

SOLAR INQUIRY COMMISSION REPORT

BY

HON'BLE MR. JUSTICE G. SIVARAJAN (RETD.)

VOLUME III

26TH DAY OF SEPTEMBER, 2017

VOLUME III

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The 4th limb of the allegation under item No.1
as settled reads:

'The phone call details from the mobile phone used by Saritha S.Nair available with the media opened the gate for connecting some of the Cabinet Ministers, their private Secretaries, one former Central Minister, many members of the Kerala Legislative assembly and other political leaders in the Solar Scam deals of Saritha S.Nair.'

This relates to the connections of some of the Cabinet Ministers, their Private Secretaries, one former Central Minister, many members of Kerala Legislative Assembly and other political leaders in the Solar Scam deals of Saritha S.Nair.

The Commission has already considered the role of former CM Sri.Oommen Chandy under the first limb. The role of the personal staff Tenny Joppan, Jikkumon Jacob and gunman Salim Raj also

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considered. The role of Sri.Thomas Kuruvila, aid of CM Sri.Oommen Chandy was considered in that context.

According to Saritha S.Nair, she as the person entrusted by Team Solar Company incorporated by Biju Radhakrishnan and herself as Directors, for the various requirements for conducting Mega solar projects in a successful manner, mainly contacted the CM Sri.Oommen Chandy and the Power Minister Sri.Aryadan Mohammed.

The connection of Power Minister Sri.Aryadan Mohammed with Saritha S.Nair is considered below.

One of the main allegations is Saritha S.Nair got acquainted with C.M. for the purpose of declaring a Solar Energy Policy for Kerala which is one of the requirements for establishing Mega solar projects in the State of Kerala, and for getting various incentives and benefits from the Central and State Governments. It is the case of Saritha S.Nair that when she approached the C.M.

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with the proposal for setting up her Mega projects; the C.M. after reading the project report contacted the Power Minister Sri.Aryadan Muhammed over phone and told him that a person by name Lakshmi Nair will meet him with a project and requested him to examine the same and do the needful. The C.M. had also asked her to meet the Power Minister Sri.Aryadan Muhammed in the matter. She met Sri.Aryadan Muhammed in his official residence, Manmohan Bungalow with the projects and he assured her that it will be done.

The genuineness of the allegation made by Saritha S.Nair as above has to be examined on the basis of materials available on record in the form of evidence both oral and documentary.

The evidence in the matter consists of the oral evidence of Saritha S.Nair, Sri.Paul Antony, IAS, Additional Chief Secretary, Power Department, Sri.N.T.Job, Executive Engineer and Sri.G.Shaj Kumar, Assistant Executive Engineer

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both of KSEB, Sri.Aryadan Muhammed, the Power Minister, Sri.Oommen Chandy, former C.M., Sri.Kesavan, Addl. P.S. to the Power Minister Sri.Aryadan Muhammed, and Sri.R.Rajesh, Programme Officer, ANERT. The documentary evidence are the Government file G.O.(P) No.49/2013/PD dated 25-11-2013 produced by Additional Chief Secretary, Sri.Paul Antony, two CDs containing the Audio video visuals of the KSEB Engineers Association function held at Sumangali Auditorium, the CDRs of the mobile phones used by Saritha S.Nair containing the details of calls between the two numbers of Saritha and the mobile number of the Minister and back.

Smt.Saritha S.Nair in her deposition before the Commission made on 27-01-2016 (DW Vol.X Part-I, Pp 62 - 92) stated thus:

She was one of the Directors of Team Solar Renewable Energy Pvt. Ltd. which was registered in January, 2011. It was after the formation of

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this Company decision was taken to handle mega Solar Power Projects. On behalf of this Company she handled Solar Mega projects. Project Development matters were also her responsibility. Therefore in connection with that she was entrusted with the responsibility to get Government recognition and other benefits. As a first step she went to the Chief Minister Sri.Oommen Chandy in his office in the North Block of the Secretariat and submitted to him the profile of the company and the project reports of various schemes which are proposed to be implemented in Kerala. The C.M. after reading it called the Power Minister Sri.Aryadan Muhammed over phone and told him that a person by name Lakshmi will come with a new project and requested him to examine the same and do the needful. She was asked to meet Sri.Aryadan Mohammed. In the representation submitted to the C.M. the main demand was with regard to Renewable Energy Policy. She along with two of her office



staff went and met Sri.Aryadan Muhammed in his official residence ManMohan Bungalow. The Minister after perusing the Project told her that this is highly necessary and he assured her that he will talk to ANERT and Energy Management Centre and take urgent measures. For this purpose she contacted Sri.Aryadan Muhammed over phone many times. The Minister had also called her. Since, when for about 4 to 5 months nothing was done, Sri.K.Kesavan, P.A. to the Minister told her that for getting it done something has to be paid to the Minister. He demanded Rs.2 Crores. Since the financial condition of her company at that time did not have the capacity to pay such a huge amount, she bargained and brought it reduced by 50%. As a first instalment she went to Manmohan Bungalow and paid Rs.25 Lakhs to him personally in his office room there. He got the amount counted by her to ensure the quantum. The second instalment of Rs.10 lakhs was paid to him through her office staff in the hands of



Sri.Kesavan when the Minister came to Kottayam Sumangali Auditorium where a workshop/seminar on Renewable Energy at the instance of KSEB Engineers Association was conducted. She was also a participant guest in the function. Sri.Aryadan Muhammed had inaugurated the function. She was also in the stage with the Minister at that time and she conveyed to him the payment of the amount. Thereafter the Minister talked specially introducing her to the audience. In spite of receiving all these amounts until she was arrested no help was extended to her. For the last two years and after bailing out from Jail she directly and through others demanded the amounts paid by her but so far it has not been returned.

Jikkumon knew all about their projects and it was on his advice that she had requested to obtain recognition, licences and permission for their Mega Projects from MNRE and other

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institutions of Renewable Energy. She said she cannot say with precision as to how many times she had been to C.M.'s office. For various matters she went there many times. It was on one such occasion she made the request as mentioned above to the C.M. and got his assurance. The C.M. asked her to prepare a feasibility report for a floating power project in Kallada Irrigation Project in Kollam District as established in Banasura Dam recently. For conducting the survey in Kallada Dam to prepare the feasibility study permission was granted by Sri.Aryadan Muhammed.

Smt.Saritha S.Nair in her deposition before the Commission made on 29-01-2016 stated thus:

Team Solar Company was a franchisee of Surana Ventures Ltd., Secundrabad which was a channel partner and enlisted company of MNRE. Till recognition is obtained for their company in the Government Projects held through ANERT their

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mother company - Surana Ventures Ltd. was participating. All dealings in connection with the tender etc. for Surana Ventures Ltd. was conducted by its representative Sri.Harish Nair and herself. Surana Ventures had participated in the tenders invited by ANERT in 2011-12 in respect of solar lanterns, Solar Home Electrification packages and solar street lighting systems. With the help of Sri.Aryadan Muhammed they quoted the lowest rate and obtained the order. For that herself and Sri.Harish Nair had met Sri.Aryadan Muhammed more than 4 times and he talked to the officers of ANERT. Though Surana Venturs Ltd. had supplied the product to ANERT there was an arrear to the tune of Rs.35 lakhs to be paid and they were denying payment for one reason or other. Then in February, 2015 - Harish Nair and a Director of the Company Mr.Mukesh Surana contacted her over phone and spoke to her about it. She asked Harish Nair to come to Kerala. She informed this matter to



Sri.Oommen Chandy. He, from the office, contacted ANERT and recommended for doing the needful. Besides, herself and Harish Nair went to the official residence of Sri.Aryadan Muhammed - Manmohan Bungalow and informed him of this matter. He, in their presence, contacted officers of ANERT and got the matter done. Accordingly, Surana Ventures got Rs.35 lakhs.

Allegations that she had illicit relationship with MLAs, MP's, Ministers have come. She has no interest in deposing about it before this Commission voluntarily, since it adversely affects her privacy, and the future of her children. In this matter, sex scandal alone assumed importance. No real investigation to ascertain the use of the amounts collected from the customers was conducted so far nor any report submitted. To some extent she was also responsible for that due to her stand. These insinuations are only a camouflage to defend the

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allegations regarding the financial scam which may come at any time. Due to this the investigation regarding the financial irregularities and corruption did not occur. And they could be able to destroy or tamper with the evidence available against them - she believe, she will elaborate this in her subsequent depositions, she said.

Smt.Saritha S.Nair in her deposition before the Commission made on 02-02-2016 stated thus:

The allegations raised against her mainly financial were in relation to the formation of Renewable Energy Policy and the National level recognition of her company, licences, permissions all promised. For this her connection was only with the CM and Sri.Aryadan Muhammed. The other allegations raised in connection with the solar cases are her personal matters affecting her privacy and hence she has mental difficulty for telling it in open courts. But, if the Commission

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makes an in-camera sitting or other appropriate arrangement she is prepared to co-operate with the Commission. But she strongly opposes making the note prepared by her while in jail a public document.

She participated in the International Workshop - Solar Kerala conducted at Muscat Hotel, Thiruvananthapuram on 13th, 14th and 15th of March, 2013. They had two exhibition stalls there. ANERT had sent letters to all dealers regarding availability of exhibition stalls by mail. It was received by them also. She contacted Sri.Sugathakumar and booked stalls and the fees for the same was remitted through her office staff. The C.M. was to inaugurate the conference but it was done by Power Minister Sri.Aryadan Muhammed. On that day she had a formal talk with Sri.Aryadan Muhammed who had an overall view of all the stalls and left. She had talked to Sri.Aryadan Muhammed in connection with

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their company matters many times and talked to him over phone many times. She did not get any written recommendation from him for their company, but many recommendations were made for them through phones. Heard about a Korean company by name TANGJONG but no dealing with that company, but heard about their contacts with the projects of others. She was asked about the payment of money to Thomas Kuruvila on two occasions at Delhi and Thiruvananthapuram which is mentioned in the letter written by her as deposed by Sri.R.Balakrishna Pillai. She answered that it is true that money has been paid but the amount specified therein is different, the true position has already been stated before this Commission.

To a question whether Team Solar Company was having the eligibility for joining the 10,000 roof top solar panel projects - her answer was that - the Minister has agreed to obtain all the

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recognition and received consideration by way of money. No such recognition was obtained. The mobile phone number 8606161700 was in her use and 9447011324 belongs to Sri.Aryadan Muhammed. Exts.X 439 (a) is the phone call details between the aforesaid two mobile phones for the period from 04-06-2012 to 10-05-2013. 35 calls are from the Ministers number to Saritha S.Nair's mobile. Except 8 calls all other calls were for less than a minute.

Sri.Paul Antony, Additional Chief Secretary in his deposition dated 16-12-2016 has stated thus:

G.O. (Rt) No.137/2010/PD dated 11-06-2010 is the one issued by the State Government in the Power Department designating in Kerala, ANERT, the Competent Authority for implementation of Solar Power Policy in connection with Jawaharlal Nehru National Solar Mission JNNSM. (Ext.X 806). The responsibilities of ANERT were specified.

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When Power Projects applications are received, after approval, it must be periodically reported to the Government. It must be submitted before the 5th of the succeeding month. He does not remember whether there is any machinery to verify whether it is being followed.

He has brought the file in G.O.No.49/2013/PD dated 25-11-2013 (Government file 555 pages and note 78 pages) as required and handed over to the Commission for perusal. He has also furnished a note - report received by him in regard to the visit of Team Solar Company in KINFRA PARK, Palakkad - Lr.No.Kin/V/IITP/2016-17 dated 14-12-2015. (Ext.X 867).

Sri.N.T.Job, Executive Engineer, KSEB in his deposition dated 25-07-2016 has stated thus:

He was General Secretary of the KSEB Engineers Association during 2011 - 2012. The Annual General Body meeting of the Association was held in Sumangali Auditorium at Kodimatha,



Kottayam District on 5th and 6th of May, 2012. A National Seminar and Annual General Body meeting were conducted. The subject of the National Seminar was "Solar Power - Solution to Power crisis in Kerala". The inauguration of this was held on 06-05-2012 by the then Power and Transport Minister Sri.Aryadan Mohammed. It was the inauguration of the General Conference. The Seminar was inaugurated by the then Home and Vigilance Minister Sri.Tiruvanchoor Radhakrishnan. The Brochure of the Programme dated 06-05-2012 is Ext.X 642. All the details of the programme were recorded there. There was no recording in the programme to show that Saritha Nair had dealt with any subject. But, Sri.P.C.Thomas who retired from KSEB as Dy. Chief Engineer is a life member of the Association. He, in the Association, had stated that since the subject of the seminar is solar power solution to power crisis in Kerala, Team Solar Company which deals with solar equipments etc. if given an



opportunity to talk about the subject, will be beneficial. On that basis the Association decided to give an opportunity to her after the seminar. Accordingly, Saritha S.Nair representing the Team Solar Company had participated in the function. But, the talk about the subject was by another person of the company. Saritha S.Nair was also there in the stage along with other persons when Sri.Aryadan Muhammed was in the stage. Saritha S.Nair was there at the time when Thiruvanchoor Radhakrishnan was also in the stage. They did not talk to Saritha S.Nair about the solar energy personally. Team Solar Company was afforded opportunity to talk about Solar subject after the seminar. Therefore Saritha Nair went out of the stage after the seminar was over.

Minister Sri.Aryadan Muhammed talked for about half an hour after the inauguration. He does not remember whether the Minister had

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mentioned about Team Solar Company. In the said function, he was sitting in the stage on the right side. Probably because of that he did not particularly notice Saritha Nair, her dressing and her elegant look. Exhibition stalls were there in connection with the seminar. Team solar company was given a stall. The Ministers who attended the seminar had passed through the stalls but he does not remember whether they had visited the stall. The visual of the function and the seminar in two CDs - Part I and Part II - held on 06-05-2012, as requested by the Commission was produced as Ext.X 643 Part I and 644 Part II. Both the CDs were played to witness. Welcome speech is made by him. After the presidential address Minister Sri.Aryadan Muhammed had inaugurated the function. It can be heard. In the stage, himself, President, Minister and other departmental officers are seen in the front row. In the row, just behind on the left side of the stage, Saritha Nair is seen



seated. Sri.Tiruvanchoor Radhakrishnan came to the stage after the inaugural speech of Sri.Aryadan Muhammed. At the time of speech made by Tiruvanchoor Radhakrishnan also Saritha Nair was in the stage. The seminar started after the Ministers had left the stage after inaugural function. Saritha Nair has left the stage after the inaugural function, he understands. Sitting in the stage the seminar presentation screen cannot be seen. So all of them got down from the stage. He remained in the stage. He does not remember now whether he, the Association President or the Ministers had talked about the projects of Team Solar Company. He did not see any other Minister talking to Saritha Nair in the stage. Saritha S.Nair happened to be in the stage at inauguration function since all those who are to present papers in the seminar were seated in the stage. Saritha Nair also was in the stage not because of the instructions or directions from anybody else. Team Solar Company

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was given a stall at the request of Sri.Thomas. The inaugural function was started at 10 A.M. He said he knows about the incentive by way of subsidy declared by the Central and State Government for promoting solar energy. It is helpful in implementing new project. The two CDs produced containing the programmes for convenience sake had been edited.

