

LAW COMMISSION OF INDIA

ONE HUNDRED SIXTY SIXTH REPORT

ON

THE CORRUPT PUBLIC SERVANTS (FORFEITURE  
OF PROPERTY) Bill

FEBRUARY, 1999

JUSTICE  
B. P. JEEVAN REDDY  
Chairman, Law Commission of India



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D.O.No.6(3)(52)/98-LC(LS)

Dated: 4.2.99

Dear Dr. M. Thambi Durai,

I am sending herewith 166th report on "The Corrupt Public Servants (Forfeiture of Property) Bill".

2. The subject was taken up by the commission suo motu. In view of the fact that corruption in public life has struck deep roots in our society including its administrative apparatus, which is causing immense loss to the State, to the Nation and the public interest, There is a crying necessity for a Law providing for forfeiture of properties acquired by holders of "Public Office". It is undeniable that the existing law viz., the Prevention of Corruption Act, 1988 which provides for confiscation of assets of public servants in excess of his known sources of income is inadequate since such forfeiture follows conviction for the relevant offences. The proposed approach is recognised by Parliament in the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1997 (SAFEMA). In order to give shape to the recommendations of the Commission, a Bill entitled "The Corrupt Public Servants (Forfeiture of Property) Bill" is also enclosed with the report. The Commission is of the considered opinion that the recommendations made by it will arm the State with an effective and powerful weapon to fight corruption which is posing a serious threat to our economy and to the security and integrity of our State.

With regards,

Yours, sincerely,

(B.P. JEEVAN REDDY)

Dr. M. Thambi Durai,  
Hon'ble Minister for Law, Justice  
and Company Affairs,  
Shastri Bhawan,  
New Delhi.

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1.1. The Background:- In a judgment delivered on May 6, 1996 (reported in the Delhi Development Authority v. Skipper Construction Co. (P) Ltd. AIR 1996 Supreme Court 2005), the Supreme Court had made the following observations -

"... a law providing for forfeiture of properties acquired by holders of 'public office' (including the offices/posts in the public sector corporations) by indulging in corrupt and illegal acts and deals, is a crying necessity in the present state of our society. The law must extend not only to - as does SAFEMA - properties acquired in the name of the holder of such property but also to properties held in the names of his spouse, children or other relatives and associates. Once it is proved that the holder of such office has indulged in corrupt acts, all such properties should be attached forthwith. The law should place the burden of proving that the attached properties were not acquired with the aid of monies/properties received in the course of corrupt deals upon the holder of that property as does SAFEMA whose validity has

already been upheld by this Court in the aforesaid decision of the larger Constitution Bench. Such a law has become an absolute necessity, if the canker of corruption is not to prove the death-knell of this nation. According to several perceptive observers, indeed, it has already reached near-fatal dimensions. It is for the Parliament to act in this matter, if they really mean business."

1.2. The Genesis Of The Report:- Based upon the observations made in and the law declared in the said judgment, the Law Commission had prepared a Working Paper and had circulated it to all political parties, to media, bar and other organisations and bodies interested in public good. The Law Commission has received a large number of responses from a wide spectrum of society containing several suggestions and comments, all of which have been taken into account in preparing this Report.

1.3. Deleterious Effect Of Corruption:- One of the essential requirements of good governance is the absence of corruption. But unfortunately, corruption has struck deep-roots in our society, including its administrative apparatus. At every rung of the administration, whether at the Centre or in the States, there are corrupt elements who are causing immense loss to the state, to the nation and the public interest. The administrative

apparatus of local authorities, public-sector corporations and Government companies has become equally bad. When a public servant is paid bribe of, say, a lakh of rupees, it is paid for the reason that the payer gets at least 10 times the benefit, if not more, and that benefit is the loss of the State and the people. It is not so much the amount of the bribe but the quantum of loss to the people and the moral degradation it involves, that is more relevant. There is no respect for public money and public funds in the minds of many in the administration; public money is nobody's money. For a small personal benefit, the corrupt are prepared to cause any amount of loss to the State and to the people. On account of corruption, many of the welfare schemes including schemes for advancement of scheduled tribes and other weaker sections are not able to achieve the intended results. In fact, a former Prime Minister had observed once that only about 16% of the funds meant for the welfare of the scheduled tribes reached them and that the remaining 84% was absorbed by the members of the administrative apparatus, politicians and other middlemen. A stage has arrived where the corruption is threatening the very security and safety of the State. There is corruption in execution of projects, in awarding contracts, in making purchases, in issuance of licences and permits, in appointments, in elections and so on and so forth. There is hardly any sphere of life left untouched by corruption in our society. Surprisingly -

or rather shockingly - the corrupt elements have lost all sense of shame and guilt. The societal sanction is practically nil. The corrupt elements are brazenly flaunting their ill-gotten wealth. The amounts involved in corruption are quite often astronomical. There are numerous foreign forces out to destabilise our country and undermine our economy and the corrupt elements in our governing structure are too willing to play their game for their personal gain. Thus corruption in our country today is not only immoral and shameful, it has also become anti-national and anti-social and therefore requires to be dealt with an iron hand. The Prevention of Corruption Act has totally failed in checking the corruption. In spite of the fact that India is rated as one of the most corrupt countries in the world, the number of prosecutions - and more so the number of convictions under the said Act - are ridiculously low. A corrupt minister or a corrupt top public servant is hardly ever prosecuted under the Act and even in the rare event of his being prosecuted, the prosecution hardly ever reaches conclusion. At every stage, there will be revisions and writs to stall and defeat the prosecution. Top lawyers are engaged. Some or other point is raised and the litigation goes on endlessly, thus defeating the true objective of the criminal prosecution. Unfortunately, the Courts too have come to attach more sanctity to procedure forgetting the principle underlying sections 460 to 465 of the Code of Criminal Procedure,

