

Justice V.C. Misra
Chairman

U.P. State Law Commission
Lucknow.

Ra. Vi.Aa- 1532/2012
Dated: January 16, 2012

Dear Chief Minister/Law Minister,

I have great pleasure in forwarding herewith **Twelfth Report-2012** of the Uttar Pradesh State Law Commission Proposing a new enactment by State Legislature titled **“The Uttar Pradesh Special Courts (Attachments and Confiscation of Property) Bill, 2012”**.

It is true 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 the income is inadequate since such forfeiture follows conviction for the relevant offences.

The Commission is of the considered opinion that the recommendations made by it will arm the State Government with an effective and powerful weapon to fight against corruption, which 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. In order to give shape to the recommendations of the Commission proposed **Draft –bill (Annexure-I)** is enclosed with the Report.

With kind regards,

Yours sincerely

(Justice.V.C. Misra)

Sushri Mayawati,
Chief Minister/Law Ministe,
Uttar Pradesh
Encl: A Report with Proposed Draft Bill

UTTAR PRADESH STATE LAW COMMISSION

TWELFTH – REPORT- 2012

ON

**THE UTTAR PRADESH SPECIAL COURTS
(ATTACHMENTS AND CONFISCATION OF PROPERTY)
BILL, 2012**

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**The Uttar Pradesh Special Courts Attachments and Confiscation
of Property) Bill, 2012**

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ANNEXURE-I (MODEL DRAFT BILL)

THE UP STATE LAW COMMISSION
TWELTH- REPORT -2012

**The Uttar Pradesh Special Courts (Attachments and Confiscation of
Property) Bill, 2012**

Chapter- I

Introduction

1.1 During recent past, with the disinterring of scams and scandals, India stands exposed to the ravages of systemic corruption. The nexus of illegality which has a symbiotic relationship with the black economy has led to the sequestering of the nation's resources in the hands of venal politicians, bureaucrats and unscrupulous businessmen. Little wonder, then, this plunder of public money has been stashed away in undisclosed tax havens and secret foreign bank accounts across the world.

1.2 A recent study released in January, 2011 by **Global Financial Integrity** states that from 2000 to 2008, India had US \$ 104.1 billion in cumulative outflows of illicit capital. This mind-boggling amount clearly shows that while India's growth story might be unprecedented, so has its illicit money outflows.

1.3 Recognising the issue as a matter of utmost public interest, **the Supreme Court** in a reply to a writ petition sharply questioned the Central Government's strategy to tackle the menace and retrieve the huge amounts kept in offshore bank accounts calling it a case of 'pure and simple theft of national money'. In its wake, the Government of India suggested a five-pronged strategy including joining the globe crusade against black money; creating an appropriate legislative framework; setting up institutions for dealing with illicit funds; developing systems for implementation; and imparting skills to the manpower for effective action, However, within the government's

Proposal, there is no provision for effective asset recovery or return of confiscated property and proceeds to redress the worst effects of high-level corruption and embezzlement of public funds.

1.4 In light of the Central Government's reluctance to disclose the names of those stashing black money abroad, the astute comment quoted by the **Supreme Court** in its judgment in the **Attorney General of India Vs Amratlal Prajivandas (1994) 5 SCC 54** case that "one can understand the immorality of the Bankers who maintained numbered accounts but it is difficult to understand the amorality of the Government and their laws which sanction such practices –in effect encouraging them" and that "any benefit obtained by a fiduciary through a breach of trust belongs in equity to the fiduciary" serves as timely reminder to the government on the issue.

1.5 the First step towards opening "secret" files maintained by the civil servants and authorities was taken by Parliament in the year of 2002 by enacting the **Freedom of Information Act, 2002**. It was replaced by **the Right to Information Act, 2005 (Act No. 22 of 2005)**.

1.6 The Act begins a citizen's right to obtain information and ends with information being made available to him or his request being justly rejected on grounds recognized by Act; What happens before and what may be the consequence of the information being made available or rightfully denied is a matter beyond the operation of the Act (**Pritam Roj V. University of Calcutta & Ors AIR 2008 Cal 118**).

1.7 There is no guarantee that the higher authorities, generally sympathetic towards their peers, would do anything promptly to redress the grievance.

1.8 For the delivery of Public services provided by various departments of the Uttar Pradesh Government Generally no time-limit was fixed and neither the competent officers for delivery of such services within stipulated time-limit were properly designated nor their

responsibilities were fixed, due to which the people of the State were facing difficulties. In this backdrop, **The Government of Uttar Pradesh** under the Chief Ministership of Mayawati has enacted **the Uttar Pradesh Janhit Guarantee Adhiniyam, 2011 (U.P. Act. No. 3 of 2011)**, to provide for the delivery of services to the people of the State within stipulated time-limit which came into force on January 14, 2011. It replaced an Ordinance to the same effect and was brought into force from the date of implementation of the Ordinance. It brings fresh hope of development catching pace in hitherto neglected hinterlands,. It is probably time, after 61 years of India becoming a Republic and the free run the civil servants had till now, that the common man must get the right to point out which official was responsible for not getting the sanctioned work executed in villages, towns and cities within the stipulated period. And it is about time for that civil Servant to face the music from the real masters, the people of India.

1.9 Without the right to service, the RTI Act will be rendered meaningless as mere knowledge of what civil servants and public authorities have noted in the files is not enough. It must be supplemented by giving people supplemented by giving people the right to demand service from civil servants.

1.10 This alone can make files get dusted out and catch pace and translate decisions to actual work on the ground. Right to service is explained as a key element in the Constitution's Directive Principles of State Policy. The Preamble of the Constitution also promised to secure justice "social, economic and political" for the citizens. Directive Principles provided guidelines for creation of conditions in which citizens could, in the true sense, enjoy their fundamental rights.

1.11 Although, the Uttar Pradesh Chief Minister Mayawati has taken various steps to curb the corruption in public life and clean the administration, and in the same process she has dropped some of Ministers from her cabinet on charges of corruption during the year of 2011 to honour the reports submitted by the Lokayukta in such matters, but, still the State Government has to do more to curb the corruption in public life and in order to quell effectively the practice of corruption in the State, in addition to **Janhit Gaurantee Adhiniyam , 2011**, it should also take initiative to enact a such law by which ill- gotten wealth by public servant could also be confiscated to the state. Till ill-gotten wealth by the public servant is not confiscated all steps taken by the State Government to curb the corruption will prove futile, because the corrupt holder of public office are enjoying with the ill – gotten Properties in full swing without any check, as ratio of conviction is much low and conclusion of trial is time consuming. Generally the corrupt holder of public office gets his retirement and pensionary benefits as usual without any hindrance.