Sri.Shajkumar, Assistant Executive Engineer, KSEB in his deposition dated 25-07-2016 has stated thus:

He was the General Secretary of the KSEB Engineers Association during 2016 - 2017. During 2011 - 13 he worked as Asst. Engineer in the KSEB in another office at Pattom. In the Annual function of KSEB Engineers Association, a Seminar on Solar Renewable Energy was conducted. In that context about one month before, among the companies conducting solar business, heard about this company also. Saritha.S.Nair representing

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Team Solar Company had attended that function. He knew only later that it was Saritha S.Nair. He has also attended the Annual General Body function and was in the stage. The inauguration of the said function was by the then Power Minister Sri.Aryadan Muhammed. Home Minister Sri.Thiruvanchoor Radhakrishnan was also there. Saritha S.Nair was also in the stage. Team Solar Company had presented a paper. He did not notice whether the paper was presented by Saritha S.Nair or anybody else. for, he was not present there at that time.

This Commission by letter dated 27-06-2016 (Ext.X 645) requested him to furnish the video visuals and connected records of the Annual meeting of the KSEB Engineers Association held at Kodimatha Auditorium, Kottayam. He had produced two DVDs (already marked as Ext.X 643 and 644). He does not know whether Saritha S.Nair or any staff of the Team Solar Company had approached

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the KSEB in connection with their solar installation and Wind Mills.

Sri.Aryadan Muhammed in his deposition dated 29-06-2016 has stated thus:

He knows about Team Solar Renewable Energy Solutions Pvt. Ltd. engaged in Solar equipments business. A woman by name Lakshmi Nair and a few other persons along with her came and met him in the Ernakulam Guest House where he was staying on a particular day. They introduced themselves as persons from Team Solar Company engaged in Solar installation business. They said they require assistance / help from ANERT. They explained to him about their company and their business and the various helps required for them from the ANERT. They said that it will be helpful if orders for supply of Solar Lanterns are given to them. He replied to them that for purchase of solar Lanterns by ANERT there is tender system and that the supply orders will be awarded to the

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lowest tenderer and that if they want more details they can contact ANERT. He also said that if they require all those information's through him he will do that. He made enquiry in that regard with ANERT and got the information that for getting orders for supply of solar lantern there are two procedures to be followed after obtaining tenders from interested persons. The first one is technical bid and the other is the financial bid. The financial bids of the technically qualified tenders will be considered and it will be awarded to lowest tenderer. This was conveyed to them. Thereafter they did not contact or meet him. He did not enquire whether the ANERT had awarded Solar Lantern orders to them. The ANERT is under the Power Department of which he was the Minister. He is aware of the Circular issued by the Central Government in the MNRE for promoting Solar Renewable Energy Projects which are the alternative for meeting the deficiency of electricity in India providing



for Central subsidy and other benefits. ANERT was appointed as the Nodal Agency of these projects. The first project towards the aforesaid programme in Kerala was 10,000 Roof Top installation programme brought in the year 2012. This was settled by discussion with Central Power Minister Dr.Farooq Abdulla who came to Kerala and discussed with him and other Officers. The inauguration of 10,000 Roof Top programme was not done by Dr.Farooq Abdulla, he said. He had only discussed and finalised the project. The Central Minister had assured Central Subsidy to this project. An International Seminar under the auspices of ANERT regarding Solar Renewable Energy was held in 2012. The first day inauguration of this Seminar was to be done by Chief Minister Sri.Oommen Chandy but due to his inconvenience it was done by him. There was Exhibition Stall in the Seminar held in Mascot Hotel which was allotted by ANERT on first come basis. He is not aware of any requirement for



allotting the stalls such as the person to whom it is allotted must be experienced in conducting solar business and must be included in the empanelled lists of ANERT and MNRE. He did not know at that time that Saritha Nair's Team Solar Company had two stalls there. He came to know about it only later in connection with the enquiry. A fee of Rs.20,000/- was fixed for a stall. An annual conference of KSEB Engineers Association was conducted in 2012 at Sumangali Auditorium, Kottayam. Being the Power Minister he was invited for inaugurating the Conference and he did it. He had only inaugurated the conference. He did not conduct or participate in the Seminars. He did not know who were all the persons who had participated in the Seminar. He also did not know whether Saritha S.Nair had made any talk regarding the solar subject in that Seminar. He did not see Lakshmi Nair there on that day. (Emphasis supplied).

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Saritha S.Nair was cross-examined by Sri.Aryadan Muhammed through his counsel, the relevant portion summarised thus:

She was told that in page 8 of Ext.618 letter it is stated that as told by Thomas Kuruvila to avoid the delay in the Electricity Department Rupees Twenty Five Lakhs was paid to Sri.Aryadan Muhammed in his official residence Manmohan Bungalow. She said it is true. Again at page 9 of the letter in which it is said several times Sri.Aryadan Muhammed had sexually abused her. She was asked the dates of such events. Her reply was that after talking to Thomas Kuruvila in January, 2013 she had such experience and that she had such connections right from 2011 when she got acquainted with him. Mainly it happened in Manmohan Bungalow and three times in Govt. Guest House, Ernakulam. One such occasion was after attending the function in Kottayam Sumangali Auditorium on coming back at Government Guest

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House, Ernakulam. Sri.Aryadan Muhammed had received money from them in connection with the formation of renewable energy policy for solar mega power projects. Solar Energy Policy, she said, is not a project it is only a policy. She denied the suggestion that she had never seen Sri.Aryadan Muhammed in Manmohan Bungalow. She also denied the suggestion that the allegation of sexual harassment is false and is an imaginary creation of hers. She also denied the further suggestion that Sri.Aryadan Mohammed has not seen her alone so far. She admitted that, she had submitted before the Commission a letter with the endorsement 'Confidential' on 9th or 10th of February, 2016. To her estimation Sri.Aryadan Muhammed is above 70 years of age. The suggestion that he had completed 81 years was not denied, since she has no such information. She also denied the suggestion that in connection with the formation of the renewable energy policy, she had met Sri.Aryadan Muhammed on many

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occasions is false. The abusive treatment to Saritha S.Nair, she said, is known to her P.A. Jisha, for, she told this to Jisha. It was suggested that the statement contained in Ext. X 428 are untrue. She denied it by stating that the statement made by her before the Commission are true.

Former Power Minister Sri.Aryadan Muhammed again cross-examined Smt.Saritha S.Nair through his counsel Senior Advocate Sri.Raju Joseph on 10-02-2016 and 24-02-2016. (DW Vol. X-II PP 386 to 429)

Saritha Nair said that, 42 applications for subsidy for the installation of solar water heaters during 2010-2011 were submitted to ANERT. She does not remember the date of the application and other details. A reply dated 04-02-2012 was sent from ANERT stating that the application is incomplete in respect of many details. This might have been received. Since, it was not her



responsibility she is not able to give a reply.

She had participated in the Green Energy Expo International Conference held in Muscat Hotel, Thiruvananthapuram on 13th 14th and 15th of March, 2012. Stalls were arranged there based on the E-mail message received from ANERT. Since the allotments of the stalls were on the basis of first come first served she directly called and booked two stalls. She meets Minister Sri.Aryadan Muhammed for first time as per the directions of the C.M. in July, 2011; date she does not remember. Thereafter, she had met the Minister many times. When she went to Manmohan Bungalow to meet the Minister she saw his P.A. Sri.Kesavan.

It was in December, 2011 Sri.Kesavan said, that for getting things done the Minister has to be paid. Rupees Seventy Five Lakhs was demanded. First she talks to Sri.Kesavan and then to the Minister. The amount payable to the Minister was



fixed, after series of discussions, on 06-12-2011. Initial payment fixed was Rs.25 lakhs which she has paid to the Minister in his official residence. In the Ministers office she was standing in front of him looking at him. Krishnettan and Ummer, personal staffs of the Minister were standing outside. But she does not know whether they had seen her paying the money to the Minister. The money paid to the Minister was the money received from customers Reginald George, Leelamma Reginaldand Raveendran.V.T for Wind Power Projects deposited in the Bank Account was withdrawn and paid. On 06-05-2012 a seminar and a workshop was conducted in connection with the Annual General Body Meeting of KSEB Engineers Association in Sumangali Auditorium at Kodimatha, Kottayam. Its inauguration was by Sri.Aryadan Muhammed. She presented a subject in the seminar. She was on the dais along with the Minister. She reached there by 9.30 A.M. and the function started at 10 A.M. The seminar was on Solar



Energy - A solution to Power Crisis. Notice of the programme was there but the person's delegates presenting the papers were not specified. The programme was recorded by IPRD. Regarding evidence she said the video visual and documents of the function will be available with IPRD and KSEB Electrical Engineers Association, Kottayam. Evidence to show that an exhibition stall was conducted there she said is available with the SIT which investigated the crime cases. There is mention in the expenditure report. Rs. 15 lakhs was paid to the Minister through her personal staff by way of placing it in his official car while herself and the Minister were sitting on the dais. The Minister confirmed the receipt of the amount to her on the dais. The money was paid to the Minister for the Central - State Governments recognition for the Wind - Solar Power Projects and for the formation of Renewable Energy Policy. It was on the assurance that the Minister will do all this, money was

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paid to him. When she first met the Minister Sri.Aryadan Muhammed other members of the company staffs were also with her. No special introduction was required in her meeting with the Power Minister since the meeting was as instructed by the C.M. She had met the Minister several times in the Government Guest House, Ernakulam. Dates, she does not remember. She had talked to the Minister matters related to ANERT also through phone. On many occasions the Minister himself had attended the phone when she called and talked to him. If the Minister was in meeting the calls are attended by his P.A. Mr. Kesavan or Krishnan or Ummar and there were return calls. 75% of the phone calls made by her were attended to by the Minister himself. She knows about the decision of ANERT for distribution of solar lantern. She had talked to the Minister in connection with submission of tender by Surana Ventures a distribution company of Team Solar and arranged it for them.



She denied the statement that Team Solar had approached the Minister for orders for supply of solar lantern and that the Minister after ascertaining the position had informed her that the order can be given only on compliance of the legal requirements. She did not talk to the Minister about orders for supply of solar lantern. She has heard about the decision taken by the Power Department for construction of Solar Power Plant having the capacity to produce 500 Mega Watt power in 2012.

To a question whether Team Solar Company was having the eligibility for joining the 10,000 roof top solar panel projects - her answer was that - the Minister has agreed to obtain all the recognition and received consideration by way of money. No such recognition was obtained. The mobile phone number 8606161700 was in her use and 9447011324 belongs to Sri.Aryadan Muhammed. Exts.X 439 (a) is the phone call details between

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the aforesaid two mobile phones for the period from 04-06-2012 to 10-05-2013. 35 calls are from the Ministers number to Saritha's mobile. Except 8 calls all other calls were for less than a minute.

She was also asked whether there is any contract or other documents to show her connection with Surana Ventures. She said, she had contacted the Minister only for finalisation of the tender and for settlement of the dues for Surana Ventures.

Since the mobile phone call details of Saritha S.Nair was the basis for the allegation which have first come in the newspaper and media and then in the Legislative Assembly discussion which commenced on 13th June, 2013 evidenced by the urgent resolution of Sri.Raju Abraham, MLA and others- the Commission through the SIT had obtained the CDR details of the two mobile phones 9446735555 and 8606161700 used by Saritha S.

A handwritten signature in black ink, appearing to read "Sarita S." followed by a date.

Nair. On verifying the said CDRs it was found that there were calls from the above two mobile phones used by Saritha S.Nair to the mobile phones of the personal staff, security etc. of the C.M. Sri.Oomman Chandy and other Ministers, MLAs., Political leaders etc. It was decided to issue notice under Section 5(2) of the Commissions of Inquiry Act to some of these persons who had frequent contacts to and fro calls to the mobile phones of Saritha S.Nair. Accordingly, notice dated 21-05-2015 was issued to Power Minister Sri.Aryadan Muhammed (Ext.X 623). The questions put to him in the notice were 1) Do you know M/s.Biju Radhakrishnan and/or Saritha S.Nair (also known as Dr.R.B.Nair and Lakshmi Nair), the prime accused in the solar scam personally? If so, kindly explain the nature of your acquaintance? 2) Did they or either of them contact you either in person or through telephone? If so, the purpose of visit / telephone contact.



Sri.Aryadan Muhammed, has filed a reply to that on 16-06-2015 (Ext.X 624). He said, he is not acquainted with either Biju Radhakrishnan or Dr.R.B.Nair and Biju never contacted him either personally or over phone.

(Para 3 to 6 (Ext.X 624) from Paper Book - Deposition Vol.XVI)

In paragraphs 3 to 6 of the reply he has stated thus:

3."During May, 2012 Smt.Saritha S.Nair introducing herself as Lakshmi met me at Ernakulam while I was in the Guest House. I have no previous acquaintance with her. I am not able to recollect the exact date. Along with her there were two other persons about whom I had no previous acquaintance. I do not remember their names. She told me that she was the Chief Executive of a company known as 'Team Solar' which is in the field of Solar Power Generation. She also told me that her company was able to

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supply any equipment or device to generate solar power and therefore any requirements of 'ANERT' for such equipments or devises could be met by her company. I did not promise anything. Thereafter on another occa0sion she again came to me accompanied by two other persons requesting me to give order to supply solar lanterns. This was at a time when ANERT was toying with the idea of supplying solar lantern to public as a part of creating public awareness about solar power generation. I told her that no order could be given without following the procedural formalities. ANERT was proposing to invite tenders from manufactures who are producing solar lanterns with standard quality and in case she became the lowest tenderer she would get the order. Thereafter she contacted me over telephone on two or three occasions with the same request and I gave the same reply. ANERT is an institution coming under Department of Power and I am in charge of that Department. To the best



of my information and knowledge no order to supply solar lantern was given to Team Solar from ANERT.

4. During the same year the Power Department had invited expression of interest from companies/persons who could generate and supply solar power up to 500 MW. During that time she approached me personally and told me that her company was capable of generating and supplying the required power through solar system. I told her that there was no question of any direct negotiation and she had to go by the procedure of submitting EOI. However she did not submit EOI and hence there was no occasion to give any order to her in that regard. After the above said meeting also she had contacted me over telephone on three or four occasions and repeated her requests and I gave her the same answer. This time I expressed displeasure in contacting over phone frequently for the same purpose.

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5. About an year ago ANERT had taken a decision to supply roof top solar panels capable of generating 1 KW solar energy to 10,000 houses. This time she again contacted me over phone and requested to accept her company's offer to supply solar panels to 10,000 houses. I told her that the programme of supplying roof top solar panels was implemented with the support of MNRE (Ministry of New and Renewable Energy) under the Central Government and State Government were giving subsidy. Since it was a programme supported by the Central Government only companies empanelled by the Central Government could be considered. Any of the companies in the panel could submit EOI and from those companies who had submitted EOI, 25 of them quoting lowest rate would be selected. Subsidy would be given, on the basis of the lowest rate quoted by the companies. However, roof top solar panels could be purchased from any of the selected companies. The above procedure adopted by ANERT was

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explained to her and advised her to participate in the tender by giving EOI if her company was one among the empanelled companies. Even after I explained the procedure in detail, she contacted me over the phone three or four times again and I gave the same reply. I understand that her company was not among the empanelled companies and therefore no EOI was submitted by her.

6. These are the occasions in which she had contacted me which I can recollect from my memory. This is my true and complete disclosure in compliance with your request contained in the letter referred to above."

He was also issued a notice under Section 8B of the Act on 09-07-2015 (Ext.X 625) explaining the circumstances under which such a notice was issued namely, the substance of the allegation under item No.1 of the terms of reference settled by the Commission by order dated 07-11-2014. No reply received.

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The telephone call details from the two mobile phones used by Saritha S.Nair to the mobile phone number 9447011324 of Sri.Aryadan Muhammed for the period from 04-06-2012 to 10-05-2013 marked as Ext.X 439 (a) showed 80 contacts between 8606161700 and 9447011324 and one call on 31-05-2013 from another mobile phone number 9446735555 to the mobile phone of Sri.Aryadan Muhammed. Of the 80 calls, 34 calls were from his number to Saritha's mobile.