1973, viz., any and every infraction of procedural provision does not vitiate the final order passed and that only that violation which causes prejudice may constitute a ground for disturbing the final order passed. Indeed it must be said that criminal judicial system in this country has proved totally ineffective particularly against the rich, the influential and the powerful. It is effective, if at all, only against the poor, the destitute and the undefended. We do not, however, think it necessary to stress any further the prevalence and pernicious role of corruption in our body politic as it is an obvious and indisputable fact.

1.4. Inadequacy Of The Existing Law And The Proposed Measures To Tackle The Evil Of Corruption:- It is true that the Prevention of Corruption Act, 1988 provides for confiscation of assets of public servant which are in excess of his known sources of income but such forfeiture can come about only after the public servant is convicted for the relevant offence [section 13(1)(e)] under the Act. There is also in vogue a pre-independence law i.e., Criminal Law Amendment Ordinance 38 of 1944 which provides for attachment of properties of a public servant who is accused of corruption. But, here again, the confiscation can come about only pursuant to and on the basis of conviction for corruption. Similar is the position under the Prevention of the Money Laundering Bill, 1998 introduced in the Parliament recently. The



Bill defines the expression "money-laundering" to mean owning, possessing or otherwise dealing in the "proceeds of the crime", and confiscation of proceeds of crime is possible only after a person is convicted of one or the other offence mentioned in the Schedule to the Bill. Part V of the Schedule mentions some of the offences created/recognised by the Prevention of Corruption Act, but quite significantly the offence of possession of disproportionate assets (dealt with under clause (e) of sub-section (1) of section 13) is not one of the offences mentioned in the Schedule. Perhaps, the said offence did not fit into the scheme of the Bill. Be that as it may, the fact remains that there is no law in force in this country providing for forfeiture/confiscation of the ill-gotten assets/properties of the holders of public office similar to SAFEMA. Merely sending the corrupt holders of public office to jail is no remedy; it is no solution. It doesn't really hurt them. Unless their ill-gotten assets are forfeited to the State, the canker of corruption cannot be really tackled. Hence, the necessity of the proposed measure.

1.5. The Proposed Approach Recognised In The SAFEMA:As a matter of fact, this approach was recognised by Parliament more than twenty years ago in the case of smugglers and violaters of foreign exchange laws, when it

enacted the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act 1976 (SAFEMA). The preamble to the Act reads -

"An Act to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto.

Whereas for the effective prevention of smuggling activities and foreign exchange manipulations which are having a deleterious effect on the national economy it is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains;

And whereas such persons have been augmenting such gains by violations of wealth-tax, income-tax or other laws or by other means and have thereby been increasing their resources for operating in a clandestine manner;

And whereas such persons have in many cases been holding the properties acquired by them through such gains in the names of their relatives, associates and confidants;

Be it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:"

(It may be mentioned that all the factors - and many more - mentioned in the said Preamble are present to a much greater degree in the case of corrupt holders of public office.)

1.5.1. SAFEMA applied to - (a) persons convicted under the Customs Act and Foreign Exchange Regulation Act; (b) persons detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 (COFEPOSA) and where such order has not been revoked on the report of the Advisory Board or has not been quashed by the Court. (It must be remembered that detention under COFEPOSA is neither a conviction nor is it a proof of guilt, it being merely a preventive measure.) The expression 'illegally acquired property' is very significant and deserves to be set out in full:

"(c) "illegally acquired property", in relation to any persons to whom this Act applies means -

(i) any property acquired by such persons, whether before or after the commencement of this Act wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited

by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or

(ii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income earnings or assets in respect of which any such law has been contravened; or

(iii) any property acquired by such persons whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or

(iv) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings from such property;

and includes -

(A) any property held by such person which would have been in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;"

1.6. Constitutionality Of The SAFEMA Upheld By The Supreme Court:- The Act provides that where any person is believed to be in possession of illegally acquired property, the appropriate authority shall give him a notice calling upon him to show cause why the said property be not forfeited to the State (section 6). Unless the person concerned establishes that the said properties have been acquired by lawful means, the properties will be forfeited to the State (section 7). In other words, the burden of proving the lawful acquisition of such properties is placed upon him i.e.,

