by the mandate of law and the statutory duty cast upon them.

31. It is useful to remember in this context what this Court has on several occasions in the past said about the nature of duty and functions of Police officers in the investigation of an offence. It is sufficient to refer to one of them, namely, Union of India and others v. Sushil Kumar Modi and others, 1997(1) Recent Criminal Reporter 702, (Bihar Fodder Scam case), wherein it was said, as under :-

"4. At the outset, we would indicate that the nature of proceedings before the High Court is somewhat similar to those pending in this Court in Vineet Narain v. Union of India, 1996(2) SCC 199 and Anukul Chandra Pradhan v. Union of India, 1996(6) SCC 354 and, therefore, the High Court is required to proceed with the matter in a similar manner. It has to be borne in mind that the purpose of these proceedings is essentially to ensure performance of the statutory duty by the CBI and the other government agencies in accordance with law for the proper implementation of the rule of law. To achieve this object a fair, honest and expeditious investigation into every reasonable accusation against each and every person reasonably suspected of involvement in the alleged offences has to be made strictly in accordance with law. The duty of the Court in such proceedings is, therefore, to ensure that the CBI and other government agencies do their duty and do so strictly in conformity with law. In these proceedings, the Court is not required to go into the merits of the accusation or even to express any opinion thereon, which is a matter for consideration by the competent court in which the charge-sheet is filed and the accused have to face trial. It is, therefore, necessary that not even an observation relating to the merits of the accusation is made by the Court in these proceedings lest it prejudice the accused at the trial. The nature of these proceedings may be described as that of "continuing mandamus" to require performance of its duty by the CBI and the other government agencies concerned. The agencies concerned must bear in mind and, if needed, be reminded of the caution administered by Lord Denning in this behalf in R. v. Metropolitan Police Commr., 1968(1) All ER 763 : 1968(2) QB 118. Indicating the duty of the Commissioner of Police, Lord Denning stated thus : (All ER p. 769)

"I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State,.. I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on

him. He is answerable to the law and to the law alone."

The nature of such a proceeding in a court of law was also indicated by Lord Denning, as under :

"A question may be raised as to the machinery by which he could be compelled to do his duty. On principle, it seems to me that once a duty exists, there should be a means of enforcing it. This duty can be enforced, I think, either by action at the suit of the Attorney General; or by the prerogative order of mandamus."

(Emphasis supplied)

There can hardly be any doubt that the obligation of the police in our constitutional scheme is no less.

"5. According to the Code of Criminal Procedure, 1973 the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the police officer making the investigation and the final step in the investigation is to be taken only by the police and by no other authority, see Abhinandan Jha v. Dinesh Mishra, 1967(3) SCR 668. This must be borne in mind as also that the scope and purpose of a proceeding like the present is to ensure a proper and faithful performance of its duty by the police officer by resort to the prerogative writ of mandamus."

32. The Minister's power in these matters has, therefore, to be understood as circumscribed by these limitations under the law.

History of CBI

33. It is useful to refer at this stage to the history of the CBI. The Special Police Establishment was formed during the World War II when large sums of public money were being spent in connection with the War and there arose enormous potential for corruption amongst the officers dealing with the supplies. An executive order was made by the Government of India in 1941 setting up the Special Police Establishment (SPE) under a DIG in the then Department of War. The need for a Central Government agency to investigate cases of bribery and corruption by the Central Government servants continued and, therefore, the Delhi Special Police Establishment Act was brought into force in 1946. Under this Act, the superintendence of the Special Police Establishment was transferred to the Home Department and its functions were enlarged to cover all departments of the Government of India. The jurisdiction of the SPE extended to all the Union Territories and could also be extended to the States with the consent of the concerned State Governments. Then the SPE was put under the charge of Director, Intelligence Bureau. Later in 1948 a post of Inspector General of Police, SPE was created and the organisation was placed under his charge. The Central Bureau of Investigation was established on 1.4.1963 vide Government of India's Resolution No. 4/31/61-T/MHA. This was done to meet the felt need of having a central police agency at the disposal of the Central Government to investigate into cases not only of bribery and corruption but also those relating to the breach of central fiscal laws, frauds in government departments and PSUs and other serious crimes. On enlargement of the role of CBI an Economic Offences Wing was added to the existing Divisions of the CBI. In 1987 two Divisions were created in the CBI known as Anti-Corruption Division and Special Crimes Division, the latter dealing with cases of conventional crimes besides economic offences. In 1994 due to increased workload relating to bank frauds and economic offences a separate Economic Offences Wing was established in CBI with the result that since then the CBI has three Investigation Divisions, namely, Anti-Corruption Division, Special Crimes Division and Economic Offences Division. Further particulars thereof are not necessary in the present context.