1.12 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 confiscation follows conviction for the relevant offences. Therefore, under the prevailing circumstances and the current public furore on corruption **the Uttar Pradesh State Law Commission has took up the subject suo-motu to submit a Report and propose a legislation on the Attachments and confiscation of Property**, to create a transparent and effective system of governance where there will be no room for corruption so that the State Government brings an effective legal system where public servants indulging in corruption are brought to book in a time-bound manner. Which will prove to be an effective step towards curbing corruption in public life. It will be a key tool in the Government's war against corruption.

1.13 To deal with the different issues regarding curbing of corruption various meetings of the Commission were held at its head quarter as well as its Camp Office at Allahabad.

1.14 We also discussed various provisions of the proposed bill with Prof. C.M. Jariwala Prof. of Law in Dr. Ram Manohar Lohiya National Law University, Lucknow and other legal luminaries on 23-12-2011.

1.15 As an outcome of the aforesaid discussions at various meetings of the Commission a Draft Report with a Model Draft Bill titled **“the Uttar Pradesh Special Courts (Attachments and confiscation of property) Bill, 2012”**, was prepared by Sri Ishwar Dayal, full-time member of the Commission and thereafter it was circulated to all the Members of the Commission and their views were invited thereon. The views on the Draft Bill, so received, was finally discussed at a meeting of the Commission held on January 11, 2012.

1.16 The Commission is of the view that State Legislature should enact a new legislation titled **“the Uttar Pradesh special Courts (Attachments and Confiscation of Property) Act, 2012”**, in terms of the accompanying **Draft-Bill (Annexure-I)**.

1.17 The proposed Bill (Annexure-I), including other provisions, provides that on the basis of a complaint or a report from the investigating officer in the case of corruption if the Lokayukta finds that there is prima facie evidence of the commission of an offence and amassing of property therefrom alleged to have committed by a person, who has held or is holding public office and is or has been public servant within the meaning of clause (c) of Section 2, of the Prevention of Corruption Act, 1988, in the state of U.P., the Lokayukta shall make a declaration to that effect in every such case and he may authorize a Public Prosecutor for making an application to the authorized officer for attachment and confiscation of movable or immovable property or both as the case may be of a public servant, even if cognizance has not been taken by the Special Court. The authorized officer if finds that there is a prima-facie evidence of the commission of an offence and therefrom movable or immovable properties or both have been procured by the accused person, it may, by order in writing attach such property during the proceedings.

1.18 It also provides that in the case for confiscation of property, the authorized officer shall serve a notice upon the person in respect of whom application is made calling upon him within 30 days, evidence, information or particulars to indicate the source of income, earning, assets or means by which the illegal property or money has been acquired. In any proceeding the burden of proving that any property specified in the notice is not illegally acquired property shall be on the person in respect of whom the application is made. The authorized officer shall provide the public servant reasonable opportunity of being heard and record the findings of whether all or any of the properties under question are illegally acquired properties. Where the authorized officer records a finding that the property is an illegally acquired property, it will declare that it stands confiscated to the State Government free from all encumbrances. In doing so, the public servant is to surrender or deliver possession of the movable or immovable property or both to the concerned authorized officer or to any person duly authorized by him in this behalf, failing which, the authorised officer may take possession by force and can seek the services of any police officer to assist in the process. If the authorized officer after consideration of the record and documents before if finds that prima-facie no offence against the accused is made out and property in question is not confiscated then it shall release such property in favour of the person in respect of whom application is made, if not seized or required in any other offence. Every proceeding for confiscation of movable or immovable property or both will be disposed of within a period of one year from the date of service of notice. It also provides that if the public servant is aggrieved by any order of confiscation of the authorized officer, an appeal may lie with the High Court if it is made within 30 days from the date on which the order appealed against was passed. The High court is empowered to transfer such cases from one special court to another. The Special Courts shall try to dispose of such cases within a period of one year.

1.19 The Bill also provides for setting up Special Courts, presided over by a Member of Uttar Pradesh Higher judicial Service and is or has been a Sessions Judge or an Additional Sessions judge in the State for a minimum period of three years. If corruption charges against any accused person are found untrue and acquitted by the Special Court, the property shall be returned to the person in respect of whom the application is made and in case it is not possible for any reason to return the property such person shall be paid the price of the property so confiscated along with the interest @ 6% per annum thereon calculated from the date of confiscation. Provision for strict restriction on adjournments has also been made, as per recommendations contained in the Chapter-III of the Report, to be submitted to the State Government.

1.20 This report has been finally settled, approved and signed by the Chairperson and Members of the Commission at its meeting held on January 16, 2012.

1.21 We wish to express our appreciation for valuable services and assistance received from Shri Santosh Kumar Pandey, Secretary of the Commission.

1.22 We also acknowledge the valuable services and assistance rendered by the other staff and officials of the Commission.

CHAPTER-II

Inadequacy of the existing law

2.1 When the Indian Penal Code was enacted it also defined and provided punishment for the offence of bribery and corruption amongst public servants. But later on, i.e., during the world war II it was realized that the existing law in Indian Penal Code was not adequate to meet the exigencies of the time and imperative need was felt to introduce a special legislation with a view to eradicate the evil of bribery and corruption and thereby **the Criminal Law Amendment Ordinance, 1944** was enacted later on **the Prevention of Corruption Act, 1947** was enacted which was amended from time to time. In spite of the 1947 Act being amended on the recommendations of the **Santhanam Committee** it was found to be inadequate to deal with the offence of corruption effectively. To make the anti-corruption laws more effective by widening their coverage and by strengthening the provisions **the Prevention of Corruption Act, 1988** was enacted by strengthening the provisions **the Prevention of Corruption Act, 1988** was enacted by parliament.

