PRESENTATION BY
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CONSULTATION WITH VIGILLENCE COMMISSION, PUBLIC SERVICE COMMISSION & A.C.B

Presentation on;

BY

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KAKINADA.
448 articles in 25 parts, 12 schedules
Preamble of the Constitution

"We the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure to all its citizens JUSTICE; social, economic and political, LIBERTY; of thought, expression, belief, faith and worship. EQUALITY of status and of opportunity and to promote among all its citizens; FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation.

In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution."
Rights.

1. **Right to equality**. Art 14-18
2. Right to freedom. Art 19-22
3. Right against exploitation. Art 23,24
4. Right to freedom of religion. Art 25-28
5. Cultural and Educational rights. Art 29,30
6. Right to constitutional remedies. Art 32-35
The presumptive loss caused to the exchequer through spectrum allocation to 122 licencees and 35 dual technology licences in 2007-08 was Rs 1,76,645 crore.

- Calculation of loss based on 3G auction earlier this year
- Advice of PM, Law Ministry, Finance Ministry ignored by Raja
- A rare national asset as Spectrum should have been auctioned
- Allocated 2G spectrum to new players at throwaway prices
- Cut-off date for license letters advanced arbitrarily by a week
- This went against procedures of government functioning
- Entire process lacked transparency
- Undertaken in arbitrary and inequitable manner
- Rules circumvented to benefit Swan: CAG
- Reliance given spectrum ahead of others: CAG
- Tata Teleservices among those who got undue benefits: CAG
- Idea and Spice not given spectrum on grounds of proposed merger—this was against the rules

The spectrum was allocated by flouting every canon of financial propriety, rules and procedures.

-Vinod Rai, CAG

I went as per the telecom policy of 1999, as per recommendations of TRAI and vision contemplated by the Govt. If there have been any procedural lapses...let it be investigated...

-A Raja
FEMA

FOREIGN EXCHANGE MANAGEMENT ACT
Introduction:

- Foreign exchange transactions were regulated by Foreign exchange regulation act (FERA), 1973
- Following the liberalization ushered in 1991 some amendments were made to FERA in 1993 there was a lot demand to bring certain major changes in FERA in the light of economic changes took place
- Consequently a new act was formed to replace FERA, known as Foreign exchange management act (FEMA), 1999
Foreign Exchange Regulation Act (FERA)

- Soon after independence, the Govt. of India enacted Foreign Exchange Regulation Act in 1947, to regulate operations of foreign controlled companies in India.
- The Act was latter on comprehensively amended in 1973.
- FERA, 1973 was enacted in wake of acute foreign exchange shortage faced by the country at that point of time.

The major objectives of FERA, 1973:

- Conservation and proper utilisation of India’s precious foreign exchange;
- To issue guidelines to the foreign companies investing in India.
HISTORY OF SEBI

- Initially SEBI was a non statutory body without any statutory power.
- However in 1995, the SEBI was given additional statutory power by the Government of India through an amendment to the securities and Exchange Board of India Act 1992.
- In April, 1998 the SEBI was constituted as the regulator of capital market in India under a resolution of the Government of India.
The Great Indian Education System

- fund embezzlement
- seat auctioneering
- favouritism
- absenteeism
- sub standard evaluation

Steps:

- Bribery
- Nepotism
- Extortion

In the Director's Office:

- Influence
- Peddling
- Cronyism
- Greed

Money:

In the Director's Office:

- ₹ ₹ ₹
Misuse of office
(either private, public or non-profit)
For private gain

- Fraud
- Embezzlement
- Favouritism
- Intimidation
- Insider Trading
- Conflict of Interest
- Receiving an Unlawful Gratuity
- Illegal contributions
- Money Laundering
- Identify Theft
- White-collar crime
- Abuse of Power
- Nepotism
- Extortion
- Bribery
What is Corruption?

- Use of public office for private gains. -World Bank

- Taking/ Accepting gratification other than legal remuneration by officials/ employees.

- Corruption = Mystification + Discretion - Accountability
Why Corruption is Harmful?