34. We are informed that almost all the State Governments have given concurrence for extension of the jurisdiction of the Delhi Special Police Establishment in their States with the exception of only a few. The result is that for all practical purposes, the jurisdiction in respect of all such offences is exercised in the consenting States only by the CBI and not by the State Police. This is the significance of the role of the CBI in such matters and, therefore, technically the additional jurisdiction under the general law of the State Police in these matters is of no practical relevance. The pragmatic effect of the Single Directive

is, therefore, to inhibit investigation against the specified category of officers without sanction in accordance with the Single Directive.

Validity of Directive No. 4.7(3) of the Single Directive

35. We may now refer to the two decisions on which specific reliance has been placed by the learned Attorney General before us as well as the IRC in its report.

36. The decision in J.A.C. Saldanha (supra) is on Section 3 of the Police Act, 1861 and deals with the ambit and scope of State Government's power of 'superintendence' thereunder. It was held in J.A.C. Saldanha (supra) that the power of superintendence of the State Government includes its power to direct further investigation under Section 173(8) Cr.P.C. That was a case in which there was occasion to require further investigation because of the unsatisfactory nature of the investigation done earlier of a cognizable offence. Thus, in that case the power of superintendence was exercised for directing further investigation to complete an unsatisfactory investigation of a cognizable offence to promote the cause of justice and not to subvert it by preventing investigation. In our opinion, in the present context, that decision has no application to support the issuance of the Single Directive in exercise of the power of superintendence, since the effect of the Single Directive might thwart investigation of a cognizable offence and not to promote the cause of justice by directing further investigation leading to a prosecution.

37. The other decision of this Court is in K. Veeraswami (supra). That was a decision in which the majority held that the Prevention of Corruption Act applies even to the Judges of the High Court and the Supreme Court. After taking that view, it was said by the majority (per Shetty, J.) that in order to protect the independence of judiciary, it was essential that no criminal case shall be registered under Section 154 Cr.P.C. against a Judge of the High Court or of the Supreme Court unless the Chief Justice of India is consulted and he assents to such an action being taken. The learned Attorney General contended that this decision is an authority for the proposition that in case of high officials, the requirement of prior permission/sanction from a higher officer or Head of the Department is permissible and necessary to save the concerned officer from harassment caused by a malicious or vexatious prosecution. We are unable to accept this submission.

38. The position of Judges of High Court and 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. Veeraswami (supra). 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. We have no doubt that the decision in K. Veeraswami (supra) has no application to the wide proposition advanced by the learned Attorney General to support the Single Directive. For the same reason, reliance on that decision by the IRC to uphold the Single Directive is misplaced.

39. The question, however, is whether, without the aid of these decisions, the Single Directive can be upheld. In this context, meaning of the word “superintendence“ in Section 4(1) of the Delhi Special Police Establishment Act, 1946 requires consideration.

40. The Delhi Special Police Establishment Act, 1946 is an Act to make provision for the constitution of a special police force in Delhi for the investigation of certain offences in the Union Territories for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences. Section 6 of the Act requires consent of the State Government to exercise powers and jurisdiction under the Act by the Delhi Special Police Establishment. This is because `Police' is a State subject, being in List II, Entry 2 of the Seventh Schedule. For this reason, the learned Attorney General contended that the power and jurisdiction of the State Police in respect of an offence within its jurisdiction remains intact and is not inhibited by the Single Directive; and that the CBI alone is inhibited thereby. Section 2 of the Act deals with constitution and powers of the Special Police Establishment (SPE). This is how the CBI has been constituted. Section 3 provides for offences to be

investigated by the SPE and says that the offences or class of offences to be investigated by the agency may be specified by notification in the Official Gazette by the Central Government.