2.2 Chapter-II (section 7- section 16) of the Prevention of Corruption Act, 1988 deals with the “offences and penalties” . Section follows:

“13. Criminal misconduct by a public servant.- (1) A public servant is said to commit the offence of criminal misconduct,-

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

Explanation- (1) For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

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

2.3 Thus under Section 13 (1) (e) if either the public servant or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant can not satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, the Public servant would have committed misconduct, unless he satisfactorily accounts.

2.4 Various provision of the Prevention of Corruption Act, 1988, Particularly Chapter-III of the Act, reveals, that the Prevention of Corruption Act is silent on the question of confiscation, except Sub-section (2) of section 6 which makes the following provisions:

“(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by a special Judge”.

2.5 Aforesaid reference of section 452 of the Code of Criminal procedure, 1973 (2 of 1974) deals with the “**order for disposal of property at conclusion of trial**”. It means that disposal of property shall be made under section 452 of the Code of Criminal Procedure, after the trial is concluded. Under the

Prevention of Corruption Act, 1947, too, there was no provision for confiscation of property. Section 5 (1)(e) of the prevention of corruption Act, 1947 corresponds to Section 13 (1) (e) of the Prevention of Corruption Act, 1988. (**M. krishan Reddy V. State by- supdt of Police, (1992) 4SCC 45, P. 47, para 6).**

2.6 Before the **Hon'ble Apex court in Mirza Iqbal Hussain Vs. State of U.P. AIR 1983 SC 60**, the only point was raised that the learned Special Judge had no Jurisdiction to Pass an order of confiscation. **In this case** the appellant was convicted under section 5(1) (e) of the prevention of Corruption Act, 1947. The learned Special Judge directed that the two fixed deposit receipts in the sum of rupees five thousand each and the cash amount of Rs. 5280/- which were seized from the house of appellant and which formed the subject matter of the charge under section 5 (1) (e) shall stand confiscated to the State. **Hon'ble Apex Court held:-**

“it is clear from the provision of S. 4 (2), Cr.P.C that in so far as the offences under laws other than the Penal Code are concerned, the provisions of the Code of criminal Procedure apply in their full force subject to any specific or contrary provision made by the law under which the offence is investigated or tried. Section 452 of the Code provides by sub-section (1) that if the trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of property by confiscation. The Prevention of Corruption Act being totally silent on the question of confiscation, the provisions of the Code of Criminal Procedure would apply in their full force, with the result that the Court trying an offence under the Prevention of Corruption Act would have the power to pass an order of confiscation by reason of the provisions contained in S. 452 of the Code. The order of confiscation cannot, therefore, be said to be without jurisdiction.”

2.7 In this regard **Hon'ble Supreme Court in Delhi Development Authority V. Skipper Construction Company (P) Ltd. And another, AIR 1996 SC 2005**, had made the following observations:-

“-----We respectfully agree with each and every statement contained in the above extract MAY WE ASY IN PARANTHESIS that 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 extent not only to –as does SAFEMA –properties acquired in the name of the holder of such office 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”.

2.8 In the year of 1999, the 166th report of the law Commission of India provided for a law for confiscation of properties illegally acquired or held by holders of Public office. As Highlighted in the report itself, no political party had objected to any of the proposed measures and provisions indicating a political consensus on the issue. However, the proposed Bill by the Law Commission of India has remained in cold storage, with no attempt to generate a public debate and discussion on its far-reaching recommendations.

2.9 Salient features of the Proposed Bill by the law Commission of India

2.9.1 Taking cognizance of the fact that public servants are stashing away their ill-gotten wealth in tax havens across the world, that prosecution and conviction of corrupt public servants is difficult and ridiculously low on account of systemic defects, that public servants have been augmenting their black money by violating and evading various tax laws, that a number of benami properties have been acquired in the name of relatives, associates and confidants, the Law Commission's Corrupt Public Servants (Forfeiture of Property) Bill was the first of its kind law to sanction the seizure and return of illegally acquired or held properties, whether in India or abroad, by holders of public office. The bill was state to work in conjunction with the **Prevention of Corruption Act 1988, Criminal Law Amendment Ordinance, 1944 (38 of 1944)** and **Prevention of Money Laundering Act.**

2.9.2 Extrapolating from the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA), the Law Commission of India was of the opinion that merely prosecuting of corrupt holders of public office by sending them to jail was no easy remedy or solution to tackle the canker of corruption. What was seriously needed was the deprive them of the gains from their ill-gotten assets/properties. The constitutionality of this view was upheld by the **Supreme Court in (Attorney General of India Vs Amratlal Prajivandas, 1994 (5) SCC 54,** wherein it stated that the law must be equal to the mischief sought to remedied. It was further buttressed in **the Delhi Development Authority Vs Skipper Construction Co. Pvt. Ltd., AIR 1996 SC 2005,** wherein the Supreme Court expanded the ambit of the law to include forfeiture of illegally acquired property held by relatives, associates and confidants of the accused public servant.

2.10 In para 1.3 of the aforesaid report the Law Commission of India observed as under:-

“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, 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 administrative apparatus, politicians and other middlemen. A state 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 licenses 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, 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 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 ever in the public servant is hardly ever prosecuted under the Act and ever in the rare event of his being prosecuted, the prosecution hardly ever reaches conclusions. 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 -----”.

2.11 As stated earlier the **Prevention of Corruption act, 1988** provides for confiscation on 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. In pre-independence law i.e, **the Criminal law**

Amendment Ordinance, 1944 (38 of 1944) which provides for attachment of properties of a public servants who is accused of corruption, but, the confiscation can come about only pursuant to and on the basis of conviction of corruption. The facts remains that there is no law in force providing for forfeiture/confiscation of the ill-gotten assets/ properties of the holders of public office similar to **the smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (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 assents are forfeited to the State, the canker of corruption to really tackled. Hence, the necessity of the proposed measure.

2.12 This approach was recognized by Parliament in the case of smugglers and violators of foreign exchange laws, when it enacted **the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA)**.

2.13 The Constitutionality of **the SAFEMA** was challenged before the **Hon'ble Supreme Court** on the grounds of being unjust, excessive and harsh, **in the Attorney –General for India & Ors V. Amratlal Prajivandas & Ors. Nine –Judges Constitution Bench of the Hon'ble Supreme Court** unanimously rejected the challenge. **The Apex Court** explained the idea underlying the Act as under:-

“ to forfeit the illegally acquired properties of the convict/ detenu irrespective of the fact that such properties are 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”.