the holder of such properties, evidently for the reason that he alone should know how has he come to hold or possess the said properties (section 8). It is equally relevant to notice that the Act extends not only to the persons convicted under specified crimes and those detained under COFEPOSA, who are found in possession of illegally acquired properties but extends to their relatives and associates as well. The expression "relative" takes in not only wife but all near relatives (section 2). When the constitutionality of the said enactment was challenged on the grounds of being unjust, excessive and harsh, a Nine-Judge Constitution Bench of the Supreme Court unanimously rejected the challenge in the Attorney General of India v. Amratlal Prajivandas [1994 (5) SCC 54]. It was explained by the Supreme Court that the idea underlying the Act is "to forfeit the illegally acquired properties of the convict/detenu  
irrespective of the fact that such properties are held by or kept in the name of or screened in the name of any relative or associate as defined in the said two Explanations. The idea is not to forfeit the independent properties of such relatives or associates which they may have acquired independently but only to reach the properties of the convict/detenu or properties traceable to him, wherever they are, ignoring all the transactions with respect to those properties." It was held by the Supreme Court that the definition of the expression "illegally acquired property" is not arbitrary or

over-inclusive and that having regard to the seriousness of the evil sought to be curbed, the law had to be made strict. In other words, the law must be equal to the mischief sought to be remedied. An insufficient and inadequate law is no law at all. The following observations are relevant:

... We see no substance in the submission that the definition is arbitrary or discriminatory nor do we see any reason for reading down the said definition to confine it to the violation of the acts referred to in Section 2(2)(a) of SAFEMA. We can take note of the fact that persons engaged in smuggling and foreign exchange manipulations do not keep regular and proper accounts with respect to such activity or its income or of the assets acquired therefrom. If such person indulges in other illegal activities the position would be no different. The violation of foreign exchange laws and laws relating to export and import necessarily involves violation of tax laws. Indeed, it is well known fact that over the last few decades, smuggling, foreign exchange violation, tax evasion, drugs and crime have all got mixed-up. Evasion of taxes is integral to such activity. It would be difficult for any authority to say, in the absence of any accounts or other relevant material that among the

properties acquired by smuggler, which of them or which portions of them are attributable to smuggling and foreign exchange violations and which properties or which portions thereof are attributable to violations of other laws (which the Parliament has the power to make). It is probably for this reason that the burden of proving that the properties specified in the show cause notice are not illegally acquired properties is placed upon the person concerned. May be this is the case where a dangerous disease requires a radical treatment. Bitter medicine is not bad medicine. In law it is not possible to say that definition is arbitrary or is couched in unreasonably wide terms....

1.7. The Concept Of 'Implied Trust' And 'Breach Of Trust' On The Part Of Bribe Takers:- More important, the Constitution Bench evolved the concept of 'implied trust' and breach of trust on the part of bribe-takers. The following observations bring out the said concept:

... After all, all these illegally acquired properties are earned and acquired in ways illegal and corrupt - at the cost of the people and the State. The State is deprived of its legitimate revenue to that extent. These properties must justly go back where they belong



- to the State. What we are saying is nothing new or heretical. Witness the facts and ratio of a recent decision of the Privy Council in Attorney General for Hong Kong v. Reid. [1993 (3) W.L.R. 1143]. The Respondent, Reid, was a crown-prosecutor in Hong Kong. He took bribes as an inducement to suppress certain criminal prosecutions and with those monies, acquired properties in New Zealand, two of which were held in the name of himself and his wife and the third in the name of his solicitor. He was found guilty of the offence of bribe-taking and sentenced by a criminal court. The administration of Hong Kong claimed that the said properties in New Zealand were held by the owners thereof as constructive trustees for the Crown and must be made over to the Crown. The Privy Council upheld this claim, over-ruling the New Zealand Court of Appeals. Lord Templeman, delivering the opinion of the Judicial Committee, based his conclusion on the simple ground that any benefit obtained by a fiduciary through a breach of duty belongs in equity to the beneficiary. It is held that a gift accepted by a person in a fiduciary position as an incentive for his breach of duty constituted a bribe, and, although in law it belonged to the fiduciary, in equity he not only became a debtor for the amount

of the bribe to the person to whom the duty was owed but he also held the bribe and any property acquired therewith on constructive trust for that person. It is held further that if the value of the property representing the bribe depreciated, the fiduciary had to pay to the injured person, the difference between that value and the initial amount of the bribe, and if the property increased in value the fiduciary was not entitled to retain the excess since equity would not allow him to make any profit from his breach of duty. Accordingly, it is held that to the extent that they represented bribe received by the first respondent, the New Zealand properties were held in trust for the Crown, and the Crown had an equitable interest therein. The learned Law Lord observed further that if the theory of constructive trust is not applied and properties interdicted when available, the properties "can be sold and the proceeds whisked away to some Shangri La which hides bribes and other corrupt moneys in numbered bank accounts" - to which we are tempted to add: one can understand the immorality of the Bankers who maintained numbered accounts but it is difficult to understand the amorality of the Governments and their laws which sanction such practices - in effect encouraging them. The ratio of this decision applies equally

where a person acquires properties by violating the law and at the expense of and to the detriment of the State and its revenues where an enactment provides for such a course, even if the fiduciary relationship referred to in Reid is not present. It may be seen that the concept employed in Reid was a common law concept, whereas here is a case of an express statutory provision providing for such forfeiture. May we say in conclusion that "the interests of society are paramount to individual interests and the two must be brought into just and harmonious relation. A mere property career is not the final destiny of mankind, if progress is to be the law of the future as it has been of the past. (Lewis Henry Morgan ; Ancient Society)."