41. Section 3 of the Police Act, 1861 is in pari materia with Section 4 of the Delhi Special Police Establishment Act, 1946. These Sections read as under :-

Section 3 of the Police Act, 1861:

"3. Superintendence in the State Government. - The superintendence of the police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate, and except as authorised under the provisions of this Act, no person, officer or Court shall be empowered by the State Government to supersede or control any police functionary.

Sections 3 and 4 of the Delhi Special Police Establishment Act, 1946:

"Offences to be investigated by S.P.E.

3. The Central government may, by notification in the Official Gazette specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.

Superintendence & Administration of S.P.E.

4.(1) The Superintendence of the Delhi Special Police Establishment shall vest in the Central Government.

(2) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State, as the Central Government may specify in this behalf."

42. The meaning of the word "superintendence" in Section 4(1) of the Delhi Special Police Act, 1946 determines the scope of the authority of the Central Government in this context.

43. There can be no doubt that the overall administration of the said force, i.e., CBI vests in the Central Government, which also includes, by virtue of Section 3, the power to specify the offences or class of offences which are to be investigated by it. The general superintendence over the functioning of the Department and specification of the offences which are to be investigated by the agency is not the same as and would not include within it the control of the initiation and the actual process of investigation, i.e., direction. Once the CBI is empowered to investigate an offence generally by its specification under Section 3, the process of investigation, including its initiation, is to be governed by the statutory provisions which provide for the initiation and manner of investigation of the offence. This is not an area which can be included within the meaning of "superintendence" in Section 4(1).

44. It is, therefore, the notification made by the Central Government under Section 3 which confers and determines the jurisdiction of the CBI to investigate on offence; and once that jurisdiction is attracted by virtue of the notification under Section 3, the actual investigation is to be governed by the statutory provisions under the general law applicable to such investigations. This appears to us the proper construction of Section 4(1) in the context, and it is in harmony with the scheme of the Act, and Section 3 in particular. The word "superintendence" in Section 4(1) cannot be construed in a wider sense to permit supervision of the actual investigation of an offence by the CBI contrary to the manner provided by the statutory provisions. The broad proposition urged on behalf of the Union of India that it can issue any directive to the CBI to curtail or inhibit its jurisdiction to investigate an offence specified in the notification issued under Section 3 by a directive under Section 4(1) of the Act cannot be accepted. The jurisdiction of the CBI to investigate an offence is to be determined with reference to the notification issued under Section 3 and not by any separate order not having that character.

45. This view does not conflict with the decision in J.A.C. Saldanha (supra) as earlier indicated. In Saldanha, the question was whether an unsatisfactory investigation already made could be undertaken by another officer for further investigation of the offence so that the offence was properly investigated as required by law, and it was not to prevent the investigation of an offence. The Single Directive has the effect of restraining recording of FIR and initiation

of investigation and not of proceeding with investigation, as in Saldanha. No authority to permit control of statutory powers exercised by the police to investigate an offence within its jurisdiction has been cited before us except K. Veeraswami which we have already distinguished. The view we take accords not only with reason but also with the very purpose of the law and is in consonance with the basic tenet of the rule of law.

46. Once the jurisdiction is conferred on the CBI to investigate an offence by virtue of notification under Section 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be estopped or curtailed by any executive instruction issued under Section 4(1) thereof. This result follows from the fact that conferment of jurisdiction is under Section 3 of the Act and exercise of powers of investigation is by virtue of the statutory provisions governing investigation of offences. It is settled that statutory jurisdiction cannot be subject to executive control.