2.14 Following observations of the **Hon'ble Apex Court** in the aforesaid case are also 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 activity, 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 a well-known fact that over the last few decades, smuggling, foreign exchange violations, 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 a 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 violation of other laws (which 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 a case where a dangerous disease requires a radical treatment. Bitter medicine is not bad medicine. In law it not possible to say that the definition is arbitrary or is couched in unreasonably wide terms-----”.

2.15 Presently, the buzz against corruption started by the **Anna Hazare-led movement** is being matched by welcome initiatives to clean the system, launched by many state governments. Using new legislative tools to crack down on erring bureaucrats and ensure smooth delivery

of services to the people. They are setting new standards in public welfare. Most importantly, the aim is to provide good governance at the grassroot rather than focus on big-ticket legislations that may not directly affect the common man.

2.16 in this regard much before Anna Hazare-led movement **Orissa** and **Bihar Governments**, with an objective of curbing corruption have enacted the **Orissa Special Court Act, 2006 (Orissa Act 9 of 2007)** and **Bihar Special Courts Act, 2009 (Bihar Act 5 of 2010) respectively**, which established special tribunals for the speedy trial of offences under the respective Acts. It is under the provisions of this new law that the swanky property of a Bihar cadre IAS officer was recently seized and converted into a school for underprivileged children. The example shows how liabilities can be turned into assets by a determined Government. The Bihar Government has also enacted the **Right to Service Act** to provide time-bound public services.

2.17 Similarly, the **Delhi Government** has come up with its Right of Citizen to Time Bound Delivery of Services Act, 2011. Coming into force from 15-09-2011, the legislation seeks to ensure smooth service delivery in 28 categories such as issuance of a new electricity connection, birth and death certificates and ration cards. Apart from administrative action, delays will attract a monetary penalty, which will be deducted from the salary of the erring official. In **Madhya Pradesh**, the state administration is said to have disposed of 3.6 million complaints in less than a year under its **Public Service Guarantee Act. Legislature** has passed the **Madhya Pradesh Vishesh Nyayalaya Videyak (Bill), 2011**. The bill is awaiting the Presidential assent.

Himachal Pradesh State Legislature too has passed **the Himachal Pradesh Special Courts (Attachment and Confiscation of Property) Bill, 2011**. In **Chhattisgarh, Public Distribution System (PDS)** reforms such as handing over the running of PDS shops to gram panchayats and other community bodies have helped increase coverage of welfare schemes. Recently Uttarakhand Government has also enacted **the Uttarakhand special Courts Act, 2011 (Uttarakhand Act No. 19 of 2011)** to curb the corruption.

2.18 Such measures need to be encouraged to increase the scope for reforms and ensure transparency and ultimately to root out corruption in public life.

2.19 In view of the fact that corruption 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 State Law providing for attachment and confiscation of properties acquired by holders of “Public Office”, in terms of the **proposed Draft-Bill (Annexure-I)**.

CHAPTER-III

Conclusion and Recommendations

3.1 In view of the discussions under the forgoing chapters it is undeniable that 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 confiscation follows conviction for the relevant offences. Therefore, having regards to the various pronouncement of the **Hon'ble Apex Court, 166th Report of Law Commission of India, many legislations enacted by different stat** and at a time when the entire country is witnessing a popular demand for an effective Lok Pal Bill to curve corruption, and when the existing legal framework is inadequate to try the corrupt public servants and persons holding public offices in a time-bound period, the Commission is of the view that new legislation should be enacted by the State Legislature in terms of the proposed **Draft-Bill (Annexure-I)** to curve the deep rooted corruption in the public life.

3.2 The effectiveness of the Law Commission's proposed Bill lies in the fact that it allows for attachment and confiscation of property illegitimately belonging to public servants as a pre-emptive and deterrent measure rather than a post-facto exercise on conviction of the offense. Such proactive action in recovering stolen assets sends out a powerful message to the corrupt that no protective umbrella in the law can shield them from government prosecution. In doing so, it provides the anti-corruption machinery of the state with a strong legal instrument to build integrity and fight graft in the establishment. If law is enacted in terms of proposed **Draft-Bill (Annexure-I)** it will prove a milestone to fight against graft. It will also prove that all is not lost in the quagmire of grand corruption striking deep roots in our society. What is clearly shows is that the current public furore would do well if it is galvanized towards genuine systemic reforms.

3.3 We have drafted a **Model Bill** to enact State legislation by the Legislature of State titled "**The Uttar Pradesh Special Court (Attachment and Confiscation of Property) Bill, 2012**". It may be noted here that under the Constitution of India the above subject is comprised under the concurrent list of the Seventh Schedule.

3.4 Article 246(2) provides “notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in list III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)”. It means Parliament and Legislature of State both have power to make laws with respect to any of the matters enumerated in List III- Concurrent list in the Seventh Schedule.

3.5 Proposed Bill, to some extent, shall effect the legislation like **The Prevention of Corruption Act, 1988, the Criminal Law Amendment Ordinance, 1944, The Code of Criminal Procedure, 1973** and Indian Penal Code etc. which are Central Legislation enacted by Parliament.

3.6 Under these circumstances, we recommend that if proposed legislation is passed by the Legislature of State, it shall required the ascent of the President of India under Article 254 (2) of the Constitution of India.

3.7 Hence, in view of the above discussion we are recommending the following Model Draft Bill titled “**The Uttar Pradesh Special Courts (Attachments and Confiscation of Property) Bill, 2012**” (Annexure-I), to be enacted by the State legislature, to curd the deep rooted corruption in the public life. The proposed Model-Bill contains.

CHAPTER-I

PRELIMINARY

Clause-1. Short title, extent and commencement,-

- (1) The Act may be called the Uttar Pradesh Special Courts Act, 2012.
- (2) It shall extent to the whole of the State of Uttar Pradesh.
- (3) It shall come into force on such date as the State Government may, by notification, in the official Gazette appoint.

Clause-2. Definitions- In this Act, unless the context otherwise requires:-

- (a) **“Authorised officer”** means any serving officer belonging to Uttar Pradesh Higher Judicial Service and who is or has been a sessions judge or Additional Sessions Judge and has been nominated as presiding officer of the Special Court by the State Government with the concurrence of the High Court.
- (b) **“Code”** means the Code of Criminal Procedure, 1973; (2 of 1974).
- (c) **“Declaration”** in relation to an offence, means a declaration made under section 5 in respect of such offence.
- (d) **“offence”** means an offence of criminal misconduct, if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account for the pecuniary resources or property disproportionate to his known sources of income, either independently or in combination with any of the provision of the Prevention of Corruption Act, 1988 (49 of 1988) or any of the provisions of Indian Penal Code.