- Corruption is anti-National.
- Corruption is anti-poor
- Corruption is anti-economic development
- Corruption many time can be a matter of life and death
- Citizens from all walks of life are affected by this malaise.
Social Infrastructure for Fighting Corruption

- Right to Information Act.
- Social Audit
- Citizens’ Charter
- Integrity Pact
- Role of the Media
- Importance & role of Value Education
Regulatory Bodies

- Central Vigilance Commission (CVC).
- Central Bureau of Investigation (CBI).
- State Anti Corruption Agencies.
- Vigilance Department.
- CAG
CAUSES OF CORRUPTION

- Lack of effective management and organization of administrative mechanism.
- Lack of economic stability.
- Lack of effective political leadership.
CONSEQUENCES OF CORRUPTION

- Loss of National wealth
- Hindrance and obstruction in development
- Backwardness
- Poverty
- Authority and power in wrong hands
- Brain drain
- Rise in terrorism and crimes
- Rise in suicide cases
- Psychological and social disorders
SUGGESTIONS: TO REDUCE CORRUPTION

➢ STRONG LOKPAL BILL IMPLEMENTATION

➢ ANTI CORRUPTION POLICE AND COURTS

➢ VIGOROUS PUNISHMENTS

➢ ANTI CORRUPTION WEBSITES AND HELPLINES
What is Vigilance?
(Contd.)

‘Vigilance’ in the context of an organization means:
Keeping a watchful eye on the activities of the Unit’s personnel and taking prompt action to promote ethical practices and ensure integrity and honesty in the official transactions.
Why Vigilance?

• There are individuals who indulge in unethical activities of getting personal gains at the cost of the organization.
• Such persons infect others leading to wastes, losses and economic decline.
• Their acts damage the image and goodwill of the organization.
• Hence, to rein such persons mis-endeavours and promote organizational interest, vigilance is required
Why Vigilance?

Vigilance helps in:

- Enhancing the image of the organization;
- Promoting culture of honesty & integrity;
- Reducing wastages/ leakages;
- Improving productivity;
- Ascertaining accountability;
- Increasing transparency and fairness;
- Protecting honest performers;
- Disciplining the wrong-doers; and
- Striving for zero tolerance to corruption.
Where Vigilance?

Vigilance is essential everywhere. However, a focused attention is required where,

- Officials have high discretions
- There is scope for jumping the queue
- Rules/ procedures are complex
- Accountability is low
- Delay in decision making is detrimental
- Opportunities to negotiate exist and
- Individuals are prone to corruption.
What is Vigilance Angle?

- Demanding and/or accepting gratification for an official act or influencing others
- Obtaining valuables without consideration/with inadequate consideration from someone in official dealing directly/indirectly
- Obtaining himself or for others valuables or pecuniary benefits by corrupt or illegal means or by abusing power
- Possession of assets disproportionate to income
- Misappropriation, forgery or cheating etc and
- Other irregularities, which cast doubt on integrity.
Facets of Vigilance

- Preventive Vigilance;
- Punitive Vigilance;
- Surveillance and Detection;
Preventive Vigilance

- To study and modify procedures if required to increase transparency and accountability.

- To undertake review of regulatory functions to avoid discretion in decision making.

- To educate employees for creating awareness about rule provisions and simplifying the cumbersome procedures if required.

- To identify gray areas which are prone to corruptions and unplug them. Also, suggesting ways for systemic improvement to avoid re-occurrence.
Preventive Vigilance

Contd...

- To prepare list of Officers of Doubtful Integrity (ODI) (officers who are found to be lacking in integrity during/after inquiry).

- To prepare agreed list in consultation with CBI and also to ensure that the officers in ODI and agreed list are not posted in sensitive posts also to ensure periodical rotation of staff.

- To ensure preparation of User’s Manual on contracts/purchases works etc.

- To scrutinize the reports of Parliamentary Committee, Audit reports etc.
Punitive Vigilance

- To verify all complaints received.
- Scrutiny of complaints from vigilance angle and ordering for investigation.
- To submit VIR to DA for RDA under minor/ major penalty.
- Vetting of charge sheet while ensuring that the charges are in-line with VIR.
- Monitoring appointment of IO and PO in RDA cases and to ensures adherence of time schedule.
- Examination/ Processing of IO’s report.
- To check timely issue of penalty order by DA.
- Recommending any work for intensive examination by CTEO.
Surveillance

- To undertake periodic inspections/ work inspections regularly.
- Conducting surprise check of all units (including remote stations).
- Conducting CTE Type inspections.
- Conducting investigation on Paras of I/E report referred by CTEO.
What is Complaint?

Receipt of information about corruption, malpractice or misconduct on the part of public servants from whatever source would be termed as complaint.
Source of Complaint

- From employees of Organization (whistle blowers)
- Departmental Inspection Reports, Audit Reports etc.
- On scrutiny of Annual Property Return (APR) Reports
- CAG reports
- Reports of PAC, CoPU
- Complaints and allegations appearing in press etc.
- Source information if received verbally from an identifiable source.
- Through intelligence agencies like CBI, local bodies etc.
What is Misconduct?

- Commission of undesirable acts or omission of desirable acts.

- Deviant behaviour against morals/accepted norms of society.

- Doing what is not expected to be done or not doing what is expected.
What is Ethics?