47. There is no similarity between a mere executive order requiring prior permission or sanction for investigation of the offence and the sanction needed under the statute for prosecution. The requirement of sanction for prosecution being provided in the very statute which enacts the offence, the sanction for prosecution is a pre-requisite for the court to take congnisance of the offence. 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 the investigation once jurisdiction is conferred on the CBI to investigate the offence by virtue of the notification under Section 3 of the Act. The word "superintendence" in Section 4(1) of the Act in the context must be construed in a manner consistent with the other provisions of the Act and the general statutory powers of investigation which govern investigation even by the CBI. The necessity of previous sanction for prosecution is provided in Section 6 of the Prevention of Corruption Act, 1947 (Section 19 of the 1988 Act) without which no court can take cognisance of an offence punishable under Section 5 of that Act. There is no such previous sanction for investigation provided for either in the Prevention of Corruption Act or the Delhi Special Police Establishment Act or in any other statutory provision. The above is the only manner in which Section 4(1) of the Act can be harmonised with Section 3 and the other statutory provisions.

48. The Single Directive has to be examined in this background. The law does 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". The question is whether any distinction can be made for them for the purpose of investigation of an offence of which they are accused.

49. 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.

50. 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.

51. The Single Directive cannot, therefore, be upheld as valid on the ground of it being permissible in exercise of the power of superintendence of the Central Government under Section 4(1) of the Act. The matter has now to be considered de hors the Single Directive.

Power of the Supreme Court

52. In view of the common perception shared by everyone including the Government of India and the Independent Review Committee (IRC) of the need for insulation of the CBI from extraneous influence of any kind, it is imperative that some action is urgently taken to prevent the continuance of this situation with a view to ensure proper implementation of the rule of law. This is the need of equality guaranteed in the Constitution. The right to equality in a situation like this is that of the Indian polity and not merely of a few individuals. The powers conferred on this Court by the Constitution are ample to remedy this defect and to ensure enforcement of the concept of equality.

53. There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. It is in the discharge of this duty that the IRC was constituted by the Government of India with a view to obtain its recommendations after an in-depth study of the problem in order to implement them by suitable executive directions till proper legislation is enacted. The report of the IRC has been given to the Government of India but because of certain difficulties in the present context, no further action by the executive has been possible. The study having been made by a Committee considered by the Government of India itself as an expert body, it is safe to act on the recommendations of the IRC to formulate the directions of this Court, to the extent they are of assistance. In the remaining area, on the basis of the study of the IRC and its recommendations, suitable directions can be formulated to fill the entire vacuum. This is the exercise we propose to perform in the present case since this exercise can no longer be delayed. It is essential and indeed the constitutional obligation of this Court under the aforesaid provisions to issue the necessary directions in this behalf. We now consider formulation of the needed directions in the performance of this obligation. The directions issued herein for strict compliance are to operate till such time as they are replaced by suitable legislation in this behalf.

54. There is another aspect of rule of law which is of equal significance. Unless a proper investigation is made and it is followed by an equally proper prosecution, the effort made would not bear fruition. The recent experience in the field of prosecution is also discouraging. To emphasise this point, some reference has to be made to a large number of prosecutions launched as a result of monitoring by the court in this matter which have resulted in discharge of the accused at the threshold. It took several years for the CBI to commence investigation and that too as a result of the monitoring by this Court. It is not as if the CBI, on conclusion of the investigation, formed the opinion that no case was made out for prosecution so that the earlier inaction may have been justified. The CBI did file numerous chargesheets which indicated that in its view a prima facie case for prosecution had been made out. This alone is sufficient to indicate that the earlier inaction was unjustified. However, discharge of the accused on filing of the chargesheet indicates, irrespective of the ultimate outcome of the

matters pending in the higher courts, that the trial court at least was not satisfied that a prima facie case was made out by the investigation. These facts are sufficient to indicate that either the investigation or the prosecution or both were lacking. A similar result of discharge of the accused in such a large number of cases where chargesheets had been filed by the CBI is not consistent with any other inference. The need for a strong and competent prosecution machinery and not merely a fair and competent investigation by the CBI can hardly be overemphasised. This is the occasion for us to take the view that a suitable machinery for prosecution of the cases filed in court by the CBI is also essential to ensure discharge of its full responsibility by the CBI. Unless a competent prosecution follows a fair and competent investigation, the exercise in the ultimate analysis would be futile. Investigation and prosecution are inter-related and improvement of investigation without improving the prosecution machinery is of no practical significance. We would, therefore, consider the aspect of prosecution also in the formulation of the guidelines.