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

- (e) **“Special Court”** means a Special Court established under section 3; and
- (f) Words and expressions used herein and not defined but defined in the Code or the Prevention of Corruption Act, 1988 shall have the meanings respectively assigned to them in the Code or in the Prevention of Corruption Act, 1988.

CHAPTER-II
ESTABLISHMENT OF SPECIAL COURTS

Clause-3. Establishment of Special Courts-

- (1) The State Government shall, for the purpose of speedy trial of offence, by notification, establish as many Courts as considered adequate to be called Special Courts.
- (2) A Special Court shall be presided over by a Judge to be nominated by the State Government with the concurrence of the High Court.
- (3) No person shall be qualified for nomination as a Judge of Special Court unless he is a member of Uttar Pradesh Higher Judicial Service and is or has been a Sessions Judge or an Additional Sessions Judge in the State for a minimum period of three years.

Clause-4. Cognizance of cases by Special Courts- A Special Court shall take cognizance of and try such cases as are instituted before it or transferred to it under section 9.

Clause-5 Declaration of cases to be dealt with under this Act

- (1) Where against a person a complaint is filed in an offence before the Lokayukta or in case a First Information Report is lodged, the investigating officer shall submit the report to the lodged, the investigating officer shall submit the report to the Lokayukta. On the basis of such complaint or report, if the Lokayukta is of the opinion that there is prima-facie evidence of the commission of an offence alleged to have been committed by a person, who has held or is holding public office and is or has been public servant within the meaning of clause (c) of section 2, of the Prevention of Corruption Act, 1988, in the State of Uttar Pradesh, the Lokayukta shall make a declaration to that effect in every such case.

- (2) The declaration made under sub-section (1) shall not be called in question in any Court.
- (3) Notwithstanding anything in the Code or any other law for the time being in force, after declaration is made under sub-section (1), any proceeding in respect of the offence shall be instituted only before a Special Court.
- (4) Where any declaration made under sub-section (1) related to an offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court under this Act, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to the Special Court for trial of the offence in accordance with this Act or under the Prevention of Corruption Act, 1988, as may be.

Clause-6 Jurisdiction of Special Court as to trial of offences.-

A Special Court shall have jurisdiction to try any person alleged to have committed the offence under this Act and under the Prevention of Corruption Act, 1988, either as principal, conspirator or abettor and all of them can be jointly tried therewith at one trial in accordance with the Code.

Clause- 7. Procedure and powers of Special Courts.-

- (1) A special Court shall, in the trial of such cases, follow the procedure prescribed by the Code for the trial of warrant cases before a Magistrate.
- (2) Save as expressly provided in this Act, the provisions of the Code and of the Prevention of Corruption Act, 1988 (49 of 1988) shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purpose of the said provisions, the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

- (3) A Special Court may pass against any person convicted by it, any sentence and punishment of the offence authorized by law.

Clause-8. Appeal against orders of special courts.-

An appeal or revision against any judgment and sentence, if any, passed by the Special Court for an offence under the Prevention of Corruption Act shall lie before the High Court as prescribed therein.

Clause-9. Transfer of Cases.-

Notwithstanding the other provisions of this Act, it would be open to the High Court to transfer cases from one Special Court to another.

Clause-10. Special Court not bound to adjourn a trial.-

- (1) A Special Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice and for reasons to be recorded in writing.
- (2) The Special Court shall expeditiously dispose of the trial of the case preferably within a period of one year from the date of its institutions or transfer, as the case may be.

Clause-11. Presiding judge may act on evidence recorded by his predecessor.-

A Judge appointed under section 3 to preside over a Special Court may act on the evidence recorded by his predecessor or predecessors or partly recorded by his predecessor or predecessors and partly recorded by himself.

CHAPTER-III**ATTACHMENT AND CONFISCATON OF PROPERTY****Clause-12. Application for Attachment and confiscation of property.-**

- (1) Where the Lokayukta, on the basis of prima-facie evidence, have reasons to believe that any person, who has held or is holding public or political office and is or has been a public servant, has committed the offence, and finds it necessary, it may, whether or not the Special Court has taken cognizance of the offence, authorize the Public Prosecutor for making an application to the authorized officer for attachment and confiscation to the authorized officer for or immovable property or both, which it believes to have been procured by means of an offence by such person.
- (2) An application under sub-section (1) Shall be accompanied by one or more affidavits, stating the grounds on which the belief is founded and the movable property and estimated value of the immovable property is believed to have been procured by means of the offence by the said person.
- (3) The application shall also furnish-
 - (a) any information available as to the location for the time being of any such movable or immovable property, and shall, if necessary, give particulars, including the estimated value, of immovable property of the said person.
 - (b) the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.

- (4) On an application being made by the Public Prosecutor, if the authorized officer finds that there is prima-facie evidence of the commission of an offence alleged to have been committed by the accused person, it may, by order in writing, attach such property during the proceeding.

Clause-13. Notice for confiscation.-

- (1) Upon receipt of an application for confiscation of property made under section 12 of this Act, the authorized officer shall serve a notice upon the person in respect of whom the application is made 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 source of his income, earnings or assets, out of which or by means of which he has acquired such movable or immovable property or both, the evidence on which he relies and other relevant information and particulars, and to show cause as to why all or any of such property should not be declared to have been acquired by means or the offence and be confiscated to the State Government.
- (2) Where a notice under sub-section (1) to any person specifies any movable or immovable property or both is 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) Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the authorized officer, by such person in respect of whom the application is made or the State Government or any other authority with which such person is associated shall be open to rebuttal in the trial the Special Court provided that such rebuttal shall be confined to the trial for determination and adjudication of guilt of the offender by the Special Court under this Act.