Sri.Aryadan Muhammed in reply to the notice under Section 5(2) of the Act, as noted above, has explained that Saritha S.Nair and two others came and met him in the Government Guest House, Ernakulam and explained about her solar business to him. He has also admitted telephone calls between them in the said reply. Sri.Aryadan Muhammed in his deposition before this Commission made on 29-06-2016 also spoke in terms of the reply filed to notice under Section 5(2).



However, he had denied the various allegations raised against him by Saritha S.Nair in her deposition before this Commission on 27-01-2016, 29-01-2016 and 02-02-2016. He has totally denied Saritha S.Nair meeting him as per the instructions of Sri.Oomman Chandy in Man Mohan Bungalow, the official residence of Sri.Aryadan Muhammed and submiting the project report. The alleged assurance given by him was also denied. It is the case of Saritha that the main purpose for which she paid money to Sri.Aryadan Muhammed was for obtaining Central - State recognition for her company and for the formation of the Solar Policy for Kerala. It was assured. She thus, paid a sum of Rs.25 lakhs to Sri.Aryadan Muhammed personally in his official residence at Manmohan Bungalow and another sum of Rupees Fifteen Lakhs through the staffs while the Minister and herself were in the Sumangali Auditorium for the Annual Conference of KSEB Engineers Association. Both the alleged transactions were denied by him; he

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even denied the presence of Saritha S.Nair in the Sumangali Auditorium at the time when he inaugurated the Annual Conference of KSEB Engineers Association. According to him, he did not see her in the stage or in the function.

Sri.Raju Joseph, Senior Counsel appearing for Sri.Aryadan Muhammed cross-examined Saritha S.Nair on 27-06-2016 very elaborately particularly with reference to the presence of Saritha S.Nair in the Sumangali Auditorium in the stage when Sri.Aryadan Muhammed inaugurated the function. True, she did not produce any documentary evidence to show that she was an invitee to the function or that she was present in the function at that time in the stage. There is no material or evidence to show that she through her staff has handed over a sum of Rs.15 lakhs to Sri.Aryadan Muhammed putting it in his official car or that he had confirmed the receipt of money while sitting in the stage.



As already noted, an Executive Engineer and an Assistant Engineer of the KSEB (the office bearers of the KSEB Engineers Association) were examined before this Commission. They were requested to produce the video/audio visuals of the function conducted in the Sumangali Auditorium. Accordingly, they have produced two CDs containing the Audio/Video visuals of the seminar conducted in the Sumangali Auditorium. The Executive Engineer has positively admitted the presence of Saritha Nair in the function. He said, since, the subject for the seminar was regarding solar renewable energy a retired Deputy Chief Engineer, of the KSE Board who is a life member of the Association has suggested in the meeting that since team solar company is in the field of solar Renewable Energy, Saritha S.Nair must be invited to make a speech on the subject and accordingly she was invited. The CDs produced by him were played in the sitting. Saritha S.Nair's presence in the stage when

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Sri.Aryadan Muhammed was inaugurating the function was noted in the visual. The former Minister Sri.Thiruvanchoor Radhakrishnan was also seen there in the function. Sri.Shajukumar, Asst. Engineer in his deposition has also confirmed the same. Thus, from the oral evidence of the KSEB Engineers and the documentary evidence afforded by the visuals in the two CDs produced by them, it is very clear that Saritha S.Nair was an invitee to the function and that she was there in the stage along with Sri.Aryadan Muhammed and Sri.Thiruvanchoor Radhakrishnan.

Saritha S.Nair had stated in her deposition that after the receipt of Rs.15 lakhs on that day, he, in his speech had specially introduced the Solar Company. This was denied by Sri.Aryadan Muhammed. The Executive Engineer to whom it was asked, said that he does not remember now whether such a reference was made by Sri.Aryadan Muhammed in his speech.



When, Sri.Oomman Chandy former C.M. was examined before the Commission on the CD produced by the Executive Engineer, KSEB before this Commission, the relevant portion was played to him. From the audio/video visuals it could be seen that Sri.Aryadan Muhammed in his speech, looking at Saritha S.Nair who was sitting in the stage, mentioned that she had met him as instructed by C.M. Sri.Oomman Chandy and said that everything that is possible have to be done for the Mega Watt project for Kerala. Sri.Oomman Chandy on seeing the audio visuals had admitted this. Thus the whole story put forward by Sri.Aryadan Muhammed to demolish the allegations made by Saritha S.Nair in her deposition made on 27-01-2016 and in the cross-examination fall flat and stand destroyed. Saritha S.Nair had clearly stated in her deposition that after the registration of Team Solar Company their idea was to concentrate in Mega Solar Projects and for that purpose a Solar Energy Policy has to be

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formulated for Kerala so that various incentives such as Central State subsidy, IREDA financing loans and other benefits for Mega projects could be obtained. It is for that purpose she, as the person responsible of Team Solar Company, had contacted the C.M. Sri.Oomman Chandy and then the Power Minister Sri.Aryadan Muhammed as per the instructions of the C.M. and obtained the assurance from the Power Minister. It is mainly for getting the Central - State Government recognition, licenses and for the formation of the Solar Policy, the Team Solar Company through her has paid substantial amount to Sri.Oomman Chandy and Sri.Aryadan Muhammed in her case.

Apart from the revelations of Sri.Aryadan Muhammed in the speech made in the KSEB Engineers Association Annual Conference on 05-06-2012 in the Sumangali Auditorium, the evidence afforded by the Government file G.O. 49/2013/PD would also reveal that it is at the instance of the Power

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Minister Sri.Aryadan Muhammed the Director, ANERT took the initiative by submission of the proposal for consideration in a meeting to be convened by the Power Minister. This is simultaneous, with the speech made by him about Team Solar Company.

From all the above circumstances, the Commission would like to enter a finding that the allegations put forth by Saritha S.Nair before this Commission has some substance. The former C.M. Sri.Oomman Chandy and former Power Minister Sri.Aryadan Muhammed are responsible for that.

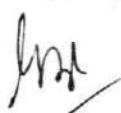
Therefore, the next point to be considered is as to whether these steps taken by the aforesaid two persons for promoting the Mega Solar projects of Saritha S.Nair and her company - Team Solar Renewable Energy Solutions are supported by consideration/gratification. The case stated by Saritha S.Nair that since, in spite of the assurance given by Power Minister Sri.Aryadan Muhammed, no steps in that regard were taken.

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P.A. to the Power Minister Sri.Kesavan told her that something has to be paid to the Minister. It is stated that there were negotiations about the amount to be paid and a decision was taken on 06-05-2012. As a result, a sum of Rupees Twenty Five Lakhs lakhs was paid to the Minister in his official residence at Manmohan Bungalow and a further amount of Rupees Fifteen Lakhs was paid through her staff in the premises of Sumangali Auditorium when the function was going on.

Sri.Kesavan, Addl. P.S. to the Power Minister was examined before this Commission on 21-06-2016 (Depo. Vol.XV Pp 177 - 207). (CW 149).

He was with Sri.Aryadan Muhammed when he was the Power Minister in 2005 to 2006 and later from 2011 May until 28th of May, 2016. He is a retired Higher Grade Under Secretary in the Secretariat. Main duty assigned to him was arranging the programmes, trips etc. of the Minister. He is one of the two Members who accompany the Minister



in his travel on alternative days. One of the Gunmen will also accompany the Ministers. Minister Sri.Aryadan Muhammed had used two mobile phones of his own. 9446008001 given from KSEB and the other 9447011324. According to him Minister will not take the phone directly. The person accompanying him will attend and after ascertaining the person calling it is intimated to the Minister and if he wants to talk to that person it will be given to the Minister. If calls come when the Minister is in meeting or otherwise engaged it will be intimated to them. If the calls are from VIPs. it will be intimated to the Minister and Minister calls that person. This is the usual practice. In the official residence of the Minister Man Mohan Bungalow his family is not there. Once in a year family comes, stays there for two days and return. Police and Gunman stay there; besides Cook, Peon and P.A. will be there. The Minister had faith in him but did not tell confidential matters to



him. Official matters and at times their family matters were discussed. He has heard of Saritha Nair known by the name Lakshmi Nair only after the news regarding her arrest in connection with solar scam came in print and visual media. Before that he has not heard of Team Solar Company. He had seen Lakshmi Nair twice in the Secretariat. She came alone. On both these occasions Saritha asked him whether the Minister is in his office and whether she can see. He only gave reply to that and never talked to her on other matters. Whenever she came she was well-dressed. Except on the two occasions Lakshmi Nair came to meet the Minister to his knowledge, she did not come and see the Minister when he was attending outside functions when he was with the Minister. He was present along with Minister Sri.Aryadan Muhammed while the Minister was inaugurating the function of the KSEB Engineers Association in Sumangali Auditorium. He said that the statement of Saritha S.Nair before this

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Commission that she sat along with the Minister in that stage is not correct. On that day he was sitting below the stage in the front side. He could see all the persons sitting in the stage. Lakshmi Nair was not on the stage. This function was subsequent to his meeting Saritha Nair on earlier occasions. He was entrusted with the reply to the letter sent from this Commission under the caption 'Confidential' prepared after discussion with his advocates for producing it before the Commission. He entrusted the same to the Secretary of the Commission. The cover containing the reply was not pasted by him, but he did not read the contents of the cover. He pretended ignorance of many of the other matters sought to be ascertained from him. However, when it was brought to his notice the statement made by Saritha S.Nair before this Commission on 27-01-2016 he denied the alleged payment of Rs.15 lakhs to him and said other matters he had not seen.



In view of the findings entered regarding the presence of Saritha S.Nair on the stage along with the Minister in the function conducted in Sumangali Auditorium, the statement of Sri.Kesavan in his deposition that though he was sitting in front of the stage from where he can see all persons sitting on the stage and had seen Saritha S.Nair earlier, he did not see Saritha S.Nair either on the stage or in the premises being a blatant lie his other statements in regard to the other relevant matters has to be considered only with a pinch of salt.

Regarding the payment of the amounts to Sri.Aryadan Muhammed she has stated that Rs.25 lakhs was drawn from the Bank account in which the money received from certain customers mentioned by her was deposited. The Bank accounts and other details are seized / collected by the SIT and criminal cases are pending. Therefore, it is a matter for verification.

[Signature]

The role of Sri.Aryadan Mohammed is also dealt with in connection with the letter dated 19-7-2013 written by Saritha S Nair. She, in her depositions given before the Commission available in Paper book of depositions Vol. X Part I and Part II and the confidential sitting held on 29-6-2016 etc., has stated the allegations against him. He was afforded opportunity through his advocate to cross examine Saritha also.

Allegations of illegal gratification both sexual and corruption are raised against him. All, mainly with reference to the Kerala Solar Policy. The Commission has also considered this in the context of application of the provisions of the PC Act.

Now coming to others.

The UDF Ministers had inaugurated the functions, Energy Marts, State wide conference of the solar projects of providing solar panels in one each of the Harijan colonies in the 14



districts of Kerala. The UDF MLA's had recommended the projects of Team Solar Company of Saritha S.Nair for installation of solar street lights in their constituencies by utilising the MLA fund. The ministers who inaugurated the functions noted above are Minister for Agriculture Sri. Mohanan, Sri. Ganesh Kumar, Planning Minister Sri. K.C.Joseph, Minister Sri.P.J.Joseph, Tourism Minister Sri.Anil Kumar, Revenue Minister Sri.Adoor Prakash, and Harijan Welfare Minister Smt.P.K.Jayalakshmi. Sri.Mons Joseph MLA, and Sri.Vishnunath MLA had recommended Saritha's Teamm Solar company for installation of solar street light by utilising their MLA fund, were examined and their depositions recorded. Sri. Hibi Eden MLA according to Sritha S Nair had helped her in settling her cases. Their depositions are recorded. Besides, Sri.Thampanoor Ravi, Ex MLA and Sri.Benny Behanan MLA all of them were examined and their depositions recorded.



Besides Sri.K.C.Venugopal MP, and Sri. Jose K Mani MP against whom allegation based on telephone calls and otherwise are raised by Saritha evident from the telephone calls or otherwise were examined and their depositions recorded. Their names and deeds occur in the letter written by Saritha S.Nair. In the case of Sri.K.C.Venugopal allegation of sexual satisfaction by Saritha and corruption by Biju Radhakrishnan are alleged.

Sri. K.C.Venugopal, M.P

Both the Solar Scam accused Biju Radhakrishnan and Saritha S Nair had raised serious allegations against Sri. K.C.Venugopal M.P. Sri. Biju Radhakrishnan has alleged payment of money for the purpose of getting MNRE channel Partnership for which, according to him, applications and other details were entrusted to Sri.K.C.Venugopal who was the Central Minister



for State in the Energy Department. Both the papers and money, according to Biju Radhakrishnan were given to Sri. Venugopal in his residence at Alapuzha through a relation of his by name Nagarajan who was the driver of Sri.K.C.Venugopal.

The allegation of Saritha S Nair is that she had met him both in his residence at Alapuzha and in New Delhi to invite him for the inauguration of their Energy Mart at Kozhikode and that he had outraged her modesty.

Her deposition available at DW Vol X speaks about his sexual appetite and cruel behaviours. Saritha has alleged in the confidential letter given to the Commission in sealed cover marked as Ext.X 428. Saritha was cross examined by senior counsel Sri. S.Sreekumar, on his behalf available at p 50 to 65 of the deposition of Saritha in the confidential sitting held on 27-06-2016 both with reference to Ext.428 and with reference to the



original letter dated 19-07-2013 written by Saritha. Sri. K.C.venugopal and Nagarajan were examined as CW 153 and 131 respectively and their evidence is available at DW Vol.XV Pp 287 and 322 DW Vol XIII Pp 58-66 respectively.

The mobile phone used by Sri.K.C.Venugopal while he was the Central Minister is 9013180106 besides he has got another number 9447016661. The call details between his mobile number 9013180106 and Saritha's mobile No.8606161700 for the period from 14-06-2012 to 13-05-2013 as per Ext.X 446(a)- CDR shows 49 calls. Similarly from another number used by Saritha 9446735555 to his above mentioned number for the period from 25-09-2012 to 30-05-2013 (Ext.X 446(b)) shows 8 calls. He admitted both as seen from the CDRs shown to him. He has made an explanation at Pp 307-308 of his deposition to the effect that he did not talk to Saritha Nair over phone.

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Sri.K.C.Venugopal, it is understood, has filed a defamation case in the Chief Judicial Magistrate court, Ernakulam against the publication of Saritha S Nair's letter dated 19-07-2013 in the media and the same is pending.

Any way in view of the allegations raised by Biju Radhakrishnan and Saritha S.Nair in their evidence particularly the telephone call details and the contents of the letter dated 19-07-2013 of Saritha S.Nair, Commission on preponderance of probability finds that there was some sort of connection between him and Saritha S.Nair.

The Commission, in the context of application of the provisions of the Prevention of Corruption Act, has suggested for examining the position in the case of Ministers, Political leaders, other than Central Minister Sri.Palani Manickam whose name occur in the letter written by Saritha S.Nair. The detailed consideration with reference to the letter of Saritha S.Nair is dealt with



under CM and his office as well as SIT. Hence not repeated. It will apply to Sri. K.C.Venugopal also.

Allegation is there against ADGP Sri.Padmakumar IPS, now ADGP and his deposition is also recorded.

The KPCC General Secretary Sri. Subramanian himself for his wife's brother entered into to MOU for dealership of Team Solar by paying R 9 lakhs shows the influence of these accused with the persons mentioned above.