55. In exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases and a brief reference to a few of them is sufficient. In Erach Sam Kanga v. Union of India , (Writ Petition No. 2632 of 1978 etc. etc.) decided on 20th March, 1979, the Constitution Bench laid down certain guidelines relating to the Emigration Act. In Lakshmi Kant Pandey v. Union of India (in re: Foreign Adoption), 1984(2) SCC 244, guidelines for adoption of minor children by foreigners were laid down. Similarly in State of West Bengal v. Sampat Lal, 1985(2) SCR 256, K. Veeraswami v. Union of India , 1991(3) SCC 655, Union Carbide Corporation v. Union of India , 1991(4) SCC 584, Delhi Judicial Service Association v. State of Gujarat . (Nadiad Case), 1991(4) SCC 406, Delhi Development Authority v. Skipper Construction Co. (P) Ltd., 1995(1) Recent Criminal Report 697 : 1995(3) Recent Criminal Report 797 and Dinesh Trivedi, M.P. v. Union of India, 1997(4) SCC 306, guidelines were laid down having the effect of law, requiring rigid compliance. In Supreme Court Advocates-on-Record Association and others v. Union of India (IInd Judges Case), 1993(4) SCC 441, a 9-Judge Bench laid down guidelines and norms for the appointment and transfer of Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. More recently in Vishakha v. State of Rajasthan and others, 1997(6) SCC 241, elaborate guidelines have been laid down for observance in work places relating to sexual harassment of working women. In Vishakha, it was said :

"The obligation of this court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995(*) [As amended at Manila, 28th August, 1997] as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are :

"Objectives of the Judiciary :

10. The objectives and functions of the Judiciary include the following;

(a) to ensure that all persons are able to live securely under the Rule of Law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) to administer the law impartially among persons and between persons and the State."

Thus, an exercise of this kind by the court is now a well settled practice which has taken firm roots in our constitutional jurisprudence. This exercise is essential to fill the void in the absence of suitable legislation to cover the field.

56. As pointed out in Vishakha (supra), it is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting

proper legislation to cover the field.

57. On this basis, we now proceed to give the directions enumerated hereafter for rigid compliance till such time as the legislature steps in to substitute them by proper legislation. These directions made under Article 32 read with Article 142 to implement the rule of law wherein the concept of equality enshrined in Article 14 is embedded, have the force of law under Article 141 and, by virtue of Article 144, it is the duty of all authorities, civil and judicial, in the territory of India to act in aid of this Court. In the issuance of these directions, we have accepted and are reiterating as far as possible the recommendations made by the IRC.

58. It is a similar perception in England which has led to the constitution of a Committee headed by Lord Nolan on `Standards in Public Life'. In Volume 1 of Lord Nolan's Report (1995), the general recommendations made are :

"General recommendations

4. Some of our conclusions have general application across the entire service :

Principles of public life

5. The general principles of conduct which underpin public life need to be restated. We have done this. The seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership are set out in full on page 14.

Codes of Conduct

6. All public bodies should draw up Codes of Conduct incorporating these principles.

Independent Scrutiny

7. Internal systems for maintaining standards should be supported by independent scrutiny.

Education

8. More needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including induction training."

59. The Seven Principles of Public Life are stated in the Report by Lord Nolan, thus :

"The Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example."

60. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

61. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to under-developed countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries : R. v. Secretary of State for Foreign and Commonwealth Affairs, (1995) 1 WLR 386.

62. Of course, the necessity of desirable procedures evolved by court rules to ensure that such a litigation is properly conducted and confined only to matters of public interest is obvious. This is the effort made in these proceedings for the enforcement of fundamental rights guaranteed in the Constitution in exercise of powers conferred on this Court for doing complete justice in a cause. It cannot be doubted that there is a serious human rights aspect involved in such a proceeding because the prevailing corruption in public life, if permitted to continue unchecked, has ultimately the deleterious effect of eroding the Indian Polity.