1.8. Reiteration Of The Aforesaid Concept:- The aforesaid idea was reiterated by the Supreme Court in a later decision rendered in 1996, Delhi Development Authority v. Skipper Construction Co. (P) Ltd. referred to above. It is only after extensively referring to the decision in the Attorney General v. Amratlal Prajivandas referred to above that the Court made the observations which have been quoted at the inception of this report.

1.9. Some Salient Features Of The Proposed Bill:- The Law Commission of India has kept the aforementioned facts and law while drafting the accompanying Bill (Annexure-A). With a view to enable the Competent Authority under the Act to obtain information with respect to the illegally acquired properties and assets of corrupt public servants (which expression includes Ministers and Members of Parliament, both incumbent and former) whether located in India or stashed abroad, the very holding of or possession of illegally acquired properties is made an offence. Declaring such holding or possession illegal and a punishable offence warrants their forfeiture and taking of steps to identify and seize them even when they are kept in numbered accounts or under pseudonyms. Power is given to the Competent Authority to call upon any public servant believed to be in possession of illegally acquired properties, whether within India or abroad, to disclose by way of an affidavit the particulars of the assets held/possessed by him, his relatives and associates. Power is also given to the Competent Authority to call upon any person including authority, officer, Bank or other organisation to disclose information with respect to a person to whom this Act applies and such person is made bound to furnish such information. Refusal to furnish information or furnishing false information is made punishable. Certain relevant powers of the Civil Court are also vested in the Competent Authority to enable him to function

effectively. For the same purpose it is also clothed with the power to attach properties pending the proceedings under the Act, to order any enquiry, investigation, search and seizure through such authorities as he may find appropriate and also to call upon any authority to render such assistance as may it be called upon to render. In short, all provisions necessary for an effective and unhindered functioning of the Competent Authority have been provided for. The accompanying Bill also bars the court from granting any injunction against the Competent Authority. It is true that such a provision cannot bar the High Court from interfering under Article 226 of the Constitution of India - or, for that matter, the Supreme Court under Articles 32 or 136 - but as held by a nine-Judge Constitution Bench of the Supreme Court in Mafatlal Industries Ltd. v. Union of India (1997 (5) SCC 536) dealing with a similar provision in the Central Excise Act and Customs Act:

"By virtue of sub-section (3) to section 11-B of the Central Excises and Salt Act, as amended by the aforesaid Amendment Act, and by virtue of the provisions contained in sub-section (3) of section 27 of the Customs Act, 1962, as amended by the said Amendment Act, all claims for refund (excepting those which arise as a result of declaration of unconstitutionality of a provision

whereunder the levy was created) have to be preferred and adjudicated only under the provisions of the respective enactments. No suit for refund of duty is maintainable in that behalf. So far as the jurisdiction of the High Courts under Article 226 of the Constitution - or of this Court under Article 32 - is concerned, it remains unaffected by the provisions of the Act. Even so, the Court would, while exercising the jurisdiction under the said articles, have due regard to the legislative intent manifested by the provisions of the Act. The writ petition would naturally be considered and disposed of in the light of and in accordance with the provisions of section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the regime of law and not for abrogating it. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it. The power under Article 226 is conceived to serve the ends of law and not to transgress them."

1.9.1. So far as the definition of "relatives" and "associates" is concerned, they have been bodily lifted from SAFEMA. Even the definition of "illegally acquired property" is substantially based upon the definition in the said Act. Indeed, the very Bill accompanying this

Report is patterned on SAFEMA. This has been done advisedly for the reason that the constitutional validity of SAFEMA has already been tested and affirmed by a larger Constitution Bench of Nine learned Judges of the Supreme Court of India in Attorney General of India v. Amritlal Prajivandas, referred to supra. The idea has been to avoid time-consuming litigation in courts on the question of constitutionality of the measure.

1.10. The Proposed Measures Supported By A Political Party And No Political Party Objected To It: It is worth mentioning that no political party had objected to the accompanying measure or to any of its provisions. Only President of the Janta Dal has give specific comments of his party in support of the proposed legislation as under:-

"The need for the legislation is well accepted by all. The proposed legislation may require Members of the Union Council of Ministers as well as MPs to file their statements of Assets and liabilities as also of their relatives and associates to the Speaker/Chairman of the House to which they belong.

The term relatives and associates defined in explanation 1 and 2 in Section 2 of the Bill appears adequate."

1.11. Measures To Combat Corruption By OECD And Countries And Need For Stringent Measures:- Let it not be

assumed that the Indian people are tolerant of corruption. People's failure to participate in elections in desired numbers is a testimony to their lack of faith in the instruments of governance. People's patience may be shortlived. Many governments viz., Brazil, Indonesia, Italy, Pakistan and Zaire have fallen at least partly on account of corruption of politicians. There are several pitfalls of corruption viz., more red tape, less investment in education, less direct foreign investment and bad governance. Anti-corruption measures have attracted worldwide attention. The United States of America enacted Foreign Corrupt Practices Act several years back. Recently, international financial institutions such as the World Bank and IMF have increasingly started linking aid to the developing countries on the condition of providing good governance. An anti-bribery convention has also been signed/ratified by some 29 members of the OECD which requires them to make it a crime to bribe any foreign official to win or retain business or for any other "improper advantage". The convention is soon expected to come into force. A few multinational companies are understood to be strictly enforcing their ethics code not to bribe officials. It is important that the Indian business people evolve their codes of ethics to discourage corrupt practices. An



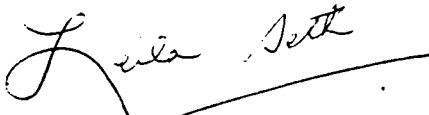
independent and fearless judiciary in India can go a long way in playing an important role in ensuring that the corrupt are not spared at any cost. Nevertheless, it is not a substitute for clean and responsive government which has the good of people at heart and which is earnest in the task of routing out corruption. Let war on corruption not remain a mere slogan. It is in this earnest hope that the government of the day means business that the Law Commission has ventured to propose the present legislation.