All are public servants. They are expected to deal with the people they represent. When public servants like Ministers, MLAs, MPs etc., openly inaugurates the functions of people engaged in business of the nature conducted by the accused in the solar cases they are expected to ascertain the credibility etc., before undertaking to attend their functions. Some safe

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guards in the matter by legislation including some sort of penalty on them have to be made.

In connection with the telephone call details furnished by the parties - confidential notices were issued and replies obtained from them. It is compiled in the form of a book for easy reference.

The telephone call details of all those who are alleged to have contacts with Saritha S.Nair, so far as possible, were collected, analysed and marked through Saritha S.Nair, which are available in her deposition and in the exhibits volumes.

The telephone call details were put to each one of them. Since those details, mostly were obtained through government sources it cannot be disputed. But explanations are available for them which each one of them have offered also.

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DEPOSITION OF SRI.PAUL ANTONY, ADDL. CHIEF
SECRETARY, POWER & INDUSTRIES DEPARTMENT

EXAMINED ON 16TH DECEMBER, 2016.

(CW 212)

G.O. (Rt) No.137/2010/PD dated 11-06-2010 is the one issued by the State Government in the Power Department designating ANERT in Kerala, the Competent Authority for implementation of Solar Power Policy as in connection with Jawaharlal Nehru National Solar Mission JNNSM. (Ext.X 806). The responsibilities of ANERT were specified. When Power Projects applications received after approval it must be periodically reported to the Government. It must be submitted before the 5th of the succeeding month. He does not remember whether there is any machinery to verify whether it is being followed.

He has brought the file in G.O.No.49/2013/PD dated 25-11-2013 (Government file 555 pages and note 78 pages) as required and hands over to the Commission for perusal. He has also furnished a



note - report received by him in regard to the visit of Team Solar Company in KINFRA PARK, Palakkad - Lr.No.Kin/V/IITP/2016-17 dated 14-12-2015. (Ext.X 867) .

Regarding Saritha S.Nair acting as a middleman in the property deal between Cochin Port and Lulu Group International since the witness was the Chairman of Cochin Port Trust from 2011 to 2016 he was asked personally about it. He replied that there was no such occasion. The deal was over prior to his taking charge as the Chairman Cochin Port.

The production of energy from solar when compared to other States in India is behind. He cannot say now how much Mega watt solar energy is produced in India.

KSEB charges domestic consumers less than the charge on other consumers.

He was asked, if for domestic consumption solar energy is produced through the media of Roof Top etc. and the power produced by KSEB is sold for Industrial and commercial purposes at higher rate KSEB will get more profit. He answered - if the BPL people meet their needs through roof top plants it will be profitable to the KSEB.

During the UDF Government, the target expected by Central Government regarding production of solar energy could not be achieved in Kerala.

The Kerala solar energy policy, 2013 was mooted by ANERT at the instance of the State Power Minister Sri.Aryadan Muhammed on -2012. It was issued as per Government Order G.O.No.49/2013/PD dated 25-11-2013.

The draft policy was prepared by a Committee. Objections called for by publishing the draft in the ANERT website.

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Regarding insertion of a sentence in para 3
of the preamble to the policy by way of
modification of the preamble portion para 3 - the
Addl. Chief Secretary, Niveditha P.Haran in the
note file made a note... scamsters...'.

This note was approved para 107 by the Power
Minister Sri.Aryadan Muhammed. Order to place
this for Cabinet decision. Also stated show this
to the C.M. and get his signature. The C.M. also
affixed his signature.

A handwritten signature in black ink, appearing to read "Sri. Aryadan Muhammed". The signature is fluid and cursive, with a prominent "S" at the beginning and a "9" at the end.

DEPOSITION OF SRI.G. SHAJ KUMAR, ASST. EXE.ENGINEER - CW 162

Sri.G.Shaj Kumar, Assistant Executive Engineer, working at Vydhuthi Bhavan, Pattom was examined as CW 162 on 25-07-2016 and his deposition recorded. Ext.X 645 is marked through him. (Depo. Vol.XVII Pp 23 - 27).

He was the General Secretary of the KSEB Engineers Association during 2016 - 2017. During 2011 - 13 he worked as Asst. Engineer in the KSEB in another office at Pattom. In the Annual function of KSEB Engineers Association, a Seminar on Solar Renewable Energy was conducted. In that context about one month before, among the companies conducting solar business, heard about this company also. Saritha.S.Nair representing Team Solar Company had attended that function. He knew only later that it was Saritha S.Nair. He has also attended the Annual General Body function and was in the stage. The inauguration of the said function was by the then Power

[Signature]

Minister Sri.Aryadan Muhammed. Home Minister Sri.Thiruvanchoor Radhakrishnan was also there. Saritha S.Nair was also in the stage. Team Solar Company had presented a paper. He did not notice whether the paper was presented by Saritha S.Nair or anybody else. for, he was not present there at that time.

This Commission by letter dated 27-06-2016 (Ext.X 645) requested him to furnish the video visuals and connected records of the Annual meeting of the KSEB Engineers Association held at Kodimatha Auditorium, Kottayam. He had produced two DVDs (already marked as Ext.X 643 and 644). He does not know whether Saritha S.Nair or any staff of the Team Solar Company had approached the KSEB in connection with their Solar installation and Wind Mills.

[Signature]

DEPOSITION OF SRI.N.T.JOB, EXE. ENGINEER - CW 161

Sri.Job, N.T., Executive Engineer, KSEB, working at Trichur was examined before this Commission as CW 161 on 25-07-2016 and his deposition is recorded. Exts. X 642 to 644 were also marked. (Depo.Vol.XVII Pp 7 - 22).

He was General Secretary of the KSEB Engineers Association during 2011 - 2012. The Annual General Body meeting of the Association was held in Sumangali Auditorium at Kodimatha, Kottayam District on 5th and 6th of May, 2012. A National Seminar and Annual General Body meeting were conducted. The subject of the National Seminar was "Solar Power - Solution to Power crisis in Kerala". The inauguration of this was held on 06-05-2012 by the then Power and Transport Minister Sri.Ariyadan Mohammed. It was the inauguration of the General Conference. The Seminar was inaugurated by then Home and Vigilance Minister Sri.Tiruvanchoor



Radhakrishnan. The Brochure of the Programme dated 06-05-2012 is Ext.X 642. All the details of the programme were recorded there. There was no recording in the programme to show that Saritha Nair had dealt with any centre. But, Sri.P.C.Thomas who retired from KSEB as Dy. Chief Engineer is a life member of the Association. He in the Association had stated that since the subject of the seminar is solar power solution to power crisis in Kerala, Team Solar Company with deals with solar equipments etc. if given an opportunity to talk about the subject will be beneficial. On that basis the Association decided to give an opportunity to her after the seminar. Accordingly, Saritha S.Nair representing the Team Solar Company had participated in the function. But, the talk about the subject was by another person of the company. Saritha S.Nair was also there in the stage along with other persons when Sri.Ariyadan Muhammed was in the stage. Saritha S.Nair was

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there at the time when Thiruvanchoor Radhakrishnan was also in the stage. They did not talk to Saritha Nair about the solar energy personally. Team Solar Company was afforded opportunity to talk about Solar subject after the seminar. Therefore Saritha Nair went out of the stage after the seminar was over.

Minister Sri.Ariyadan Muhammed talked about half an hour after the inauguration. He does not remember whether the Minister he meets mentioned about Team Solar Company. In the said function, he was sitting in the stage on the right side. Probably because of that he did not particularly notice Saritha Nair her dressing and her allegiant look. Exhibition stalls were there in connection with the seminar. Team solar company was given stall. The Ministers who attended the seminar had passed through the stalls but he did not remember they had visited the stall. The visual of the function and the seminar in two CDs

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- Part I and Part II - held on 06-05-2012 as requested by the Commission produced as Ext.X 643 Part I and 644 Part II. Both the CDs were played to witness. Welcome speech is made by him after the presidential address Minister Sri.Ariyadan Muhammed had inaugurated the function. It can be heard. In the stage, himself, President, Minister other departmental officers are seen in the front row. In the row just behind on the left side of the stage Saritha Nair is seen seated. Sri.Tiruvanchoor Radhakrishnan came to the stage after the inaugural speech of Sri.Ariyadan Muhammed. At the time of made by Tiruvanchoor Radhakrishnan also Saritha Nair was in the stage. The seminar started after the Ministers had left the stage after inaugural function. Saritha Nair was left the stage after the inaugural function, he understands. Sitting in the stage the seminar presentation screen cannot be seen. So all of them got down from the stage. He remains, in the stage. He does not remember now whether he, the



Association President or the Ministers had talked about the projects of Team Solar Company. He did not see any other Ministers talking to Saritha Nair in the stage. Saritha S.Nair happened to be in the stage at inauguration function since all those who are to present papers in the seminar were seated in the stage. Saritha Nair also was in the stage not because of the instructions or directions from anybody else. Team Solar Company was given a stall at the request of Sri.Thomas. The inaugural function was started at 10 A.M. He said he knows about the intensive by way of subsidy declared by the Central and State Government for promoting solar energy. It is helpful in implementing new project. The two CDs produced containing the programmes for convenient say had been edited.

The Special Investigation Team headed by Sri.A.Hemachandran, IPS or any other members of



the said Team did not contact the Association or take statement.

The evidence available in the matter afford sufficient grounds to say that they knew Saritha S.Nair and Team Solar Company and helped in one way or the other knowingly or unknowingly. The telephone call details not a few but in good numbers, afford grounds for believing that those persons had some sort of connections with Saritha S.Nair and her company.

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Item no. (ii) and (iii) as per the terms of Reference is

'(ii) Whether the Government have sustained any financial loss in connection with transactions involved in the said allegations? If so how much? Whether this could have been avoided? Who are the persons responsible for the same?

(iii) Since both these relate to the same issue namely, the financial loss to the government, they are dealt with together. On the question, the admitted position is that the government did not part with any money to Team Solar Company or Solar Scam accused Saritha S.Nair and Biju Radhakrishnan or to any of their associates. The allegation is only that the solar scam accused have paid the money collected from their customers to Kerala Police Association, to the Chief Minister,



the Minister for Power, some other Ministers, Private Secretaries, etc.

However, these matters are not the subject matter of these items.'

There is some allegation that through the Chief Minister and the Minister for Power, ANERT lost money. ANERT, the nodal agency of the Central Government in the MNRE, is the agency for the production, development and distribution of solar energy both for domestic and industrial purposes by utilizing the various benefits such as Central subsidy, etc. for promotion of solar renewable energy. ANERT entered into an MOU, after following the procedure prescribed for purchase of Solar Lanterns with Surana Telecom and Power Ltd., Secunderabad for supply of 28000 solar lanterns at the rate of Rs.1889/- for a total consideration of Rs.5,28,92,000/-, for being distributed to ration card holders. Time schedule was fixed for supply of the same. They

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did not properly adhere to the time schedule. They have supplied only 2500 solar lanterns. Even those supplied by them, many were defective. Though initially ANERT raised objections, allegation in that, they paid the value of those 2500 solar lanterns at the rate of Rs.1889/- at the instance of the CM and the Minister for Power. Perusal of the relevant files produced by ANERT would show that though defects were pointed and correspondence ensued all on a sudden, as if the defects were cured, payment were effected. It is a matter for verification. It would also appear from verification of the files produced by ANERT that all is not well with the functioning of ANERT. The only serious project which they have implemented by availing the MNRE declared benefits is the 10000 roof top program. Even that, for the last 3-4 years they could carry-out only less than 8000 solar roof top installations.

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Sri.C.L.Anto who appeared before the Commission as a witness has said he had prepared a solar-cum-waste management project under his financial module PPP (Public Private Partnership).

This was a project prepared from his experience that the then Chief Minister of Kerala Sri.K.Karunakaran had implemented a project prepared by adopting his financial module PPP and established Nedumbassery Airport. The Government investment in that is only 25 % (percent), but the entire control is with the government. According to Sri.Anto who was very close to Sri.K.Karunakaran as he called Sri.Anto 'pavam payyan', Chief Minister Sri.Oommen Chandy and other Congress Leaders knew him very well. He submitted the Solar-cum-Waste Management Project of Rupees One Lakhs Sixty Thousand Crores to implement it by adopting his modified form of financial module PFSAR. He had submitted this to

(Signature)

the Chief Minister Sri.Oommen Chandy personally in the year 2011 itself and the CM sent it by his endorsement in writing with his signature to the Planning Minister for the discussion and preparation of cabinet note. According to Mr.Anto, if this project had been implemented by using his financial module on co-operative basis the government could have produced solar energy at lesser cost and save substantial revenue. He has also a case that employment could have been given to many and so many others advantages could have been achieved.

This matter has been elaborately dealt within the depositions of Sri.P.C.George, Former Government Chief Whip, the CM Sri.Oommen Chandy, Sri.C.L.Anto and Sri.Jose Kuttiyani, Ex-MLA.

This apart, though not for the solar scam accused, lakhs of Rupees had to be spent from the coffers of the Government for maintenance of law and order in the Secretariat and its premises to

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meet the protest of lakhs of people as an off shoot of solar scam and the large scale protest of the LDF workers and in the CM's public contact programme during that period.

Needless to say, amounts had to be spent in connection with the solar scam inquiry. If all the aforesaid circumstances can be treated as financial loss to the revenue in that sense it can be said that the government has sustained substantial financial loss in connection with the transactions involved in the allegations. Needless to say that the person who are found responsible under the first limb are the persons responsible.

Coming to item (iii), it has come out from the evidence of MLA Sri.Vishwanath, Sri.Mons Joseph, PA to Sri.Shanavas MP, that they have recommended Team Solar Company for installing solar street lights in their respective constituencies by utilizing MLA funds. Of course

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this could not be achieved. The steps for solar electrification in all the police stations in the north zone of State, according to Saritha S.Nair were taken at the instance of the Kerala Police Association to whom the substantial amounts have been paid in connection with annual function.

This apart it is alleged that the government have taken a decision to insist for setting up solar installations in the building having a plinth area of 2000 sq.ft. and above for the team solar Company such allegations are there. But it does not appear that any financial loss have been suffered by the Government on that account.

It is answered accordingly.

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Item No. 4 of the Terms of Reference reads:

"Whether any lapse occurred in dealing with the complaints being raised since 2005 with regard to the persons involved in the solar scam and allied financial transactions? If so, who are responsible for them?"

Mr.Bijo Alexander sent a letter to this Commission dated 17/11/2014 stating thus:

In pursuance of the direction issued by the Commission I had addressed secretaries of various departments and all the District Police Chiefs in Kerala to gather information of petitions filed by the victims of Team Solar and its allied agencies vide reference cited IIInd and IIIIrd.

The response on that along with proforma report received from the District Police Chiefs of Idukki and Palakkad district were already submitted before the Hon'ble Commission.

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The District Police Chief Idukki has sent a second report in the prescribed proforma. On perusal of the same it is seen that one more case in Cr.318/14 of Vandanmedu police station was added to his previous report. No details of any petitions received at any stations is seen included in the proforma report. The same is attached as attachment I.

The District Police Chief, Kannur could not offer more apart from the details of cases received from the State Police Chief, Kerala. The same also attached as attachment 2. Perusing the report of District Police Chief, Kannur it is seen that total four petitions were received at Kannur town station and 1 case was registered and other petitions were clubbed with the crime case registered.

The copy of letter issued to the Circle Inspectors under city police by the District Police Chief, Kozhikode City directing them to

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report with certification after verifying the records for the case and petitions against Team solar has been received. Further reports of those CIs are to be received. Copy of the letter of District Police Chief, Kozhikode City is attached as attachment 3. I will send reminder letter to all the Circle Inspectors of Kozhikode city to expedite the actions.