A set of moral Principles/ values which governs the conduct of an individual or an organization.

What are Morals?

Morals are the values based on one’s experiences/ impressions/ opinion/ conclusion/ belief and conviction etc.
What is Ethics?
Contd...

- Ethics is nothing but doing the right things. In a situation of dilemma or conflict of interest to be able to choose the right path at all costs.

- Lawful conduct may not always be an ethical conduct.

Example: In a cricket match between India Vs. Sri Lanka, Randeev Singh delivered a No Ball to avoid century of Sehwag which was legally right but unethical.
Why Ethics?

- It is essential:
  - For improved accountability.
  - For better governance.
  - For sustained economical growth of an organization.
  - To enhance Integrity.
  - To minimize corruption
Ethical Practices

- Don’t do anything, un-becoming of yourself as an employee.
- Be updated with relevant rules, regulations & procedures.
- Don’t be biased.
- Don’t misuse official position for self gain.
- Don’t be indecisive.
- Be fair and transparent in dealings.
What is Integrity?

- Integrity is the quality of having a sense of honesty and truthfulness in one’s actions.

**Example:**
‘Do what you say’ and ‘say what you do’.
Organizational Integrity

- Integrity of an organization is recognized from the integrity of the employees.

- Integrity improves transparency and fair practices.

- It enables in building the image of an organization.

- Every member of an organization should maintain absolute integrity.
What is Accountability?

- Being answerable or responsible for something.
- Taking responsibility for one’s own work and the result thereof.
- Enables to view the organization as a “system” of individuals, linked by mutuality and trust.
- Enables to take up personal and group responsibility to achieve the mission, vision and strategic position of the organization.
Need of Accountability

- Helps in taking responsibility of one’s own behaviour.
- Doing what’s right consistently, demonstrates the personal integrity.
- Lack of accountability may doubt one’s integrity.
- Enables active participation in the activities / interactions that support the strategy of an organization.
- Increased accountability reduces discretion.
- Brings transparency and enhances fair practices.
- Lack of accountability provides scope for corruption.
Vigilance is not a hostile outsider. It is an essential part of the management.

It helps to improve managerial and financial practices and working procedure.

It assists in better performance and greater customer satisfaction.
• Media has been recognized as “FOURTH ESTATE”, occupies very important and significant place in a Democracy along with Legislature, Executive and Judiciary.

• Freedom of Speech and Expression are recognized under Article-19 (1) (a) of the Indian Constitution subject to certain restrictions.

• Media is expected and obliged to work within the frame-work of the Constitution and other relevant Acts.
EVOLUTION OF LAW

- **INDIAN PENAL CODE** was brought into force from **01.01.1862**, though it received assent of Governor General of India on **6th October 1860**.

- Indian Penal Code **Chapter-IX** deals with all offences by or relating to public servant. This Chapter does not deal with misconduct and abuse of power by the public servant.
• Section 161 to 165 of IPC deals with various offences of corruption and this is the first step to fight against corruption committed by the public servants.

• Section 161 of IPC deals with a public servant who accepts or obtains or agrees to accept from any person for himself or for any other person any gratification other than the legal remuneration.

• Section 162 of IPC deals with a person who accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any gratification by corrupt or illegal means to influence a public servant.
• **Section 163 of IPC** deals with a person who accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any gratification for inducing and by exercise of personal influence with any public servant.

• **Section 164 of IPC** deals with abetment of offence of sec.162 and 163 IPC.

• **Section 165 of IPC** deals with a public servant who accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any valuable thing without any consideration or less consideration.
There was no offence till 1952 for abetment of any offence u/sec.161 or 165. Hence, in 1952, by way of Criminal Law Amendment, 165-A was inserted to make abettor of sec.161 or 165 of IPC as offenders.
What amounts to a bribe?

I. The receiver must be a public servant.
II. He must solicit or receive illegal gratification.
III. He must have received the same as a motive or reward.
IV. It should be other than legal remuneration.

✓ Motive is for doing a future act.
✓ Reward is for a past act.
• Mere demand of bribe by a public servant is an offence u/sec. 161 IPC (Mubarak Ali v/s State AIR 1958 MP page-157).

• Gratification is not restricted to pecuniary gratification or estimable in money (C.I. Emden v/s State of UP AIR 1960 SC 548).

• During 2nd World War, there was large scale of corruption in War Dept. which necessitated for creation of a Special Police Establishment to curb corruption.

• Later the Special Police Establishment became the Central Bureau of Investigation.

• There was no special act for Prevention of Corruption till 11th March 1947.
• A Special Act i.e. Prevention of Corruption Act, 1947 came into existence from 11th March 1947 to make more effective provision for the prevention of bribery and corruption.