1.12. New Legislation Recommended:- The Law Commission hopes and trusts that the government would take immediate steps for introducing legislation in terms of the accompanying Bill (Annexure-A) and have it passed. Such a legislation would arm the State with an effective and powerful weapon to fight corruption which is sapping the fundamentals of our society and is posing a serious threat to our economy and to the security and integrity of our State.



(MR. JUSTICE B.P. JEEVAN REDDY) (RETD.)

CHAIRMAN



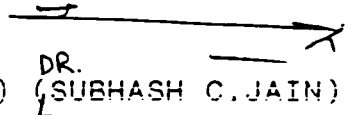
(MS. JUSTICE LEILA SETH) (RETD.)

MEMBER



(DR. N.M. GHATATE)

MEMBER



DR. (SUBHASH C. JAIN)

MEMBER SECRETARY

DATED: 4.2.1999

(ANNEXURE-A)

THE CORRUPT PUBLIC SERVANTS (FORFEITURE OF PROPERTY) BILL

An Act to provide for the forfeiture of illegally acquired properties of corrupt public servants and for matters connected therewith or incidental thereto.

WHEREAS for the effective prevention of corruption by public servants which is having a deleterious and deadening effect on administrative efficiency, developmental activities and programmes and is endangering the national economy and the security of the State, it is necessary to devise effective and prompt measures to deprive persons engaged in such activities of their ill-gotten gains;

AND WHEREAS many such public servants are stashing away their ill-gotten gains in numbered accounts in foreign banks and in many other ways outside the territory of India and whereas it is necessary to identify and seize those assets for being utilised for public purposes and whereas it is necessary for achieving the said purpose to declare the very holding or possession of illegally acquired properties an offence;

AND WHEREAS prosecution of corrupt public servants under the provisions of the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988 has become difficult on account of various systemic defects and as a result of which the number of prosecutions and more so the number of convictions of corrupt public servants is ridiculously low compared to the widespread corruption pervading every level of administration;

AND WHEREAS such public servants have been augmenting such gains by violations of Wealth Tax, Income Tax and other laws or by other means and have thereby been increasing their resources for operating in a clandestine manner;

AND WHEREAS such persons have in many cases been holding the properties acquired by them through such gains in the name of their relatives, associates and confidants; and whereas it is necessary to forfeit all such properties ignoring all kinds of devices and transactions;

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:

Section 1: Short title, extent and commencement

(1) This Act may be called the Corrupt Public Servants (Forfeiture of Property) Act 1999.

(2) It extends to the whole of India.

(3) It shall come into force on such day as may be specified by the Central Government in the Official Gazette but such day shall not be later than three months from the day on which the President accords his assent to this measure.

Section 2: Application

(1) The provisions of this Act shall apply only to the persons specified in sub-section (2).

(2) The persons referred to in sub-section (1) are the following, namely:-

(a) every public servant-

(i) who has been found guilty of corruption in a disciplinary/departmental enquiry or by a court or

(ii) who is holding or is in possession of illegally acquired properties or

(iii) who is found holding or in possession of properties whether in the course of a search, raid or survey by an authority or in any other manner whatsoever, which are disproportionate to his known means of income;

(b) every person who is a relative of the public servant referred to in clause (a);

(c) every associate of the public servant referred to in clause (a);

(d) any holder of any property which was at any time previously held by the public servant referred to in clause (a), unless such holder proves that he was a transferee in good faith for adequate consideration;

(e) any person who has deposited any amounts or other movable properties in any bank or any other concern outside the territory of India, or has acquired any properties outside the territory of India without the requisite permission of the appropriate authority in India.

Explanation-1: For the purposes of clause (b) of this sub-section, "relative" in relation to a public servant means -

- (i) spouse of the public servant;
- (ii) brother or sister of the public servant;
- (iii) brother or sister of the spouse of the public servant;
- (iv) any lineal ascendant or descendant of the public

servant;

- (v) any lineal ascendant or descendant of the spouse of the public servant;
- (vi) spouse of the person referred to in clause (ii), clause (iii), clause (iv) or clause (v);
- (vii) any lineal descendant of the person referred to in clause (ii) or clause (iii).

Explanation-2: For the purposes of clause (d), "associate", in relation to a public servant means -

- (i) any individual who had been or is residing in the residential premises (including outhouses) of such public servant;
- (ii) any individual who had been or is managing the affairs or keeping the accounts of such public servant;
- (iii) any association of persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act, 1956, of which such public servant had been or is a member, partner or director;
- (iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals partnership firm or private

company referred to in clause (iii) at any time when such public servant had been or is a member, partner or director of such association, body, partnership firm or private company;

(v) any persons who had been or managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in clause (iii);

(vi) the trustee of any trust, where -

(a) the trust has been created by such public servant; or

(b) the value of the assets contributed by such public servant (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which the contribution is made, to not less than twenty per cent of the value of the assets of the trust on that date;

(vii) where the competent authority, for reasons to be recorded in writing, considers that any properties of such public servant are held on his behalf by any other person, such other person.