Letter dated 05/11/2014 of the Secretary of Power department was received at my office in the proforma given in reply of letter given to various departments of the government. The reply letter furnishes a NIL report. The letter is attached along with this report as attachment 4. The Additional Chief Secretary (SSA) Home had forwarded a copy of the letter addressed to the secretary of the Hon. Commission to my office. The letter is attached as attachment 5.

Departments namely Forest & Wild life, Cultural Affairs, Industries, Norka, Information

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& Public Relations are not responded till date and I have deputed Sri.Musthafa, GSI and Saijan, SCPO of the Investigation Team to proceed to Thiruvananthapuram and conduct enquiries about the follow up action taken by these departments on the letter sent by me.

Since the information received from the some District Police Chiefs not exhaustive and descriptive as what the Hon. Commission sought for but only the details of cases registered, I have addressed Police Inspector Generals of each ranges and all the District Police Chiefs to impress subordinate offices in providing the details of petitions against 'Team Solar' and allies from 2005 onwards at the earliest.

I have also intimated the Inspector Generals and all the District Police Chiefs in Kerala about the instructions given by the District Police Chief, Kochi city to all police stations



for providing required information which the Hon. Commission observed beneficial.

Copy of letters sent to Inspector Generals and District Police Chiefs are enclosed herewith for kind information as attachment 6 and 7.

The Commission wrote a letter dated 27/11/2014 to Mr.Bijo Alexander, ACP, Thrikkakara with reference to his letter dated 17/11/2014.

A careful scrutiny of the reports received from you reveals that you have not correctly understood or appreciated the purpose for which you were appointed as Nodal Officer.

Item No.4 of the terms of reference of the Solar Scam Inquiry reads as follows:

"Whether any lapse occurred in dealing with the complaints being raised since 2005 with regard to the persons involved in the solar scam and allied financial

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transactions? If so, who are responsible for them?".

It was felt that only a senior Police Officer could be of help in the collection, collation and classification of the matters raised in the complaints received by the Hon'ble Chief Minister, his cabinet colleagues as well as hierarchy of Civil and Police Officials. That was what prompted the commission to address the State Police Chief to depute a senior officer for the purpose.

Though it is seen from your reports that you had addressed various authorities for the purpose, unfortunately there is nothing to show that you have applied your mind in analyzing the reports received from those quarters. More forwarding of the reports from the various officials is not what is expected from a Nodal Officer. It is for you to analyse the reports in accordance with the directions issued by this

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office earlier and send a comprehensive report.

Only such a report will serve the purpose.

If it is found by you that any of the officials whom you had addressed have not been promptly furnishing the information called for, you could have utilized the services of the team of officers working under you to collect the same without any delay. If despite such attempts you notice reluctance on the part of any of the officials you could have reported to this office for appropriate direction. But, so far you have only forwarded the replies received to your communications without making any attempts to classify the same.

I regret to remind you that though you were appointed as Nodal Officer as early as on 14/08/2014, there is nothing to show that any earnest efforts have been made to collect and collate the requisite information so as to enable

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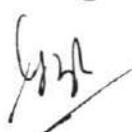
the Commission to answer the terms of reference cited above.

Under the circumstances, you are hereby directed to furnish a detailed report expeditiously as regards the action taken by you as a Nodal Officer till date in the chronological sequence. The report should be all comprehensive depicting your application to mind to the issue referred to you.

Mr.Bijo Alexander sent a reply dated 27/12/2014 to the Commission wherein he has stated thus:

In pursuance of the direction issued by the Commission, all the Station House Officers and other officers throughout the state had been contacted over phone to furnish the information called for as per reference cited above.

In this context I wish to submit that in every office there will be not less than 20

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registers each in which entries regarding the petitions are made. For submitting a report as called for all these registers have to be referred to. The information which I could gather is that considerable number of police personnel are deputed on special duty at Sabarimala and also some special functions and festivals organized by the state government in the new year eve. Under the circumstances a minimum of three weeks' time will be required for a thorough scrutiny of the registers.

The reports have been received from 72 Station House Officers and letters from the secretaries of Home and Power departments were also received.

My team of officers are contacting and reminding the officers concerned whose reports have not been received yet.



The reports received till date are being carefully scrutinized for furnishing reply in the proforma received from the Hon. Commission.

The reports from the remaining Station House Officers are being expected shortly.

As soon as the reports called for are received I shall scrutinize the same and furnish reply in the prescribed format.

I request that I may be granted three weeks time to submit final report to the Commission.

He sent a reply letter dated 11/05/2015 stating:

The details of petitions and cases registered since year 2005 to 2011 against Team Solar scam accused Biju Radhakrishnan and Saritha S.Nair received from the 168 police stations earlier and subsequently received replies of 146 police districts have been submitted before the Hon'ble

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Commission on 11/02/2015 and 12/03/2015 respectively after due verification.

Considering the gravity of the matter and the urgency in obtaining reports I have intimated the matter to the State Police Chief, Kerala on 31/03/2015 and also forwarded the list of 134 police stations which has not responded properly to my letter and subsequent telephonic conversation and reminders.

Apart from the proceedings initiated by the State Police Chief, Kerala, as per the direction of the Secretary to the Hon'ble Commission, the investigation team members contacted the superior officers as Asst. Commissioner/Deputy Superintendent of Police who have jurisdictional powers over the police station from where replies were not received timely and as a corollary to such efforts reports from 83 police stations also received.



Commissioner of Police and Secretary

Scrutiny of all the received 397 replies were revealed that 14 cases in 11 police stations were registered against the criminal misappropriation and cheating by Sri.Biju Radhakrishnan and Smt.Saritha S. Nair during the period from year 2005 to 2011.

The perusal also disclosed that the incident pertaining to the case in Crime 347/2014 registered on 12/03/2014 at Eravipuram PS in Kollam District was occurred in August 2005 and the date of occurrence of Cr.562/2013 registered on 18/06/2013 at Enath PS in Pathanamthitta District was December 2006. The circumstances behind the time delay caused in the registration of both the cases are to verified by questioning those complainants.

Consequent to the action initiated by the State police chief, reply from the Asst. Commissioner of Police, Thiruvananthapuram Fort Sub "Division has been received through District

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Police Chief, Thiruvananthapuram City which expressed a NIL report to the request for furnishing details of petitions/cases. The Deputy Police Superintendent of Irity Sub division, Kannur reported that police stations under his jurisdiction such as (1) Irity PS (2) Ulikkal PS (3) Karikottakari (4) Aralam PS (5) Peravoor (6) Kelakam (7) Maloor (8) Mattannur and (9) Irikkur have not received such petitions or registered cases against Team Solar.

Reports of Deputy Police Superintendent of Irity Sub Division and the report of Asst. Commissioner of Police, Thiruvananthapuram Fort Sub division received through District Police Chief, Thiruvananthapuram City are attached herewith.

Replies from the secretaries of Industries and information and Public relation department have also been received but which offered only NIL reports,

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The compiled report in specific proforma comprising details of 14 cases registered in 11 police stations, details of reports received from the secretaries of various department such as Norka, Cultural affairs, Power and home and the list of remaining police stations which were not responded till date, replies of Industries and Information & Public relation department are attached herewith before the Hon'ble Commission for favour for kind perusal and further necessary action.

He sent another reply dated 04/07/2015 stating:

I have appeared before the Secretary to the Hon'ble Commission on 11/05/2015 and submitted the consolidated details of petitions and cases in specific proforma since year 2005 to 2011 registered at the 397 police stations in the state against Team solar scam accused Biju Radhakrishnan and Saritha S.Nair.

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In reply to the E-mail communication given to the Deputy Inspector General of Police, Kannur Range yielded report pertaining to the cases/petitions against Team solar from the District Police Chief, Kozhikode Rural furnished a NIL report on 02/06/2015. The report on the same from the District Police Chief, Kasaragod received on 23/06/2015 also offered a NIL report.

Proforma reports of 51 police stations in the state is outstanding till date.

Since the lapse in timely submission of proforma reports with proper certification amounts to severe dereliction leading to the initiation of legal action from the Hon. Commission against the faulty Station House Officers, I have intimated the Asst. Commissioner/Deputy Police Superintendents who have jurisdictional control over such 51 police stations, In that message also I have reiterated the urgency and gravity in obtaining reports from

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that 51 Station House Officers in the prescribed proforma.

It is submitted that I have initiated every steps in obtaining the reports of all the remaining 51 police stations. It is also humbly submit that the same could be presented before the Hon. Commission at the earliest after due verification.

Yet another letter dated 23/07/2015 was received from Mr. Bijo Alexander stating:

In obedience to the direction of the Hon. Solar scam inquiry commission to collect the details pertaining to the petitions and cases registered since year 2005 to 2011 against Team solar scam accused Biju Radhakrishnan and Saritha S.Nair from the police stations, I had communicated the matter through e mail and over phone with all the 449 nos. Of law and order Station House Officers of 19 police districts in Kerala State.

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The responses received from that police stations were perused in detail and Nedupuzha police station originally falls within the jurisdiction of Thrissur City was found included under both city and rural districts. The same was rectified and thus the number of total police stations were reduced into 448.

Out of the 448 police stations, received responses of 168 police stations had been submitted before the Hon. Commission on 11/02/2015 along with the work done report of mine. Subsequently received reports of 146 police stations and 53 stations were also submitted before the Hon. Commission on 12/03/2015 and 11/05/2015 respectively. The report submitted on 11/05/2015 also covered the consolidated profo9rma and the list of 51 police stations whose reports remained pending on that date.



Subsequently, I have sent e-mail messages to the Asst. Commissioners/Deputy Police Superintendents who have jurisdictional control over such 51 police stations regarding the urgency in obtaining reports and about the probable recommendation for disciplinary action of Hon. Commission against the faulty Station House Officers. The investigation team also contacted that officers over phone and reiterated the gravity of the matter. Then as a corollary to the efforts replies from all the remaining police stations had received last day.

With the help the investigation team members, received replies of 448 police stations were classified according to different police districts and scrutiny were also performed by comparing with the copy of the compiled data of cases registered against solar accused at various police stations in Kerala originally received from the State Police Chief, Kerala. Out of the

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total 14 cases, 12 cases viz. 6 nos. Of cases in Thiruvananthapuram city, 3 cases in Alappuzha, 1 case each in Kollam city, Kottayam and Kochi city during the period from year 2005 to 2011 were seen registered against the solar scam accused. (Annexure I).

The remaining two cases as Cr.562/13 of Enad Police station in Pathanamthitta and Cr,347/14 of Eravipuram police station in Kollam city are found registered during the year 2013 and 2014. (Annexure-II).

The consolidated proforma report of 19 police districts prepared after due verification (Annexure I, II and III) and the replies received recently from the of 51 police stations (Annexure IV) are herewith submitting before the Hon. Commission for kind perusal and further necessary action.

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SOLAR SCAM INQUIRY COMMISSION

8th Floor, Housing Board Building, Panampilly Nagar,

Ernakulam, Kochi - 682 036.

Phone: 0484 - 2314644 FAX: 0484 - 2323277

No. SC 28/2014

Dated: 23-02-2016

To

Bijo Alexander,
Assistant Commissioner,
Thrikkakara, Kochi
Phone: 9497990201.

Sir,

I am enclosing herewith a list of old cases which did not find a place in the report submitted by you. Kindly find out the present stage of the cases and the subject matter therein expeditiously.

Yours faithfully,

Sd/-

P. S. DIVAKARAN

SECRETARY,

Selection Grade Dist Judge (Retd.)



FIND OUT THE PRESENT STAGE OF THE CASES ANDSUBJECT MATTER

1.	Crime No.11/2008	Kollam CBCID
2.	Crime No.142/2012	Kadakkavoor Police Station
3.	Crime No.501/2011	Vanchiyoor Police Station
4.	Crime No.68/2005	Karamana Police Station
5.	Crime No.344/2005	CBCID (SIG)-3, Kozhikode
6.	Crime No.11/2008	Kottarakara Police Station
7.	Crime No.19/2009	Vadavally Police Station, Coimbatore
8.	Crime No.22/2008	Coimbatore DCB
9.	Crime No.1/2009	Coimbatore DCB
10.	Crime No.33/2010	Bukgardan Police Station,



		Pune
11.	Crime No.102/2010	Nooranadu Police Station
12.	Crime No.910/2009	Medical College Police Station
13.	Crime No.45/2010	Do. Do.
14.	Crime No.69/2010	Do. Do.
15.	Crime No.70/2010	Do. Do.
16.	Crime No.707/2005	Do. Do.
17.	Crime No.491/2005	Aranmula
18.	Crime No.162/2010	Chengannoor
19.	Crime No.56/2010	Alleppey North Police Station

Sd/-

P.S.DIVAKARAN

SECRETARY



Sri.Bijo Alexander was examined as CW 167 on 04.08.2016, and his depositions recorded. (DW 167 Vol.XVII PP 327-346). The exhibits marked through him are also available at Exhibits X658 to X674 were marked. (These are available at Vol.XVII PP 327-346). The relevant portion of his deposition is extracted below.

One other matter to be inquired into item No.IV of the terms of reference is whether any lapse occurred in dealing with the complaints being raised since 2005 with regard to the persons involved in the solar scam and allied financial transactions? If so, who are responsible for them?

For assisting the Commission in the inquiry the State Police Chief on 01-03-2014 (Ext.X 658) constituted a police team with Inspector of Police, Ponkunnam Sri.Francis Shelbi.K.F. The State Police Chief on 16-07-2014 (Ext.X 659) sent a letter to the Commission ascertaining whether a

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senior officer is required. Based on the request of the Commission (Ext.X 660) for posting a Dy.S.P. to assist the Commission the State Police Chief by letter dated 31-07-2014 (Ext.X 661) requested the Government for that.

Commissions by letter dated 24-07-2014 (Ext.X 662) requested for deputing Sri.Biju Alexander, Dy.S.P. of Police, CBCID, EOW-II, Ernakulam sub unit. The Government by Order - G.O. (Rt) No.2248/2014/Home dated 14-08-2014 and the letter dated 10-08-2014 enclosing the order are Ext.X 663 (a) and (b).

An authantative report from the Nodal Officer is required was stated in the letter dated 11-02-2015 sent from this Commission to the Addl. Chief Secretary, Home (SSA) Department. (Ext.X 664).

The progress of the work done by him as Nodal Officer was recorded in a report dated 17-11-2014 accompanying the documents is Ext.X 665.

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Ext.X 666 is a letter requesting for the details of enquiries so far conducted. He sent a reply dated 27-12-2014 stating the details of documents collected and the steps taken for getting the balance documents and requested for time to file a final report. (Ext.X 667).

Another report dated 11-05-2015 (Ext.X 668) containing the details collected and the details of police stations from where details yet to be obtained.

A report dated 04-07-2015 (Ext.X 669) was submitted in that report details received from 397 police stations in the proforma was produced on 11-05-2015. Report from the balance 51 police stations since not received. Superior Officers having jurisdiction over those police stations were intimated the default.

Report and connected documents were submitted by him on 11-02-2015 (Ext.X 670). In that report it is stated that he had contacted 449

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police stations maintaining law and order in Kerala and asked them to furnish the details of solar scam criminal cases in which Biju Radhakrishnan and Saritha S.Nair are accused. The Station House Officers of those police stations by E-mail messages dated 23-12-2014, 24-12-2014 and 26-12-2014 requested to verify the Registers and to find out whether complaints have been received against them and to furnish the details in the accompanying in the proforma supplied.