63. As a result of the aforesaid discussion, we hereby direct as under :-

I. CENTRAL BUREAU OF INVESTIGATION (CBI) AND CENTRAL VIGILANCE COMMISSION (CVC)

1. The Central Vigilance Commission (CVC) shall be given statutory status.

2. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity, to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately.

3. The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for overviewing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to the CVC about cases taken up by it for investigation; progress of investigations; cases in which chargesheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused.

4. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a non-partisan agency.

5. The CVC shall have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it.

6. Recommendations for appointment of the Director, CBI shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of IPS officers on

the basis of their seniority, integrity, experience in investigation and anti-corruption work. The final selection shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee. If none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.

7. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation. This would ensure that an officer suitable in all respects is not ignored merely because he has less than two years to superannuate from the date of his appointment.

8. The transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment, should have the approval of the Selection Committee.

9. The Director, CBI shall have full freedom for allocation of work within the agency as also for constituting teams for investigations. Any change made by the Director, CBI in the Head of an investigative team should be for cogent reasons and for improvement in investigation, the reasons being recorded.

10. Selection/extention of tenure of officers upto the level of Joint Director (JD) shall be decided by a Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary (Personnel) with the Director, CBI providing the necessary inputs. The extension of tenure or premature repatriation of officers upto the level of Joint Director shall be with final approval of this Board. Only cases pertaining to the appointment or extension of tenure of officers of the rank of Joint Director or above shall be referred to the Appointments Committee of the Cabinet (ACC) for decision.

11. Proposals for improvement of infrastructure, methods of investigation, etc. should be decided urgently. In order to strengthen CBI's in-house expertise, professionals from the revenue, banking and security sectors should be inducted into the CBI.

12. The CBI Manual based on statutory provisions of the Cr.P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the concerned officials.

13. The Director, CBI shall be responsible for ensuring the filing of chargesheets in courts within the stipulated time limits, and the matter should be kept under constant review by the Director, CBI.

14. A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.

15. Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

16. The Director, CBI should conduct regular appraisal of personnel to prevent corruption and/or inefficiency in the agency.

II. ENFORCEMENT DIRECTORATE

1. A Selection Committee headed by the Central Vigilance Commissioner and including the Home Secretary, Secretary (Personnel) and Revenue Secretary, shall prepare a panel for appointment of the Director, Enforcement Directorate. The appointment to the post of Director shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee.

2. The Director, Enforcement Directorate like the Director, CBI shall have a minimum tenure of two years. In his case also, premature transfer for any extraordinary reason should be approved by the aforesaid Selection Committee headed by the Central Vigilance Commissioner.

3. In view of the importance of the post of Director, Enforcement Directorate, it shall be upgraded to that of an Additional Secretary/Special Secretary to the Government.

4. Officers of the Enforcement Directorate handling sensitive assignments shall be provided adequate

security to enable them to discharge their functions fearlessly.

5. Extensions of tenure upto the level of Joint Director in the Enforcement Directorate should be decided by the said Committee headed by the Central Vigilance Commissioner.

6. There shall be no premature media publicity by the CBI/Enforcement Directorate.

7. Adjudication/commencement of prosecution shall be made by the Enforcement Directorate within a period of one year.

8. The Director, Enforcement Directorate shall monitor and ensure speedy completion of investigations/adjudications and launching of prosecutions. Revenue Secretary must review their progress regularly.

9. For speedy conduct of investigations abroad, the procedure to approve filing of applications for Letters Rogatory shall be streamlined and, if necessary, Revenue Secretary authorised to grant the approval.

10. A comprehensive circular shall be published by the Directorate to inform the public about the procedures/systems of its functioning for the sake of transparency.

11. In-house legal advice mechanism shall be strengthened by appointment of competent legal advisers in the CBI/Directorate of Enforcement.

12. The Annual Report of the Department of Revenue shall contain a detailed account on the working of the Enforcement Directorate.

III. NODAL AGENCY

1. A Nodal Agency headed by the Home Secretary with Member (Investigation), Central Board of Direct Taxes, Director General, Revenue Intelligence, Director, Enforcement and Director, CBI as members, shall be constituted for coordinated action in cases having politico-bureaucrat-criminal nexus.