**Explanation-3:** For the avoidance of doubt, it is hereby provided that the question whether any person is a person to whom the provisions of this Act apply may be determined with reference to any facts, circumstances or events (including any conviction or detention) which occurred or took place before the commencement of this Act.

Section 3: Definitions

(1) In this Act, unless the context otherwise requires -

(a) "competent authority" means the competent authority appointed under sub-section (1) of Section 5 and shall include the competent authorities designated as such under sub-section (2) of Section 5.

(b) "corruption" includes (i) conduct of the nature specified in any of the offences mentioned in the Prevention of Corruption Act and the offences mentioned in sections 166 to 169, 197, 217 to 219, 409, 477-A and 489-A to 489-E of the Indian Penal Code, 1860 and (ii)



such conduct as is inconsistent with the integrity a public servant is expected to possess and which causes or likely to cause loss or prejudice to the interest of the State or to the public interest, as the case may be.

(c) "illegally acquired property", in relation to any person to whom this act applies, means -

(i) any property acquired by such person whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or

(ii) any property acquired by such person whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or

(iii) any property acquired by such person whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws, or

(iv) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings from such property;

(v) any property held by or in possession of such person, whether before or after the commencement of this Act, which is disproportionate to his known lawful sources of income or for which he cannot satisfactorily account for:

and includes

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;

Explanation (1): If the value of illegally acquired property increases after it was acquired or if a different property or asset is acquired or created out of or with the aid of or by transfer of the illegally acquired property, all such increase in value or other property or asset so acquired or created shall be and shall be treated as illegally acquired property. If however the value of the property diminishes after it is

acquired, the person concerned shall be liable to make good the diminution value.

Explanation (2): Illegally acquired property includes property acquired or held by, or in possession of, a person to whom this Act applies, outside the territory of India.

(d) "public servant" means a person holding or who has held an office or post in the Central Government or Union Territory or in any statutory corporation, agency or company subject to the control of the Government of India or financed wholly or partly by it and shall include -

any person who has held or is holding the office of a minister, or is or has been a Member of Parliament, or is holding or has held any other political office in the Central Government, or in the government or administration of a Union Territory;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "person" includes a public servant within the meaning of clause (c) and his/her relative and/or associate referred to in Section 2.

(g) "property" includes cash, jewellery or any article of value and any interest in property movable or immovable;

(h) "trust" includes any other legal obligation.

(2) Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

(3) Any reference in this Act to any officer or authority shall, in relation to any area in which there is no officer or authority with the same designation, be construed as a reference to such officer or authority as may be specified by the Central Government or by notification in the Official Gazette.

Section 4: Prohibition of holding illegally acquired property

(1) As from the commencement of this Act, it shall

not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1) such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Act.

(3) Notwithstanding anything contained in sub-section (2), a person holding or in possession of illegally acquired property in contravention of the provisions of sub-section (1) shall, on conviction by a criminal court, be liable to be punished with imprisonment which shall not be less than one year but which may extend to seven years. In any such trial, the provisions contained in section 20 of the Prevention of Corruption Act, 1988 shall apply.

Section 5: Competent Authority

(1) The Central Vigilance Commissioner appointed under Section 3 of Ordinance No. 15 of 1998 (as amended by Ordinance No. 18 of 1998) shall be the competent authority to exercise the powers and perform the functions of the competent authority under this Act.

(2) The Central Vigilance Commissioner shall be entitled to delegate his powers and functions to the Vigilance Commissioners appointed under section 3 of Ordinance No.15 of 1998 (as amended by Ordinance No. 18 of 1998) in respect of such public servants or cases or class or classes of public servants or cases, as the case may be, as may be specified by him. On such delegation, such Vigilance Commissioners shall exercise all the powers and perform all the functions of the competent authority under this Act in respect of the public servants or cases or the class or classes of public servants or cases as may have been specified by the Central Vigilance Commissioner.

Section 6: Power to Call For Information

(1) If the competent authority has reason to believe that any person is in possession of or holding illegally acquired properties, whether within India or abroad, it may serve a notice upon such person to disclose, by way of an affidavit, a true, full and up-to-date list of properties held by him or in his possession and those held by or in possession of his relatives and associates. The competent authority may after making such enquiry as it may think fit, take such action on the basis of the

information so furnished and the other material, if any, gathered by it including the action contemplated by Section 7.

Explanation: The death of the public servant or the person to whom this Act applies, whether before the issuance of a notice under this section or under section 7 or any other provision of this Act or during the pendency of any proceedings under this Act shall not prevent the initiation or continuation of the proceedings under this Act and all or any proceedings under this Act can be initiated or continued against the relatives or associates of the public servant or against the legal representatives of the person to whom this Act applies, as the case may be.

(2) Any person furnishing false information under sub-section (1) and any person refusing to furnish information called for under sub-section (1) shall on conviction by a criminal court, be liable to be punished by imprisonment of either description for a term which may extend to three years or fine or both.