Besides, the members of the Investigation team contacted the Station House Officers over phone and intimated them up to 17-01-2015 information received from 125 police stations on taking further steps information from 43 police stations more received. 38 reports where no signature and certification of the SHO were returned. He had furnished the details received from 168 police stations as Annexure 1 to 19.

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On 12-03-2015 he submitted another report (Ext.X 671) in which he had stated. Along with that he had enclosed the statements received from 146 police stations as Annexure 1 to 19. No report received from the balance 135 police stations was also stated. They are being contacted by reminders, E-mail and telephone. He also requested the Commission to summon one SHO each from each District.

He submitted another report on 11-05-2015 and its Annexures marked as Ext.X 668 containing the details received from 83 police stations.

Then he had examined the details received from 397 police stations from which it is understood that 14 cases in which Saritha Nair has cheated the customers and complaints registered in 11 police stations. The details of those cases were also stated.

In his report dated 23-07-2015 he has stated the due to his constant efforts reports are



received from the remaining 51 police stations also and the same produced along with his report. With the help of the other members of the Investigation team the reports received from all the 448 police stations were categorised and complied. From that out of the 14 cases - 12 cases (6 - Thiruvananthapuram City, 3 Alappuzha, Kollam City, Kottayam and Kochi City one each were seen registered during the period 2005 to 2011. This is produced as Annexure-I. The other two cases are registered in Pathanamthitta Enath Police Station and Kollam City, Eravipuram Police Station in the year 2013-2014. Annexure II produced.

Apart from the 14 cases registered in 6 police districts in the remaining 13 police districts no cases were registered during the period 2005 -2011. A statement to that effect is filed as Annexure-III.

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Apart from the Proforma reports Annexure I, II & III produced with respect to the reports received from 51 police stations a separate report as Annexure IV is also produced (Ext.X 672).

Ext.X 673 is the copy of a letter dated 23-02-2016 sent from this Commission along with a list of 19 cases. He had furnished a reply to that on 01-03-2016 (Ext.X 674). Details about the 19 cases were ascertained and submitted a report.

In that enquiry apart from the 14 cases furnished in his report another case (Cr. No.491/2005 Aranmula PS) in which Saritha Nair is the accused. This was not in the report of SHO, Aranmula Police Station.

He, in accordance with the orders of the State Police Chief and the Government, with respect to item No.4 of the Terms of reference took prompt steps for collection of the detail from all places and the details collected from

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all the police stations in the State were processed with the help of the other members of the team and on being convinced of the position he had submitted reports to this Commission.

As per his enquiry up to the period of the Government notification only 14 criminal cases in which Biju Radhakrishnan and Saritha S.Nair are accused are registered. All the relevant matters were stated in his report. No more enquiries are required in this matter as he understands. All the matters were promptly and honestly reported.

He has furnished along with the report the correspondence between him and the Government and Police authorities.

The Commission has examined the entire details collected, analysed and furnished by the Nodal Officer Sri.Bijo Alexander, DySP and finds that there were only 14 cases registered in various police stations in the state between 2005 and 2011 in which Biju Radhakrishnan and Saritha

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S.Nair are accused. The Commission also finds all the above 14 cases are not solar criminal cases, some of them are registered outside the state. The Commission also finds that there is not much delay in dealing with those cases. As such no action is called for against any of the police officers in the matter.

Item no.4 is answered as above.

No.136/DYSP/IS/ER/16

From

Bijo Alexander,

Deputy Superintendent of Police,

Nodal Officer,

SSIC, Ernakulam.

To

The Secretary,

SSIC, Ernakulam.

Sir,



Sub:- Report submitting as Nodal Officer

- reg:-

Ref:- 1) G.O. (Rt) No.2248/2014/Home -

TVPM

2) No.SC 28/2014 dated 23-02-2016.

Kind attention is invited to the above subject
and reference cited.

I have conducted detailed enquiries regarding
the reference cited 2nd with the help of the
investigation team and also verified to proforma
reports received from concerned SHO's I am
furnishing the details regarding reference 2nd
below.

Cr.11/22008 item No.1 & 6 in the reference 2nd
i.e. the list of the cases are one and the same.
This case was registered in connection with the
suspicious death of Reshma W/o.Sri.Biju
Radhakrishnan registered at Kottarakkara.P.S. U/S
174 CRPC and later transferred to CBCID, Kollam

unit. The section was subsequently altered to 302 IPC. The case was charge sheeted, trial conducted and accused Sri.Biju Radhakrishnan was sentenced for life imprisonment and undergoing punishment at Central Prison, Poojappura.

Item No.2 in the list Cr.142/2012 of Kadakkavoor P.S. was registered on the complaint of one Hameed Hussain, age 72/2012. The allegation in this case is that accused promised to arrange kidney for the daughter of Hussain, and accepted Rs.5.5 Lakhs from him and cheated him by not neither arranging kidney nor returning money. The accused in this case are one Biju, age 35, S/o. Vijayan, Charum Moodu, Puthantheruvu, Kizhakkekotta, Muttuthara village and Lakshmi age 27,k D/o. Kumari and it is not known that whether these accused are one and the same of the accused in Solar scandal. The investigation team has contacted the son of complainant Hameed Hussain, Sri.Al-Ameen in his

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personal mobile number 9446272754 and it is learnt that Sri.Hameed Hussain is no more and Al-Ameen does not know the details of this case. It was also learnt that the above case was charge sheeted leaving the accused as absconding and it is now pending trial before the Honourable JFMC-1, Varkala and the further details about this case could be collected only after perusing the CD file.

The performa report received from SHO Kadakkavoor furnished a NIL report and the same has been submitted to the Honourable Commission vide Vol.3, Annexure 2, Page 7.

Item No.3 in the list Vanchiyoor P.S. Crime 501/11 U/S 198, 199 & 200 IPC. In this the accused are Biju Radhakrishnan, Gopakumar & Sudheesh Kumar. This case was registered for submitting forged documents before the Honourable Court for obtaining a favourable judgment in Medical College P.S. Crime No.910/2009 in which

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Sri.Biju Radhakrishnan was the accused. Item No.3 Criome case is now pending trial before the Honourable JFM Court, Vanchiyoor as CC 708/2014. The performa report received from SHO, Vanchiyoor doesn't contain the details of item No.3 crime was and the performa report of the Commission on 12-03-2015 vide Vol.2, Annexure 1, Page 3.

The Item No.4 Crime No.68/2005 and item No.16 Crime No.707/2005 in the list was registered in connection with one and same incident. This case was registered at Karamana Police Station with regard to the suicide attempted by Smt.Saritha S.Nair because of her illicit relation with Sri.Biju Radhakrishnan was questioned by Smt.Reshma, W/o. Sri.Biju Radhakrishnan, and her relatives. This case was transferred to Medical College police station on point of jurisdiction and the case was re-registered there as Crime No.707/2005. Smt.Saritha S.Nair was acquitted in this case. Since this case was an attempt to



suicide case the SHO's had not mentioned these cases in their Performa report.

Enquiries were made about the Item No.5 Cr.344/2005 (CBCID, SIG3, Kozhikode) and it has revealed that the above mentioned case was registered at CBCID, Headquarters, Thiruvananthapuram and was investigated by Palakkad, CBCID, OCW3 and it was found that Sri.Biju Radhakrishnan and Smt.Saritha S.Nair are not accused in this case and inter alia one Muhbammadali, Ashraf and Sebastin are the accused in this case and the same pending trial before the Honourable CJM Court, Manjeri. CD file in this case is to be perused for obtaining further details regarding this case.

Item No.7 to 10 cases of the list ie. Cr.19/2009, 1/2009 and 22/2008 were registered at Coimbatore and item No.10 Crime 33/2010 was registered at Bukgardan Police Station at Pune. Among these Crime 19/2009 is pending trial as CC

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134/2011 and Crime 22/2008 as CC 351/2010 before the Honourable JFCM-6 Coimbatore. The details regarding Cr. 1/2009 and Cr.33/2010 will be enquired in to and the same will be furnished the Honourable Commission immediately.

Since I have conducted enquiries regarding cases registered against Team Solar and Sri.Biju Radhakrishnan and Smt.Saritha S.Nair only in the State of Kerala these cases couldn't find a place in the reports filed by me earlier.

Item No.11 Crime 102/2010 of Nooranad Police Station was taken in to file as CC 803/2013 by Honourable JFCM-2nd Mavelikkara and the same was settled between the parties. The details regarding this has already been furnished to the Honourable Commission on 23/07/2015 along with performa report of SHO Nooranad vide Vol.4, Annexure-4, Page 31.

Item No.12 to 15 Crime cases Cr.910/2009, 45/2010, 69/2010 and 70/2010 are now pending

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trial before the court and the same was reported to the Honourable Commission on 23/07/2015 along with the Performa report vide Vol.4, Annexure-1, Page 1 & 2.

Item No.17 case in the list Crf.491/2005 of Aranmula P.S. u/s 381, 420, 467, 468, 477, 471 & 408 IPC. Smt. Saritha S.Nair is the accused in this case. The investigation team contacted the Aranmula Police Station and it was learnt that the incident pertaining to this case had taken place in 2004 and the accused was arrested on 19-10-2013 and now she is on bail and the case is under investigation with Sub Inspector of Police, Aranmula. The details regarding this case was not included in the performa report furnished by SHO Aranmula and the same was submitted to the Honourable Commission on 11-02-2015 vide Vol.1, Annexures, Page 3.



Item No.18 case in the list Cr.162/2011 of Chengannoor Police Station was charge sheeted and was pending trial before the Honourable JFM Court, Chengannoor as CC 1281/2010 and the same was acquitted on 01-11-2013 u/s 320(8) CRPC and the performa report in this regard received from SHO Chngannoor containing these details has already been submitted to the Honourable Commission vide Vol.4, Annexure 1, Page 4 & 5.

Item No.19 case Alappuzha North P.S. Cr.56/2010 and the case is now under investigation and the 3rd accused is not arrested so far. The performa report obtained from SHO Alappuzha North containing these details has already been submitted to the Honourable Commission. Vol.IV, Annexure-1, Page Nos. 4 & 5.

This report is submitted to the Honourable Commission for information and further necessary action.

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Yours faithfully,

Sd/-

Bijo Alexander,
Superintendent of Police,
Nodal Officer, SSIC, Ernakulam.

Date: 01/03/2016



Item Nos.5 and 6 of the terms of reference reads as follows:

"(v) Whether the existing laws and arrangements are adequate to prevent cheating and deception of the public extensively by giving false promises and to take action against these? If not, what are the suggestions for making stringent laws and for taking other appropriate measures to eliminate such cheating and deception?

(vi) Suggestions to get back the amount lost to those who are subjected to financial scams as referred above?"

Parties assisting the Commission and the 8B recipients were requested to furnish their views in the matter. Since it was a matter of public importance the Commission felt that it will be better to have the views of persons in the field of law including those in charge of

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academies and other legal institutions.

Accordingly notices were issued to

1) Dr. K. P. Pradeep, Advocate, High Court

2) Adv. T. Asafali, Advocate, High Court

(Former Director General of Prosecution)

3) Dr. P. Lakshmi Nair, Principal, Kerala Law Academy Law College, Perurkada, Thiruvananthapuram.

4) Professor (Dr.) Rose Varghese, Vice Chancellor, NUALS, Kochi.

5) Dr. R. Rajkumar, Principal, Govt. Law College, Ernakulam.

6) Dr. Raghunanthan.K.R., Principal, Govt. Law College, Thiruvananthapuram.

7) Smt. Binu Poornamadam, Principal, Govt. Law College, Thrissur.

8) Sri. K. T. Jawahar, Principal, Govt. Law College, Kozhikode

9) Dr. N. S. Soman, Director, KUSAT, Ernakulam.

10) Dr. Chandrasekhara Pillai, House No. 31, Maveli Nagar, Cochin University.P.O.

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All of them were requested to make available their considered views in this regard as expeditiously as possible. The response in that regard was not quite encouraging. Surprisingly, those who are actively in the field of legal education expressed their views that they do not have much to offer in this regard.

It is worth mentioning in this context that Sri.Nithin R., who was engaged at that time in the legal research and who is at present serving as Assistant Professor in the Chinmaya University at Piravom and also a fellow, Centre for Economy, Development and Law, Kerala sent his views quoting elaborately from various text books and legal literature. According to him the problem to be addressed ws whether the act mentioned in the reference pertains to white collar crimes or it is about socio economic offence or commercial fraud etc. It is pointed out that under the existing law, if the intent to defraud the

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persons who paid advances for the solar equipment is not established by the prosecution then the case is only a breach of contract which attracts only civil liability. He referred to Section 415 of the IPC including illustration G thereof. According to him offences involved in the scam is basically the crime of cheating under Section 415 IPC whether extra elements existed or not. In other words according to him there is law intact to attack any of these acts. But the question which compels attention is as to whether it can be effectively applied in individual cases. The report given by him is virtually a thesis covering all the relevant aspects. It is annexed herewith.

Dr.K.M.Chandrasekhara Pillai, House No.31,
Maveli Nagar, Cochin University. P.O.,
expressed the view that since initially people
like MLA's, MP's and Ministers had been acting
as abettors though not intentionally, we have
to think of a separate legislation dealing



with the scam in all aspects including investigation, trial, evidence, sentencing etc. and also have to spell out special rules of evidence and new modes of punishments. The opinion given by him is annexed.

According to Professor Dr.Rose Varghese, Vice Chancellor of National University of Advanced Legal Studies, cheating and deception of people at large which dealt with under different laws both civil and criminal and the conventional provisions under the criminal law are adequate if the offences alleged are appropriately investigated, evidence collected and the trial is conducted in a fair environment not swayed by public opinion or otherwise. She further pointed out that the act of private individuals indulging in deceptive activity claiming access to politicians in power is not something which can be prevented by legislation. According to her only an alert Intelligence Wing can caution the political executive from

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associating with such individuals and existing laws on corruption are adequate in this regard. It is annexed herewith.

The A Party Sri.B.K.Guruprasad has expressed the view that though the existing laws are adequate the punishment provided should be enhanced to 5 years imprisonment. It is also annexed.

Sri.John Joseph, the F Party is of the view that the companies Act has to be amended and the Registrar of Companies shall have a scheme or a programme to scrutinize and investigate the activities of the Companies periodically to prevent the tendencies to cheat the public. He suggested that the Kerala Protection of Investment Deposit Act 2013 which has obtained President's approval should be enforced with full vigour for the benefit of the common consumer. According to him now to prevent the tendency of the political leaders to be involved in such scams the Representation of Peoples Act may be

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amended so as to add that abetment of such offences may disqualify MLAs, M.Ps. etc. It is also annexed.

Sri.K.Rajan, H Party is of the view that a new law has to be promulgated by the Government to attach the properties obtained by cheating and restore possession thereof to the victims of the cheating. It is also annexed.

Sri.B.Vinod, Senior Government Pleader submitted his view with a preface that the opinion given by him is purely personal and not given in consultation with the Government or any other public servant. He pointed out that the officers who investigate fraud in respect of companies are very often ill equipped with the knowledge of the intricacies of the trade or other activities and therefore the facts sought to be proved are very often confused. According to him seizure of wrongfully gained proceeds of fraud must necessarily be attempted. He has classified

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several categories of frauds. According to him the ill gotten wealth of fraudsters whether transferred or not must be confiscated by administrative action and the convicted cheats are named and shamed. He further stated that the Ministers and Public Servants appearing in advertisements of private companies shall be deemed to be directors thereof with actual involvement and should be proceeded against under Civil, Criminal and Revenue laws. It is also annexed herewith.