Clause-14. Confiscation of property in certain cases.-

- (1) The authorized officer may, after considering the explanation, if any, to the show cause notice issued under section 13 and the materials available before it, and after giving to the person in respect of whom the application is made (and in case where such person holds any movable or immovable property or both 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 other such properties have been acquired illegally.
- (2) Where the authorized officer records a finding under this section to effect that any property has been acquired by means of the offence, he shall declare that such property shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances.
- (3) Where any share in a Company stands confiscated to the State Government under this Act, then the Company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the Articles of Association of the Company, forthwith register the State Government as the transferee of such share.
- (4) If the authorized officer after consideration of the record and documents before it finds that prima-facie no offence is made out against the accused and property in question is not confiscated under sub-section (2), then it shall release such property in favour of the person in respect of whom the application is made, if not seized or required in any other offence.
- (5) Every proceeding for confiscation of movable or immovable property or both under this Chapter shall be preferably disposed of within a period of one year from the date of service of the notice under section 13.

- (6) The order of confiscation passed under this section shall, subject to the order passed in appeal, if any, under section 19, be final and shall not be called in question in any Court of law.

Clause-15. Burden of Proof-

In any proceeding under this Act the burden of proving that any property specified in the notice served under Section-13 is not illegally acquired property shall be on the person in respect of whom the application is made.

Clause-16. Persons authorized to investigate-

Notwithstanding anything contained in the code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank of a Deputy Superintendent of Police or a Police officer of equivalent rank, shall investigate any offence punishable under this Act.

Provided that if a police officer not below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may also investigate any such offence.

Clause-17. Procedure in relation to certain trust properties-

Where the lokayukta, on the basis of the information and materials available to it, has reason (to be recorded in writing) to believe, 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 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 specific 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 contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under section 13 and all the other provisions of this Act Shall apply accordingly.

Clause-18. Transfer to be null and void.-

Where, before or after the attachment of property under section 12 or issue of a notice for confiscation of property under section 13, as the case may be, any movable or immovable property or both referred to in the attachment order or the said notice are alienated or transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act shall be deemed to be null and void.

Clause-19. Appeal,-

Any person aggrieved by any final order of confiscation of the authorized officer under this Chapter may appeal to the High Court within thirty days from the date on which the order appealed against was passed.

Clause-20. Power to take possession.-

- (1) Where any movable or immovable property or both have been confiscated to the State Government under this Act, the concerned authorized officer shall order the person in respect of whom the application is made, as well as any other person, who may be in possession of the such property to surrender or deliver possession thereof to the concerned authorized officer or to any person duly authorized by him in this behalf, within thirty days of the service of the order.

Provided that the authorized officer, on an application made in that behalf and being satisfied that the person in Property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be specific but not more than six months from the date of order on payment of market rent to the state Government and thereafter, such person shall deliver the vacant possession of the property.

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

- (3) Notwithstanding anything contained contained in sub-section (2) the authorized officer may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of nay police officer to assist and it shall be the bounden duty of such officer to comply with such requisition.

Clause- 21. Refund of Confiscated property.-

Where an order of confiscation made under section 14 is modified or annulled by the High Court in appeal or where the person in respect of whom the application is made is acquitted by the Special Court, the property shall be returned to the person in respect of whom the application is made and in case it is not possible for any reason to return the property, such person shall be paid the price thereof with the interest at the rate of six percent per annum thereon calculated from the date of confiscation.

Provided that return of such property may be subject to such conditions as may be imposed by the authorized officer on an application by the state regarding alienation of such property pending appeal against acquittal before the High Court, as the authorized officer may determine after recording the reasons for passing such order.

CHAPTER- IV
MISCELLANEOUS

Clause- 22. Notice or Order not to be invalid for error in description.-

Any notice issued or served, any declaration made and any order passed, under this Act shall not be deemed to be invalid by passed, under this Act shall not 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.

Clause-23. Act to be in addition to any other law.-

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

Clause- 24. Bar to other Proceedings.-

Save as provided in sections 8 and 19 and notwithstanding anything contained in any other law, no suit or other legal proceedings shall be maintainable in any court in respect of any such property ordered to be attached under section 12 and confiscated under section 14.

Clause-25. Protection of action taken in good faith.-

No suit, prosecution or other legal proceedings shall lie against any person for anything done or intended to be done in good faith in pursuance of this Act.

Clause-26. Power to make rules.-

The State Government may, by notification, published in the official Gazette, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.

Clause-27. Notification under section 3 and rules made under section 26 to be laid.-

Every notification made under sub-section (1) of section 3 and rules made under Section 26 shall be laid, as soon as may be, after they are made, before each House of the State legislature.

Clause-28. Overriding effect.-

Notwithstanding anything in the Prevention of Corruption Act, 1988 and the Criminal Law Amendment Ordinance, 1944 or any other law for the time being in force, the provisions of this Act shall prevail in case of any inconsistency.

3.8 We hope and trust that the State Government would take immediate steps for enactment of new legislation in terms of the accompanying **Draft-Bill (Annexure-I)**.

3.9 We recommend accordingly.

(Justice V.C. Misra)
Chairman

(Prof. Balraj Chauhan)
Member (Part-time)

(Ishwar Dayal)
Member (Full-time)

ANNEXURE-I

MODEL BILL

THE UTTAR PRADESH STATE LAW COMMISSION

TWELFTH REPORT- 2012

ON

**THE UTTAR PRADESH SPECIAL COURTS
(ATTACHMENTS AND CONFISCATION OF PROPERTY)
BILL, 2012**

THE UTTAR PRADESH SPECIAL COURTS (ATTACHMENTS AND
CONFISCATION OF PROPERTY) BILL, 2012

(WITH TWELFTH REPORT- 2012)

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**THE UTTAR PRADESH SPECIAL COURTS (ATTACHMENTS AND CONFISCATION OF
PROPERTY, BILL, 2012**

A

BILL

To provide for the constitution of special courts for the speedy trial of certain class of offences and for attachment and confiscation of the properties involved and for matter connected therewith or incidental thereto.

WHEREAS, corruption is perceived to be amongst some persons holding public offices and public servants within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 in the State of Uttar Pradesh;

AND, WHEREAS the Government has sufficient reasons to believe that some of such persons, who have held or are holding public offices and are public servants within the meaning of Section 2 (c) of the Prevention of Corruption Act, 1988 have accumulated vast property, disproportionate to their known sources of income by resorting to corrupt means;

AND, WHEREAS, it is constitutional, legal and moral obligation of the state to prosecute persons involved in such corrupt practices and confiscate their ill-gotten assets.