2. The Nodal Agency shall meet at least once every month.

3. Working and efficacy of the Nodal Agency should be watched for about one year so as to improve it upon the basis of the experience gained within this period.

IV. PROSECUTION AGENCY

1. A panel of competent lawyers of experience and impeccable reputation shall be prepared with the advice of the Attorney General. Their services shall be utilised as Prosecuting Counsel in cases of significance. Even during the course of investigation of an offence, the advice of a lawyer chosen from the panel should be taken by the CBI/Enforcement Directorate.

2. Every prosecution which results in the discharge or acquittal of the accused must be reviewed by a lawyer on the panel and, on the basis of the opinion given, responsibility should be fixed for dereliction of duty, if any, of the concerned officer. In such cases, strict action should be taken against the officer found guilty of dereliction of duty.

3. The preparation of the panel of lawyers with the approval of the Attorney General shall be completed within three months.

4. Steps shall be taken immediately for the constitution of an able and impartial agency comprising persons of unimpeachable integrity to perform functions akin to those of the Director of Prosecutions in U.K. On the constitution of such a body, the task of supervising prosecutions launched by the CBI/Enforcement Directorate shall be entrusted to it.

5. Till the constitution of the aforesaid body, Special Counsel shall be appointed for the conduct of important trials on the recommendation of the Attorney General or any other law officer designated by him.

64. The learned amicus curiae had urged us to issue directions for the appointment of an authority akin to the Special or Independent Counsel in the United States of America for the investigation of charges in politically sensitive matters and for the prosecution of those cases and to ensure that appointments to sensitive posts in the CBI and other enforcement agencies and transfers therefrom were not made by the political executive. We are of the view that the time for these drastic steps has not come. It is our hope that it never will, for we entertain the belief that the

investigative agencies shall function far better now, having regard to all that has happened since these writ petitions were admitted and to the directions which are contained in this judgment. The personnel of the enforcement agencies should not now lack the courage and independence to go about their task as they should, even where those to be investigated are prominent and powerful persons.

65. In view of the problem in the States being even more acute, as elaborately discussed in the Report of the National Police Commission (1979), there is urgent need for the State Governments also to set up credible mechanism for selection of the Police Chief in the States. The Central Government must pursue the matter with the State Governments and ensure that a similar mechanism, as indicated above, is set up in each State for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralising the police force, it has also the adverse effect of politicizing the personnel. It is, therefore, essential that prompt measures are taken by the Central Government within the ambit of their constitutional powers in the federation to impress upon the State Governments that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission's Report (1979) was alarming and it has become much worse by now. The desperation of the Union Home Minister in his letters to the State Governments, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the constitutional scheme found necessary to remedy the situation is too stringent in these circumstances.

66. In the result, we strike down Directive No. 4.7(3) of the Single Directive quoted above and issue the above directions, which have to be construed in the light of the earlier discussion. The Report of the Independent Review Committee (IRC) and its recommendations which are similar to this extent can be read, if necessary, for a proper appreciation of these directions. To the extent we agree with the conclusions and recommendations of the IRC, and that is a large area, we have adopted the same in the formulation of the above directions. These directions require the strict compliance/adherence of the Union of India and all concerned.

67. The writ petitions are disposed of in the above terms.

Criminal Misc. Petition Nos. 5879-5882 of 1997

68. In view of the disposal of the writ petitions in the manner indicated above and in the facts and circumstances of the case, we do not consider it necessary now to examine the appointment of Shri R.C. Sharma as Director, CBI. Moreover, the tenure of Shri Sharma as Director, CBI is to end soon. We make it clear that Shri Sharma is not to be continued as CBI Director beyond the date of expiry of his present tenure. Accordingly, these Crl. M.Ps. are disposed of is this manner.

69. In view of the withdrawal of C.W.P. No. 2992 of 1997 in the Delhi High Court as required by this Court's order dated 11.9.1997, no further order for the disposal of C.W.P. No. 2992 of 1997 is necessary.