Sri.C.Harikumar, Learned counsel assisting the Commission is of the view that lack of transparency, accountability and opportunity for personal gain has fostered an environment in which fraud and corruption thrives. He points out that the Companies Act 2013 has defined fraud in relation to the affairs of the company and also laid down provisions for investigation thereof and submit the report to a special court to initiate prosecution. It should be mandatory that the officials who

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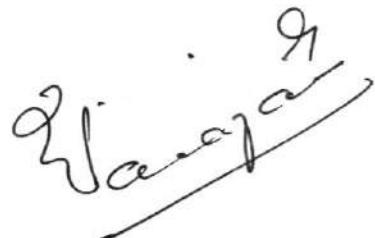
come across such instances of corruption report the matters to the appropriate authorities without any delay and that will curb corruption. It is also annexed.

On a careful consideration of the views submitted by recipients of communication from the Commission it is seen that in general all are of the view that the present legal provisions are adequate to address the crime. But they have also expressed the view that there should be some provisions for the purpose of redressing the grievances of the victims with a view to compensate the loss suffered by them, as a result of the deception practised on them.

In this context it is relevant to remember that Lord Macaulay has sacrificed the major part of his life for creating the Indian Penal Code and that the provisions conceived, chiselled and polished by him cannot be even attempted to be altered or modified by us.

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On a careful consideration of the views expressed by those in the legal field as well as the parties, it is found that the present legal provisions in the civil and criminal law are adequate to meet the challenges of such corruption. But it will be desirable if some legal provisions are introduced with a view to help the victims of the deception to have their reliefs by getting possession of the amount or properties lost.

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Mr. Nithin R

Page 1 of 22

**JUSTICE G SIVARAJAN COMMISSION OF INQUIRY IN TO THE SOLAR SCAM
AND CONNECTED FINANCIAL TRANSACTIONS**

TERMS OF REFERENCE NO: 5

Whether the existing laws and arrangements are adequate to prevent cheating and deception of the public extensively by giving false promises and to take action against these? If not what are the suggestions for making stringent laws and for taking other appropriate measures to eliminate such cheating and deception?

TERMS OF REFERENCE NO: 6

Suggestions to get back the amount lost to those who are subjected to financial scams as referred above?

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INTRODUCTION

Indian legal system has never known the term 'inadequacy.' The Indian Scholars, Lawyers, Jurists and Judges were always renowned for the judicial creativity in applying the available legal paradigms to the variety of multifaceted and divergent issues. We must be always reverent of the fact that our legal system were actually even with its age-old law of crimes was very much skilful of handling the Hi-tech crimes. However when it comes to Justice Administration the larger media, academic scholars, and policy makers are elegiac about the delayed justice.

The larger truth is that we are almost blind of the fact that Indian Justice delivery system has been architected by the British in their colonial periods. As they were inexperienced with maintaining law and order in a society where heterogeneity is the only common inherent feature, our systems and administrative arrangements fell short of quantity and efficiency levels from those stages of history. It must be understood in the days of colonial era, they

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may have not even addressed such a wide mass population in their natives. By the time they left, India was culturally fragmented, economically devastated and politically inexperienced.

Therefore, given the population size, diversity of the cultural habits and developing nature of Indian economy, what we are aspiring for as a better criminal justice administrative set-up is practically unrealistic, especially when we look at foreign models as ideals. A simple example is the reason why we are not be able to provide much better whistle-blower or witness protection laws as in abroad. Therefore, looking upon foreign arrangements must least warranted when we think about restructuring our laws and legal system. This is one fundamental idea which the author wants to get it cleared at the first instance before addressing the question which has been referred for. It is said so in the first instance, because that would really explicate the complexity of the problem addressed by the commission. For example, if we are bringing stricter regulatory rules or multiple regulatory agencies for business firms, companies and associationsin order to prevent such commercial and financial frauds, it may rebound the economic policy of the nation which is looking for more ease of business in order to promote its developing economy. Such is the complexity involved in dealing with the laws which addresses economic offences and especially when these scams involve state apparatus, the complexity is much greater.

Now lets us glance at the various elements of the question referred to the Commission. The spirit of the question is worded in the last part of the reference, i.e., we are looking at the **measures to eliminate**¹cheating and deception, not solely curbing the menace of such commercial frauds as refferred in the instant case. The mechanism or the process by which such goal is to be achieved is also mentioned in the second part of the question, i.e., **by making stringent laws and taking appropriate measures**.²This in-turn has several levels of questions to be addressed. When it comes to stringency of laws, it means both 'the scope of substantive laws' and 'the efficiency of procedural laws'. On question on the arrangements, the commission must address the various 'investigative', 'prosecutorial' and 'adjudicatory' setups both at structural and operational levels. Beyond these many specific questions on the justice delivery system, the **purport of the word 'prevent'** in the first question of the reference entrusts the commission to deliberate upon'a regulatory strategy' by which such criminal or wrongful acts are disallowed to happen even in minuscule levels.

As a requisite before developing strategies and plaiting suggestions, it is necessary to understand the current appropriateness and stringency levels of existing arrangements and laws respectively. This is what is exactly contained in the first question of the reference, though last part of the first question itself presupposes a *prima facie* negative answer. Only because the existing system failed to prevent such occurrences we are bound to take actions as made in the instant case.

However these references are analytical; the scope and relevance are extensive both at academic and policy levels. But then, as prequel to this study, there needs to be a descriptive study on the crime or the wrong which the government seeks to eliminate, for the language of the first question of the reference itself represents the ambiguity of the subject it addresses, i.e. cheating and deception of the public extensively by giving false promises.

¹Emphasis supplied

²Emphasis Supplied



False promise *per se* is not punishable, whereas cheating and deceiving is. What more is 'cheating', than a mere 'false promise'? The terms of reference had created a muddle over the core wrong by driving in the words like 'cheating', 'deceiving', 'public extensively', 'false promise' and placing them together; many of them not known to Indian criminal law. These words contained therein do not even reveal the real nature of the wrong committed in the instant case. Let us for convenience take that the commission can co-relate the question to the substances of the case which is being dealt by it, even then, panoply of uncertainties crumble in. Whether the 'act' explained in the question pertains to a white collar crime? Or is it about a socio-economic offence? Whether it is a commercial fraud? Whether it is a matter of consumer law? Can it be dealt under laws regulating unfair trade practice? Whether it talks about a corporate crime? One must duly acknowledge the fact that, under existing law, if the intent to defraud the persons paid advances for the solar equipment in the instant case is not established by the prosecution, then the case is only of a breach of contract, which attracts only civil liability. Illustration (g) of the Section 415 of the IPC then explains the act. So what is it exactly the government is looking at as public menace; that pertains to be the first question to be answered. Above all, the terms of references addressed to the commission pretends to circumvent the fact that in the instant case of Solar Scam, with or without the knowledge of the government, the state apparatus were used by the accused to deceive the public.

Taking all these into consideration, the commission would prefer to label the acts referred in the above question as 'deceptive trade practices', which is essentially different from 'unfair trade practice' explained in Monopoly and Restrictive Trade Practice Act 1969. The analogy of the same shall be explained in the subsequent chapters. The commission would also delress the crime specifically where a state apparatus is involved. The analysis and answers are the following:

FALSE PROMISES AND CHEATING UNDER SECTION 415 IPC

The Indian Penal Code has long standing tradition of more than 15 decades, and Section 415 IPC which defines cheating is quite easily applicable to any case where the offenders had fraudulently obtained the money (advances sums) on the deceitful representation that goods shall be delivered on a future date and services shall be so rendered. One can easily say the act of accused in the instant case, whether extra elements exist or not, is basically the crime of cheating under section 415 IPC. Thus any such crime of cheating and deceiving the public extensively by giving false promises, save of rest, at the minimal level falls in the pigeon hole of Section 415 IPC. This means there is a law intact to attack any of these acts. But whether it can be effectively applied in each individual case is the question which compels attention. Remember, the Section 138 of Negotiable Instruments Act 1998 was incorporated to the Banking Law *corpus*, because the application of Section 415 IPC seemed to greater challenge as the fraudulent and dishonest intention has to be proved at the outset¹.

Therefore, the terms of reference no. 5, directly refers to question when business firm, whether a registered company or an unregistered association commits a large scale deception (*public extensively*) whether the Section 415 IPC is competent enough to handle the seriousness of the case. Moreover, as in the instant case of solar scam, when the act alleged to

¹ The 1998 Act was enacted after a series of cases in High Court, like Duryodhan v. State, 1971 CrJ 1797 (Ori); C.Layal Naray v. Naidu, 1985 CrJ 1839 (Ori); the Bolzenth Arora's Case 1982 CrJ 1482(Del), P. Venkara Reddy 1986 CrJ 207 AP, etc.

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be the crime of cheating is a failure to perform a business contract, the complexity of applying the a stringent law becomes larger.

The recent judicial trends are quiet affirmative of this statement. They represent the complexity involved, but at the same time Indian Courts were successful in bringing the individual offenders of such acts to justice and convictions are held in wide majority of cases⁴. However, we see a long delay in any such prosecution when it is committed by a corrupt syndicate of the people; especially if the case is a highly publicized financial scam. Also, we see unbridled recurrences of such crimes and offences round the nation. Whenever there is delay only the victims who had suffered losses are at a peril and left absent of choices, but to wait for the mercy of the legal fraternity. The offenders though publicly censured enjoy a privileged atmosphere, once they are on bail. At this context, the commission really concurs to the strict accord with *Young v. The King- (1789)*⁵, the first case decided under the original English statute making the obtaining of property underfalse pretenses a crime. The court observed

“all persons who knowingly and designedly, by false pretence or pretences, shall obtain from any person or persons, money, goods, wares or merchandise, with intent to cheat or defraud any person or persons of the same ... shall be deemed offenders against law and the public peace ... (Emphasis Supplied.)”

The citation of the aforesaid paragraph is not quoted ornamental; the import of the words offenders against law and the public peace is not a matter to be overlooked. The import is best understood when analysed why the Law Commission of India in its 29th Report considered (albeit in a narrower sense) the acts mentioned above as socio-economic offences, which are actually an act in the nature of breach of contracts, resulting in non-performance with the delivery of goods or services. The report also specifically attacks the complicity of such offenders with the officers of government (Law Commission report, para 134).

Later when the Law Commission specifically dealt with socio-economic crimes in its 47th report, for some reason they withdrew from referring specifically to this offence. The commission cited their reason as on that date, the enforcement of laws against the crime did not confront problems with much frequency and seriousness (Law Commission Report, para 1.6.3). Perhaps this is one reason; the crime of deception in trade received much little legislative attention.

There are more jurisprudential aspects for this issue, which are actually too broad and lengthy, incapable of being included in this report to the original length. Yet still a condensed version of the jurisprudential questions and the behavioural understanding of the crime is to be included for the benefit guiding a strategy to deal with the crime.

As per Section 415 IPC⁶ false promises cannot be punished with or lying. Even acts of deceit and misrepresentation cannot be brought under penal law, unless the graveness of the acts elevates them from mere conduct of torts. Strictly speaking this is quiet contrary to moral

⁴K. Periaswami, 1982 CrIJ 1721 (Mad), Poovalappil David v. State of Kerala, 1989 CrIJ 2452, Ranjit Pandey v. State of Jharkhand, 2003 CrIJ 1736, Bhidayan Ranjan Pd. Verma v. State of Bihar, AIR 2000 SC 2341.

⁵I.R. 98, 100 Eng. Rep. 475 (K.B. 1789). See for a longer discussion in Elliot D. Pearl, “Criminal Law: False Promises As False Pretences”, California Law Review, Vol. 43, No. 4 (Oct., 1955), pp. 719-734.



theories and deontological studies (M. Alasdair, 1997)⁶. It is also noteworthy that moral philosophers frequently distinguish between lying and deception and *condemn lying as the worse offense*.⁷ If that is the case, why is it IPC doesn't deal with lying? What could be the reason for such exclusion under Section 415 IPC. The answer pertains to British Jurisprudence on frauds, false pretences, deception and misrepresentation.

A lie, strictly defined by Larry Alexander and Emily Sherwin (2003:395), is a statement, verbal or non-verbal, of a proposition that the speaker believes to be false, but that the speaker intends the audience to take as a proposition the speaker believes to be true.⁸ In contrast to propaganda of moral theories, David Nyberg (1992) points to positive contributions that lie and other forms of deception can make to civility and effective moral teaching; to privacy, self-confidence, and emotional comfort; and even to trust, if trust is understood as the expectation that another will act in one's best interests⁹. Nyberg (1992: 53) states that although honesty remains an important value, deception "may actually serve to promote and preserve emotional equilibrium on a personal level, and a civilized climate for communicating with each other and living our lives on a social level."¹⁰ He further favours particularistic evaluation of the ethics of deception, guided by principles of decency, rather

⁶ Alasdair MacIntyre distinguishes "two rival moral traditions with respect to truth-telling and lying, one for which a lie is primarily an offense against trust and one for which it is primarily an offense against truth." A. MacIntyre, "Truthfulness, Lies, and Moral Philosophers: What Can We Learn from Mill and Kant?", in *Philosophy and the Turner Lectures on Human Values*, vol. 16 (1995), pp. 307, 336. Mill, for example, argued that lies undermine mutual trust, "the insufficiency of which does more than any one thing that can be named to keep back civilization, virtue, everything on which human happiness on the largest scale depends." See John Stuart Mill, (New York, 1901; 1st edn., 1869), p. 33. See also, Jeremy Bentham, *The Theory of Legislation*, in C. K. Ogden (ed.) (1931), at p. 260 (falsehood "brings on at last the dissolution of human society"). In Kant's view, false assertion is "directly opposed to the natural purposiveness of the speaker's capacity to communicate his thoughts": therefore the liar "throws away and, as it were, annihilates his dignity as a human being."⁸ It follows that lying is an offense to all humanity and, most importantly, to the liar himself. To illustrate the absolute character of the moral imperative not to lie, Kant gave the notorious example of lying to a murderer who asks about the whereabouts of his intended victim; in Kant's view, the lie is wrong. Immanuel Kant, "On a Supposed Right to Tell Lies from Benevolent Motives", in Thomas E. Abbott (ed.), in (transl.) *Kant's Critique of Practical Reason and Other Works on the Theory of Ethics* (1898), pp. 361, 362-363.

⁷ Unquote supplied. See, e.g., Immanuel Kant, "Ethical Duties Toward Others: Truthfulness", in Lewis Beck (ed.), Louis Infield (trans.), *Lectures on Ethics* (1963), p. 226; Roderick M. Chisholm and Thomas D. Lecham, "The Intent to Deceive", *J. Phil.* 74 (1977), pp. 143, 153; Stuart P. Green, "Lying, Misleading, and Concealing: An Analysis of Lying, Deception, and Self-Deception", *Philosophical Perspectives* 15 (2001), at pp. 162-168.

⁸ Larry Alexander and Emily Sherwin (2003), "Deception in Morality and Law", *Law and Philosophy*, Vol. 22, No. 3 (Sep., 2003), pp. 393-450.

⁹ On the development of skills of deception in children, see David Nyberg, *The Varnished Truth: Truth-Telling and Deceiving in Ordinary Life* (1992), pp. 166-171.

¹⁰ Similar views can be observed in Carolyn Saarni and Michael Lewis, "Deceit and Illusion in Human Affairs", in Michael Lewis and Carolyn Saarni (eds.), *Lying and Deception in Everyday Life* (1993), pp. 1, 8 ("deception, lying, falsehood, and masking of our inner selves exist as part of the social world in which we live"); Michael Lewis, "The Development of Deception", in *Lying and Deception in Everyday Life*, supra, at p. 90. Robert C. Solomon, "What a Tangled Web: Deception and Self-Deception in Philosophy", in *Lying and Deception in Everyday Life*, at p. 41 (suggesting that the morality of lying depends on the relationship within which the lie is told).