AND, WHEREAS, the existing courts of Special Judges cannot reasonably be expected to bring the trials, arising out of those prosecutions, to a speedy termination and it is imperative for the efficient functioning of a parliamentary democracy and the institutions created by or under the Constitution of India that the aforesaid offenders should be tried with utmost dispatch;

AND, WHEREAS, it is necessary for the said purpose to establish Special Courts to be presided over by the persons who are or have been Sessions Judges or Additional Sessions Judges and it is also expedient to make some procedural changes whereby avoidable delay in the final determination of the guilt or innocence, of the persons to be tried, is eliminated without interfering with the right to a fair trial.

BE, it enacted by the Legislature of State of Uttar Pradesh in the Sixty-third year of the Republic of India as follows:-

CHAPTER-I

PRELIMINARY

1. Short title, extent and commencement,-

- (1) This Act may be called the Uttar Pradesh Special Courts Act, 2012.
- (2) It shall extent to the whole of the State of Uttar Pradesh.
- (3) It shall come into force on such date as the State Government may, by notification, in the Official Gazette appoint.

2. Definitions- In this Act, unless the context otherwise requires:-

- (a) **“authorized officer”** means any serving officer belonging to Uttar Pradesh Higher Judicial Service and who is or has been a Sessions Judge or Additional Sessions judge and has been nominated as presiding officer of the Special Court by the State Government with the concurrence of the High Court.
- (b) **“Code”** means the Code of criminal Procedure, Procedure, 1973; (2 of 1974).
- (c) **“Declaration”** in relation to an offence, means a declaration made under section 5 in respect of such offence.
- (d) **“offence”** means an offence of criminal misconduct, if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account for the pecuniary resources or property disproportionate to his known sources of income, either independently or in combination with any of the provision of the Prevention of Corruption Act, 1988 (49 of 1988) or any of the provisions of Indian Penal Code.

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

- (e) **“Special Court”** means a Special Court established under section 3; and

- (f) Words and expressions used herein and not defined but defined in the Code or the Prevention or Corruption Act, 1988 shall have the meanings respectively assigned to them in the Code or in the Prevention of Corruption Act, 1988.

CHAPTER-II **ESTABLISHMENT OF SPECIAL COURTS**

3. Establishment of Special Courts-

- (1) The State Government shall, for the purpose of speedy trial of offence, by notification, establish as many Courts as considered adequate to be called Special Courts.
- (2) A Special Court shall be presided over by a Judge to be nominated by the State Government with the concurrence of the High Court.
- (3) No person shall be qualified for nomination as a Judge of Special Court unless he is a member of Uttar Pradesh Higher Judicial Service and is or has been a Sessions Judge or an additional Sessions Judge in the State for a minimum Period of three years.
- (4) **Cognizance of cases by Special Courts-** A Special Court shall take cognizance of and try such cases as are instituted before it or transferred to it under section 9.
- (5) **Declaration of cases to be dealt with under this Act**
 - (1) Where against a person a complaint is filed in an offence before the lokayukta or in case a First Information Report is lodged, the investigating officer shall submit the report to the lokayukta. On the basis of such complaint or report, if the lokayukta is of the opinion that there is prima-facie evidence of the commission of an offence alleged to have been committed by a person, who has held or is holding public office and is or has been public servant within the meaning of clause (c) of section 2, of the Prevention of Corruption meaning of clause (c) of section 2, of the Prevention of Corruption Act, 1988, in the State of Uttar Pradesh, the Lokayukta shall make a declaration to that effect in every such case.
 - (2) The declaration made under sub-section (1) shall not be called in question in any Court.

- (3) Notwithstanding anything in the Code or any other law for the time being in force, after declaration is made under sub-section (1), any proceeding in respect of the offence shall be instituted only before a Special Court.
- (4) Where any declaration made under sub-section (1) related to an offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court under this Act, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to the Special Court for trial of the offence in accordance with this Act or under the Prevention of Corruption Act, 1988, as the case may be.

6. Jurisdiction of Special Court as to trial of offences.-

A Special Court shall have jurisdiction to try any person alleged to have committed the offence under this Act and under the Prevention of Corruption Act, 1988, either as principal, conspirator or abettor and all of them can be jointly tried therewith at one trial in accordance with the Code.

7. Procedure and powers of Special Courts.-

- (1) A special Court shall, in the trial of such cases, follow the procedure prescribed by the Code for the trial of warrant cases before a Magistrate.
- (2) Save as expressly provided in this Act, the provisions of the Code and of the prevention of Corruption Act, 1988 (49 of 1988) shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purpose of the said provisions, the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.
- (3) A Special Court may pass against any person convicted by it, any sentence and punishment of the offence authorized by law.

8. Appeal against orders of Special Courts.-

An appeal or revision against any judgment and sentence, if any, passed by the Special Court for an offence under the Prevention of Corruption Act shall lie before the High Court as prescribed therein.

9. Transfer of Cases.-

Notwithstanding the other Provisions of this Act, it would be open to the High Court to transfer cases from one Special Court to another.

10. Special court not bound to adjourn a trial.-

(1) A Special Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice and for reasons to be recorded in writing.

(2) The Special Court shall expeditiously dispose of the trial of the case preferably within a period of one year from the date of its institution or transfer, as the case may be.

11. Presiding Judge may act on evidence recorded by his predecessor.-

A Judge appointed under section 3 to preside over a Special Court may act on the evidence recorded by his predecessor or predecessors or partly recorded by his predecessor or predecessors and partly recorded by himself.

CHAPTER-III**ATTACHMENT AND CONFISCATION OF PROPERTY****12. Application for Attachment and confiscation and confiscation of property.-**

(1) Where the Lokayukta, on the basis of prima-facie evidence, have reasons to believe that any person, who has held or is holding public or political office and is or has been a public servant, has committed the offence, and finds it necessary, it may, whether or not the Special Court has taken cognizance of the offence, authorize the Public Prosecutor for making an application to the authorized officer for attachment and confiscation under this Act of the movable or immovable property or both, which it believes to have been procured by means of an offence by such person.