(3) Notwithstanding anything contained in the Criminal Procedure Code 1973, the offence under sub-section (2) shall be tried as a summary case and the



procedure prescribed in Chapter XXI of the said Code (except sub-section (2) of section 262) shall be applicable thereto.

Section 7:            Notice of Forfeiture

(1) If, having regard to the value of the properties possessed or held, whether within the territory of India or anywhere else, by any person to whom this Act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of action taken under section 6, 17, 18 or 19 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

(3)(a) Simultaneously with the issuance of the notice under sub-section (1) or at any time thereafter, the Competent Authority may attach all the properties generally, or any of the properties specified in the notice, held by or in possession of the person to whom the notice under sub-section (1) is issued. Such attachment shall be effective till the passing of the final orders by the Competent Authority, unless vacated by the Competent Authority earlier.

Explanation: An order of attachment issued under this clause shall also operate as an injunction against the person restraining him from transferring or dealing with the attached properties in any manner, except under the orders of the Competent Authority.

(b) An order under clause (a) can also be directed to any person or bank or any other institution, authority or organisation, holding properties for and on behalf of the person to whom the notice under sub-section (1) is or has been issued. On being apprised of such order, the

person, the bank, the institution, authority or organisation shall hold all the properties of the person to whom the notice under sub-section (1) is issued or the specified properties, as the case may be, subject to the orders of the Competent Authority and shall not part with those properties except under the orders of the Competent Authority.

(4)(a) Where any claim is preferred to, or any objection is made to the attachment of any property under sub-section (3) on the ground that such property is not liable to such attachment, the competent authority shall proceed to investigate the claim or objection.

Provided that no such investigation shall be made where the competent authority considers that the claim or objection was designedly or unnecessarily delayed.

(b) The claimant or objector must adduce evidence to show that the property attached is not liable to be forfeited under the provisions of this Act.

(c) Where upon such investigation, the competent authority is satisfied that such property is not liable to be forfeited under the provisions of this Act, he shall release the same from attachment. In case he is not so satisfied, he shall disallow the claim or the objection.

(d) Where a claim or objection is preferred, the party against whom the order is made, may institute a suit in a Civil Court to establish the right which he claims to the said property but subject to the result of such suit, if any, the order of the competent authority shall be conclusive.

Section 8: Forfeiture of property in certain cases

(1) The competent authority may, after considering the explanation, if any, to the show-cause notice issued under Section 7 and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.

(2) Where the competent authority is satisfied that some of the properties referred to in the show-cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties, which, to the best of its judgment, are illegally acquired properties and record a finding according under sub-section (1).

(3) Where the competent authority records a finding under this Section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to provisions of this Act stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Act, then, the company, shall, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

Section 9: Burden of Proof

In any proceedings under this Act, the burden of proving that any property specified in the notice served under Section 7 is not illegally acquired property shall be on the person affected.

Section 10: Fine in lieu of Forfeiture

(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 8 and it is a case where the source of only a part, being less than one-half, of the

income, earnings or assets with which such property was acquired has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part.

Explanation: For the purposes of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be -

(a) in the case of any part of income or earnings, the amount of such part of income or earnings;

(b) in the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets;

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under section 8 and thereupon such property shall stand released.

Section 11: Procedure in relation to certain trust properties

In the case of any person referred to in clause (vi) of Explanation 2 to sub-section (2) of section 2, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust is illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within such time as may be specified in the notice which shall not ordinarily be less than thirty days, to explain the source of the money or other assets out of or by means of which such property was acquired or, as the case may be, the source of the money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under section 7 and all the other provisions of this Act shall apply accordingly.

Explanation: For the purposes of this section "illegally acquired property" in relation to any property held in trust, includes -

- (i) any property which if it had continued to be held by the author of the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor;
- (ii) any property acquired by the trust out of any contributions made by any person which would have been illegally acquired property in relation to such person had such person acquired such property out of such contributions.

Section 12: Certain transfers to be null and void

Where after the issue of a notice under section 7 or under section 11, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Central Government under section 8, then, the transfer of such property shall be deemed to be null and void.



Section 13: Appeal to the High Court

(1) An appeal shall lie to the High Court within whose territorial jurisdiction the competent authority is located against an order passed under Section 8, 10 or 11.

(2) The appeal under sub-section (1) shall be heard by a Division Bench, as may be designated by the Chief Justice of the High Court.

(3) The appeal shall be preferred within 45 days of the date on which the order appealed against is served upon the appellant;

Provided that the High Court may entertain an appeal preferred beyond 45 days in case the appellant satisfies that there was sufficient cause for not preferring the appeal within the period prescribed.

Section 14: Notice or order not to be invalid for error in description

No notice issued or served, no declaration made, and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

Section 15: Bar of jurisdiction

No order passed or declaration made under this Act shall be appealable except as provided therein and no Civil Court shall have jurisdiction in respect of any matter which the High Court or any competent authority is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 16: Competent authority to have powers of civil court

(1) The competent authority shall have all the powers of the civil court while trying a suit under the Code of Civil Procedure 1908, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;

- (e) issuing commissions for examination of witnesses or documents;
- (f) any other matter which may be prescribed.