• By enacting the Special Act, in addition to IPC provisions (Sec.161 to 165) Criminal Misconduct was made as an offence as per Sec.5 of PC Act, 1947.
1. If a public servant *habitually* accepts any bribe. This offence is aggravated form of 161 IPC.

2. If a public servant *habitually* accepts any valuable thing without consideration or for less consideration with whom he transacted business or about to be transacted. It is aggravated form of sec. 165 IPC.

3. Fraudulently *misappropriates or converts* for his own use any property entrusted to him or under his control or allows any other person.
4. **By corrupt and illegal means or otherwise by abusing his official position as public servant obtains any valuable thing or pecuniary advantage.**

5. **Possession of Disproportionate Assets.**

- To consolidate the law relating to the Prevention of Corruption, the old PC Act is repealed, and the provisions of Section 161 to 165-A IPC were also repealed by introducing PC Act, 1988 which came into effect from **09.09.1988.**
Under this Act, the provisions of IPC and the provisions of Sec. 5 of PC Act, 1947 were put together as under:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>IPC</th>
<th>Punishment</th>
<th>PC Act, 1947</th>
<th>Punishment</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sec. 161</td>
<td>3 years</td>
<td>Sec.7</td>
<td>Shall not be less than six months. May extend to five years</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Sec. 162</td>
<td>3 years</td>
<td>Sec.8</td>
<td>Shall not be less than six months. May extend to five years.</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Sec. 163</td>
<td>3 years</td>
<td>Sec.9</td>
<td>Shall not be less than six months. May extend to five years.</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Sec. 164</td>
<td>3 years</td>
<td>Sec.10</td>
<td>Shall not be less than six months. May extend to five years.</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Sec. 165</td>
<td>3 years</td>
<td>Sec.11</td>
<td>Shall not be less than six months. May extend to five years.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Sec. 165 A</td>
<td>3 years</td>
<td>Sec. 12</td>
<td>Shall not be less than six months. May extend to five years.</td>
<td></td>
</tr>
</tbody>
</table>
Anti-Corruption can be basically divided into three categories.

1. Bribery and its abettors.
2. Abuse of official position.
3. Possession of disproportionate assets.
Bribery and its Abettors

- Just as fish moving under water cannot possibly be found either as drinking or not drinking water. (Kautilya) Similarly, public servants cannot be found out while taking money.
- Sec. 7 of PC Act 1988 deals with public servant taking gratification other than legal remuneration.
- The public servant becomes *funktus officio* when money offered to him as a bribe.
• **Section 8 and 9 of PC Act** are complimentary to sec. 7 of the PC Act and are intended to reach to the aiders and abettors of the offence.

• **Section 8 and 9 of the PC Act** are applicable to public servants as well as private persons.

• The **abettors** of the offences of **sec. 7 and 11** are dealt under **sec. 12** of the PC Act for the abetment.

• The abettors of the offences u/sec. 8 and 9 are dealt u/sec. 10 of the PC Act.
The **habitual** abettors for the offences u/sec. 8, 9 and 12 of PC Act are dealt under sec. 14 of the PC Act.

The aggravated form of bribe i.e. habitual acceptance of bribe is a criminal misconduct.

The habitual acceptance of valuable thing without consideration or inadequate consideration is also criminal misconduct.

The above forms are falling under the category of bribery.
Abuse of official position

- Abuse means misuse i.e. using his position for something for which it is not intended.
- The abuse of official position is wider than the offence of bribery.
- The abuse may be by corrupt or illegal means.
- To obtain pecuniary advantage or any valuable thing for himself or for any other person.
• To obtain pecuniary advantage or any valuable thing for himself or for any other person without any public interest.

• All bribery cases squarely fall under “obtaining any pecuniary advantage “ in addition to section 7 of the PC Act, 1988.

• Causing wrongful loss to the Govt to obtain pecuniary advantage for a third party falls under abuse of Power (M Narayanan Nambiar Vs State of Kerala AIR 1963 SC 1116).

• Issue of contracts to the bidders at higher rates would also fall under abuse of powers (Narbahadur Bhandari Vs State 2003 Cr.LJ 2799 Sikkim, Ghulam Din Butch Vs State of J& K AIR 1996 SC 1568).
Central Vigilance Commission (CVC) is a commission established under CVC Act 2003.

According to sec 8(g) of CVC Act, it tenders advice to the Central Govt., corporations established under any central act.

CVC advices whether there is a prima facie case against a Group-A officer/ Middle Management officer of a Corporation to accord sanction or not.

In case of difference of opinion between the organisation and CBI, CVC resolves the difference of opinion.
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Thank you