- (2) An application under sub-section (1) Shall be accompanied by one or more affidavits, stating the grounds on which the belief is founded and the movable property and estimated value of the immovable Property is believed to have been procured by means or the offence by the said person.
- (3)The application shall also furnish-
- (a) Any information available as to the location for the time being of any such movable or immovable property , and shall, if necessary, give particulars, including the estimated value, of immovable property of the said person.
- (b)The names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.
- (4)On an application being made by the Public Prosecutor, if the authorized officer finds that there is prima-facie evidence of the commission of an offence alleged to have been committed by the accused person, it may, by order in writing, attach such property during the proceeding.

13. Notice for confiscation.-

- (1) Upon receipt of an application for confiscation of property made under section 12 of this Act, the authorized officer shall serve a notice upon the person in respect of whom the application is made 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 source of his income, earnings or assets, out of which or by means of which he has acquired such movable or immovable property or both, the evidence on which he relies and other relevant information and particulars, and to show cause as to why all or any of such property should not be declared to have been acquired by means of the offence and be confiscated to the State Government.

- (2) Where a notice under sub-section (1) to any person specifies any movable or immovable property or both is 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) Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the authorized officer, by such person in respect of whom the application is made or the State Government or any other authority with which such person is associated shall be open to rebuttal in the trial before the Special Court provided that such rebuttal shall be confined to the trial for determination and adjudication of guilt of the offender by the Special Court under this Act.

14. Confiscation of property in certain cases.-

- (1) The authorized officer may, after considering the explanation, if any, to the show cause notice issued under section 13 and the materials available before it, and after giving to the person in respect or whom the application is made (and in case where such person holds any movable or immovable property or both 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 other such properties have been acquired illegally.
- (2) Where the authorized officer records a finding under this section to the effect that any property has been acquired by means of the offence, he shall declare that such property shall, subject to the provisions of this Act, stand confiscated to the provisions of this Act, stand confiscated to the State Government free from all encumbrances.
- (3) where nay share in a Company stands confiscated to the State Government under this Act, then the Company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the Articles of Association of the Company, forthwith register the State Government as the transferee of such share.

- (4) If the authorized officer after consideration of the record and documents before it finds that prima-facie no offence is made out against the accused and property in question is not confiscated under sub-section (2), then it shall release such property in favour of the person in respect of whom the application is made, if not seized or required in any other offence.
- (5) If the authorized officer after consideration of the record and documents before it finds that prima-facie no offence is made out against the accused then it shall release the property in question in favour of the said person if not seized in any other offence.
- (6) Every proceeding for confiscation of movable or immovable property or both under this Chapter shall be preferably disposed of within a period of one year from the date of service of the notice under section 13.
- (7) The order of confiscation passed under this section shall, subject to the order passed in appeal, if any, under section 19, be final and shall not be called in question in any Court of law.

15. Burden of Proof-

In any proceeding under this Act the burden of proving that any property specified in the notice served under Section-13 is not illegally acquired property shall be on the person in respect of whom the application is made.

16. Persons authorized to investigate-

Notwithstanding anything contained in the code of Criminal Procedure, 1973 (2 of 1974), on police officer below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act.

Provided that if a police officer not below the rank of an inspector of Police is authorized by the State Government in this behalf by general or special order, he may also investigate any such offence.

17. Procedure in relation to certain trust properties-

Where the Lokayukta, on the basis of the information and materials available to it, has reason (to be recorded in writing) to believe, 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 contributed to the trust for acquiring such property any thereupon such notice shall be deemed to be a notice served under section 13 and all the other provisions of this Act shall apply accordingly.

18. Transfer to be null and void.-

Where, before or after the attachment of property under section 12 or issue of a notice for confiscation of property under section 13, as the case may be, any movable or immovable property or both referred to in the mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act shall be deemed to be null and void.

19. Appeal,-

Any person aggrieved by any final order of confiscation of the authorized officer under this Chapter may appeal to the High Court within thirty days from the date on which the order appealed against was passed.

20. Power to take possession.-

- (1) Where any movable or immovable property or both have been confiscated to the State Government under this Act, the concerned authorized officer shall order the person in respect of whom the application is made, as well as any other person, who may be in possession of the such property to surrender or deliver possession thereof to the concerned authorized officer or to any person duly authorized by him in this behalf, within thirty days of the service of the order.

Provided that the authorized officer, on an application made in that behalf and being satisfied that the person in respect of whom the application is made is residing in property in question, may instead of dispossessing him immediately from the same, permit such person to

occupy it for a limited period to be specified but not more than six months from the date of order on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property.

- (2) If any person refuses or fails to comply with an order made under sub-section (1), the authorized officer 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 authorized officer may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist and it shall be the bounden duty of such officer to comply with such requisition.

21. Refund of Confiscated property.-

Where an order of confiscation made under section 14 is modified or annulled by the High Court in appeal or where the person in respect of whom the application is made is acquitted by the Special Court, the property shall be returned to the person in respect of whom the application is made and in case it is not possible for any reason to return the property, such person shall be paid the price thereof with the interest at the rate of six percent per annum thereon calculated from the date of confiscation.

Provided that return of such property may be subject to such conditions as may be imposed by the authorized officer on an application by the state regarding alienation of such property pending appeal against acquittal before the High Court, as the authorized officer may determine after recording the reasons for passing such order.

CHAPTER-IV

MISCELLANEOUS

22. Notice or Order not to be invalid for error in description.-

Any notice issued or served, any declaration made and any order passed, under this Act shall not be deemed to be invalid by reason of nay error in the description of the property or person mentioned therein, if such Property or person is identifiable from the description so mentioned.

23. Act to be in addition to any other law.-

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

24. Bar to other Proceedings.-

Save as provided in sections 8 and 19 and notwithstanding anything contained in any other law, no suit or other legal proceedings shall be attached under section 12 and confiscated under section 14.

25. Protection of action taken in good faith.-

No suit, prosecution or other legal proceedings shall lie against any person for anything done or intended to be done in good faith in pursuance of this Act.

26. Power to Make rules.-

The State Government may, by notification, published in the official Gazette, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.

27. Notification under section 3 and rules made under section 26 to be laid.-

Every notification made under sub-section (1) of section 3 and rules made before each House of the State Legislature.

28. Overriding effect.-

Notwithstanding anything in the Prevention of corruption Act, 1988 and the Criminal Law Amendment Ordinance, 1944 or any other law for the time being in force, the provisions of this Act shall prevail in case of any inconsistency.