(2) The competent authority shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the competent authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

Section 17: Information to competent authority

(1) Notwithstanding anything contained in any other law, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority or a Bank, a company, a firm or any other institution, establishment, organisation or any individual to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Act. Failure to furnish the information so called for or furnishing false information shall be punishable with imprisonment of either description for a term which may extend to three years and fine.

(2) Notwithstanding anything contained in the Criminal Procedure Code, 1973, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in chapter XXI of the said Code (except sub-section (2) of section 262) shall be applicable thereto.

(3) Any officer of the Income-tax Department, the Customs Department or the Central Excise Department or any officer of enforcement appointed under the Foreign Exchange Regulation Act, 1973, may furnish suo moto any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purposes of this Act.

Section 18: Filing of Statement of assets:- (1) Every Member of Parliament shall file a true and full statement of the properties held by him, whether in his own name or in the name of his relatives or his associates as on the 31st March of every year. Such statement shall be filed on or before the 30th June of that year. The statements shall be submitted to the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha, as the case may be.

(2) Every public servant, not belonging to class III or IV or an equivalent category, whose conditions of service do not provide for filing an annual statement of

properties held by him, whether in his own name or in the name of his relatives or his associates, shall file such a statement, as on 31st March of each year, on or before the 30th June of that year. Such statement shall be filed with the head of his department, undertaking or organisation, or such authority as may be specified.

(3) The Competent Authority shall be entitled to summon the statement filed under sub-section (1) or (2) or under the Central Civil Services (Conduct) Rules, 1964 or any other corresponding rules, and take such action thereon as may be called for under the provisions of this Act.

Section 19: Certain officers to assist competent authority

For the purposes of any proceedings under this Act, the following are hereby empowered and required to assist the competent authority namely:-

- (a) officers of the Customs Department;
- (b) officers of the Central Excise Department;
- (c) officers of the Income-tax Department;
- (d) officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973;
- (e) officers of police,
- (f) such other officers of the Central or State

Government as are specified by the Central Government in this behalf by notification in the Official Gazette.

Section 20: Power of competent authority to require certain officers to exercise certain powers

(1) For the purposes of any proceedings under this Act or the initiation of any such proceedings, the competent authority shall have power to cause to be conducted any inquiry, investigation, search and seizure or survey in respect of any person, place, property, assets, documents, books of accounts or any other relevant matters.

(2) For the purposes referred to in sub-section (1) the competent authority may, having regard to the nature of the inquiry, investigation or survey, require an officer of the Income-tax Department to conduct or cause to be conducted such inquiry, investigation, search and seizure or survey.

(3) Any officer of the Income-tax Department who is conducting or is causing to be conducted any inquiry, investigation, search and seizure or survey required to be conducted under sub-section (2), may, for the purpose of such inquiry, investigation or survey exercise any

power (including the power to authorise the exercise of any power) which may be exercised by him for any purpose under the Income-tax Act, 1961, and the provisions of the said Act shall, so far as may be, apply accordingly.

Section 21: Power to take possession

(1) Where any property has been declared to be forfeited to the Central Government under this Act, or where the person affected has failed to pay the fine due under sub-section (1) of Section 10 within the time allowed therefor under sub-section (3) of that Section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or to any person duly authorised by it in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may for that purpose use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the competent authority may, for the purpose of taking possession of any property referred to in

sub-section (1), requisition the services of any police officer to assist the competent authority and it shall be the duty of said officer to comply with such requisition.

Section 22: Rectification of mistakes: With a view to rectifying any mistakes apparent from record, the competent authority or the High Court, as the case may be, may amend any order made by it within a period of one year from the date of the order:

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

Section 23: Findings under other laws not conclusive for proceedings under this Act

No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act.

Section 24: Service of notices and orders: Any notice or order issued or made under this Act shall be served -



- (a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;
- (b) if the notice or order cannot be served in the manner provided in clause (a), by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made, or on such conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally worked for gain.

Section 25: Protection of action taken in good faith

No suit prosecution or other proceedings shall lie against the Central Government or any officer of the Central or State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act, or the rules made thereunder.

Section 26: Punishment for giving false information:

(1) Whoever, with intent to cause injury to or defame, any person, gives any information or complaint to the Competent Authority which he either knows or has reason to believe to be false or with reckless disregard

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

(2) Notwithstanding anything in the Criminal Procedure Code, 1973, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in chapter XXI of the said Code (except sub-section (2) of section 262) shall be applicable thereto.

Section 27: Act to have overriding effect: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any or other law for the time being in force.

Section 28: Provisions of the Act not to apply to certain properties held in trust

Nothing contained in this Act shall apply in relation to any property held by a trust or an institution created or established wholly for public religious or charitable purposes -

(i) such property has been so held by such trust or institution from a date prior to the commencement of this Act; or

- (ii) such property is wholly traceable to any property held by such trust or institution prior to the commencement of this Act.

Section 29: Power to make rules: The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Section 30: Act to be in addition to any other law:

The provisions of this Act shall be in addition to the provisions of the Prevention of Corruption Act 1966, Criminal Law Amendment Ordinance 38 of 1944 and the Prevention of Money Laundering Act. Any proceeding taken under any of the said enactments shall not preclude the competent authority under this Act from taking any action or initiating any proceedings under this Act.