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than a prohibition against lying. He identifies (1992: 25) the problem with deception is not that we engage in it, but that "we have not trained ourselves to deceive thoughtfully and judiciously, charitably, humanely, with discretion."

Similarly, deception is also a broader concept, encompassing an unlimited variety of devices by which the deceiver creates false impressions in others' minds¹¹. Not all forms of deceptions are crimes¹². The devices can include false statements, lies, misrepresentation, actions and omissions, strategic silences, and even truthful statements. For example, the story of Saint Athanasius appears frequently in discussions of the morality of lying and deception. Saint Athanasius was rowing downstream when he encountered persecutors hot on his trail. Not recognizing him, they asked where they might find the Saint Athanasius replied "He is not far from here," and the persecutors hurried on¹³. Here one can understand the Saint deceived the persecutors with telling a truth. Similar story is there in the Indian Epic Mahabharata where Yudhistira tells Dronacharya Ashwathamaa is dead in order to make him defenceless in the battlefield. Though Yudhistira meant an elephant named the same dead, Dronacharya took it for his son, who is named Ashwathamaa.

The example of Saint Athanasius or Yudhistira was not quoted just to show case that even truth telling can commit deception, but, to show that deception can bring in benefits also. This is where governments round the world don't create pervasive penal laws attacking the acts of deception. Early English law punished only specific categories of deception, such as forgery and use of false weights and measures that threatened the public at large or were not avoidable through caution (Larry and Emily, 2003). According to Sanford and Stephen (2001), simply lying to obtain property was not a crime until the middle of the eighteenth century¹⁴. It was in the year 1757, Obtaining Money by False Pretences, etc. Act¹⁵ was passed in Britain, but the impact and reach of Statute was considerably less; as the trials of common law offence of cheating had crept into create confusions. An Act of 1541¹⁶ which amplified the offence of cheat appears to have been restricted to frauds effected by some material device or token "against which common prudence and caution could not guard."

In 1761, the King's bench arrested the indictment of the Wheatley, in the case Rex v. Wheatley¹⁷, guilty, pointing out that there was no evidence of false weights or measures, "nor

¹¹ Michel de Montaigne, "Of Liars", in Donald M. Frame (trans.), *The Complete Works of Montaigne* (1957), p. 11.

¹² See infra.

¹³ James Rachels, *The Elements of Moral Philosophy*, 2nd edn. (1993), pp. 165-166.

¹⁴ See Sanford H. Kadish and Stephen J. Schulhofer, *Criminal Law and Its Processes*, 7th edn. (2001), pp. 951-953.

¹⁵ 30 Geo II, c. M. 1 (1757).

¹⁶ An Act concerning counterfeit Letters or privy Tokens to receive Money or Goods in other Men's Names 1541 (33 Hen. 8) c. 1. See also F. Hawkins (1777), *Pleas Of The Crown* 343-44 (6th ed. 1777). East places greater emphasis upon the requirement that the fraud affect the public generally, and considers the use of false tokens as but one example of fraud "against which it is said that ordinary care or prudence is not sufficient to guard." 2 *East. Pleas of the Crown* 817 (1806).

¹⁷ 2 Boro. 1424, 97 Eng. Rep. 746 (1761).

any false token at all." Similarly eighteen years after, Pear's Case also evidenced the same confusion. Pear had hired a horse, ostensibly to use it for a single day's journey and promising to return it at the end of the day. He immediately sold the horse, and on an indictment for the felony of larceny, the jury found specially that at the time he hired the horse, he had not intended to return it. The judge on assize having respite judgment and reserved his decision for the determination of the judges, it was decided that a conviction for larceny was proper. However, only seven of the eleven judges who delivered opinions concurred in this decision. Rest others argued the false pretense statute and its predecessor defined a misdemeanour and said that the statutes established legislative treatment discrimination between taking by fraud and taking by stealth. They felt the new statute required a different result. One of them directly argued that Pear's offense was essentially stealthy rather than fraudulent.

The whole of the judicial trends during that period dint show a sharp departure of the 1757 statute from the predecessor, though it was corrected by the Kings bench in *Rex v. Young*, in 1789. Then again the argument of the case, was purely ingenious. They argued that where the representation is of a thing past or present, against which caution cannot guard, it may come within the statute but if it be a representation of some future transaction, concerning which enquiries may be made, it is not an indictable offence under this statute, but is only the subject of a civil remedy, because the party can only be imposed upon through his own negligence." This argument though was not successful, found its space strong in many previous cases and later cases like *Rex v. Goodhall* (1821).

In the same year of 1789, previously to Young's case, there was a case on deceit as a tort. The case *Pasley v. Freeman*¹⁸, was revered as foundation case of the modern tort of deceit. In this case, though complainant was awarded damages, in the dissenting opinion of J. Grose it was opined that there are cases of two sorts, in which, though a man is deceived, he can maintain no action. The first class of cases (though not analogous to the present) is where the affirmation is that the thing sold has not a defect which is a visible one; there the imposition, the fraudulent intent is admitted, but it is not tort. The second head of cases is where the affirmation is (what is called in some of the books) a nude assertion; such as the party deceived may exercise his own judgment upon, as where it is matter of opinion, where he may make inquiries into the truth of the assertion, and it becomes his own fault from laches that he is deceived.

The origin of confusion is what known as Wharton's Dogma, since in American Jurisprudence, this was first articulated Scholarly by Wharton in *American Criminal Law*, the book he wrote in the year of 1846. He relied on *Rex v. Goodhull* and an American judgement, *Commonwealth v. Drew*¹⁹.

Even in Kerala's latest two large scale public deception scams, the 'Total 4 U' scam and 'Solar' Scam, one can see that this defence that victims should have acted prudently and guarded against the evil holds good. More importantly many of the victims of these scams have not approached the judicial remedy fearing about their own corrupt hands. It can be extensively said that the offenders had preyed on the innate weakness of victims such as a greed and rent seeking behaviour.

¹⁸3 Darr & T. 51 (1789)

¹⁹9 Pick. 179 (Mass. 1837)



Early Examination of all cases decided in the period 1943-1953 which are digested in the American Reporter System, 20 Fifth Decennial Digest (1948), and 18 General Digest, 2D Series (1953), under the heading "False Pretenses, Elements of Offenses, Nature of Pretense," reveals the following: The issue of whether or not a particular form of deception constituted a false pretense has been raised in 32 appeals. In 27, *the form of the deception was contended by the criminal defendant to be a promise and thus not a false pretense*. Courts in eight jurisdictions held so during this period, according to (Arthur, R., 1953) each grounding its decision on the established dogma that a false pretense must be a misrepresentation of an existing fact.²⁰

The essence of this leniency on deception and false promises (Arthur, R. 1953: 1003 quoting J. Clark in Chaplin's case, see fn. 20) is that promissory fraud is indistinguishable from innocent breach of contract except in the mental element. The mental element is generally determined by reasoning backward from the act, i.e., in this instance from non-performance. A rule which makes promissory fraud criminal would therefore permit juries to punish innocent breaches of contract, would encourage disgruntled creditors to persecute judgment-proof debtors, and would materially encumber business affairs.

It is this confusion existing during that period, made its expression in the language and attitude of Indian Penal Code 1860. There is no specific offence called 'False Promise' or 'False Pretence' and also, the offence of 'Cheating' entail punishment *per se* unless a harm is occurred to the person deceived²¹ and an intention to deceive existed at the time of induction.²²

However it is interesting to note that Section 417 IPC deals with punishment with cheating and Section 420 deals with the punishment of cheating in which an inducement to delivery or destruction of property, or alteration or destruction of any valuable security or anything which can be converted to valuable security is committed. The section 417 IPC envisages 1 year imprisonment, or fine or both as penalty, whilst, section 420 IPC envisages imprisonment up to 7 years and fine. Therefore, while on one hand the legislative intent is clear that the law makers intend to punish deterrent the crimes which entail a pecuniary loss, probably a commercial crime or fraud, on the other hand, the seriousness and gravity of such offences and its punishment brings in greater responsibility on the law makers not to shield the innocents from the superfluous grab of the law.

existing and the rules of modification which was existent in the English common law were automatically adopted in the Indian Criminal Jurisprudence. These are the few.

1. Definition of Cheating provided in the section 415 IPC, requires the proof of injury. It should contain a pecuniary loss or any harm, which can be converted to pecuniary damage. All the illustrations of 415 IPC only talks about commercial transaction of property. Moreover, it is classified under the chapter, 'offences against property'.

²⁰ Arthur R. Pearce (1953). "Theft by False Promises", *University of Pennsylvania Law Review*, Vol. 101, No. 7 (May, 1953), pp. 967-1011. See also Chaplin v. United States, 157 F.2d 697 (D.C. Cir. 1946); James v. State, 218 Ark. 335, 236 S.W.2d 429 (1951); State v. Robington, 137 Conn. 140, 75 A.2d 394 (1950); State v. Pierson, 91 A.2d 541 (Del. Super. Ct. 1952); Button v. State, 226 Ind. 312, 79 N.E.2d 903 (1948); State v. Lamoreaux, 13 N.J. Super. 99, 89 A.2d 213 (1951); People v. Karp, 298 N.Y. 213, 81 N.E.2d 817 (1948).

²¹ Shobhanda Coke Products v. State of U.P, 1994 CrJ 657 (All; AIR 1994 SC 960)

²² S.N. Palamthikar v. State of Bihar, AIR 2001 SC 2960

Until recently the promise to marriage for pre-marital sex is not considered as an offence of cheating. All these are the imports of English Law.

2. Another qualification for an act to be dealt under Section 415 IPC is that the victim must satisfy the requirement of justified reliance³³. In fact this was the principle in which Wharton has based his dogma. Not only must the victim of a misrepresentation rely in fact, but reliance must also be justified according to external standards of reasonableness drawn in large part from custom. According to Larry and Emily (2003) the reason most often given for this requirement is a general interest in security of transactions, which counter balances the wrong of misrepresentation and the interest in fully informed consent³⁴. Prosser and Keeton (1984: 753) imply that the requirement of justifiable reliance is best understood as testing the credibility of the claim that fraud induced the plaintiff to act. The real effect of the requirement is to place a degree of responsibility on the victim for his own false belief, even in the case of an outright lie. The various legal guidelines for determining whether reliance is justified rely heavily on custom and they follow the existing trade practices. For Example
 - a. Victim cannot rely upon the adversary parties statement of Opinion
 - b. Victim must also view the Statements of intention with suspicion
 - c. Victim must not ignore the evident facts that are contrary
 - d. Rule of materiality - contract law
3. However these rules contrasts when these person who induces belief act in fiduciary capacity. Fiduciary rules apply to those acting in certain recognized fiduciary roles, such as lawyers, doctors, brokers, and trustees, and to those occupying roles that appear, on case-by-case analysis, to invite confidence. Statements that otherwise would be treated as unreliable statements of opinion become assertions that justify reliance when spoken by fiduciaries. Therefore, the stricter rules are applied to fiduciaries, but the significances is that by raising standards in a limited class of cases, they imply that in the ordinary run of legal relations, trust is not absolutely prized.
4. Rules of disclosure of known facts relate only to few circumstances, for e.g., in fiduciary relationships or in the cases where one party understands the counter part in the transaction is essentially mistaken about the a material fact. This again gives a substantial immunity to certain type of passive deception.

³³Emphasis Supplied.

³⁴See also misrepresentation), I. E. Allan Farnsworth *Farnsworth on Contracts*, 2nd edn. (1998), pp. 472-477 [hereinafter Farnsworth] (contractdoctrine); W. Page Keeton, Dan B. Dobbs, Robert L. Keeton and David G. Owen, Prosser and Keeton on the Law of Torts, 5th edn. (1984), pp. 725-735 (tort doctrine). On deception in criminal law, see generally Wayne R. LaFave, *Criminal Law*, 3rd edn. (2000), pp. 828-850.



DECEPTION IN BUSINESS AFFAIRS: HOW FAR IT IS TOLERATED?

Therefore, it is clear that from the analysis of the above paragraphs that law is evidently in conflict with both non-consequentialist moral theories and with those consequentialist theories that endorse a rule against deception. The laws tolerate deception as normal in many instances and see it as customary part of many economic interactions. They use assumptions of economic theories to justify such status.

First assumption is that there is no negative outcome is associated with lying per se. Uri Gneezy, (2005: 384) argues this assumption is very useful in many economic models²⁵. He says to consider contract theory, where it is assumed that without an explicit contract, neither side will fulfil its respective obligations. He also quotes George Akerlof's (1970) paper on asymmetric information and the market for lemons assumes that sellers of used cars will always lie if it is in their benefit to do so²⁶.

A graver assumption is that of *homo economicus*, an economic theory figure who acts selfishly and is unconcerned about the well-being of others. However there are lighter approaches like (Baker, 1993), where the assumption does not assume that individuals are motivated solely by selfishness or material gain. It is a method of analysis, not an assumption about particular motivations. Assumption of self-interest is narrow, but, behaviour is not just driven by self-interest; it is driven by a much richer set of values and preferences²⁷.

According to Bengt Holmstrom (1979), the standard assumption is that people will tell the truth only if this is incentive-compatible given material outcomes²⁸. He uses the literature on tax evasion, the choice of whether to avoid paying taxes is considered a decision under uncertainty; cost is treated as a product of the probability of being caught and the cost of punishment, whereas benefit is simply the money saved by avoiding payment.

Utilitarianism of Jeremy Bentham (1789) prescribes that, when choosing whether to lie, one should weigh benefits against harm, and happiness against unhappiness²⁹. Gneezy (2005) proves this utilitarian prediction is correct, that that people not only care about their own gain from lying; they also are sensitive to the harm that lying may cause the other side. The average person prefers not to lie, when doing so only increases her payoff a little but reduces the other's payoff a great deal. The implications of his results are illustrated by the purchase of a car: you can trust what the seller says about the condition of the brakes more than what she says about the state of the air-conditioning. The result may also explain why people are more accepting of fraudulent behavior directed at large organizations or rich counterparts than at

²⁵ Gneezy (2005), "Deception: the Rule of Consequences", *The American Economic Review*, Vol. 95 No. 4, at pp. 384-393.

²⁶ Akerlof, George A. (1970), "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism," *Quarterly Journal of Economics*, 84(3), at pp. 488-500.

²⁷ Becker, Gary S. (1973) "Nobel Lecture: The Economic Way of Looking at Behavior", *Journal of Political Economy*, 81(1), at pp. 385-409.

²⁸ Holmstrom, Bengt. (1979) "Moral Hazard and Observability," *Bell Journal of Economics*, 10(1), at pp. 74-91.

²⁹ Bentham, Jeremy (1789). *An Introduction To The Principles Of Morals And Legislation*. Oxford: Clarendon Press, 1907.

individuals; the monetary cost may be identical, but the damage to the individual is perceived as greater. For example, people are more accepting of lies told by an employee to an employer than vice versa (David Strahlberg, 2001)³⁰ and are more likely to deceive insurance companies than private citizens (Sharon Tennyson, 1997; Insurance Research Council, 1991)³¹.

Business culture explains the leniency of Law against deception based on these models and leaves out efficient deception from the control of law. Efficient Deception is defined as deception that benefits the deceiver at the expense of his victim, and yet, if permitted by law, will tend to maximize overall welfare. Though this model received strong opposition from welfare economists, legal scholars have identified various situations in which non-disclosure or fraud may have economic benefits.

Anthony Kronman (1978) has argued that a legal right to withhold pertinent information in contractual negotiations can provide incentives to gather information, which in turn will increase the likelihood of efficient exchange³². He differentiates information earned causally and earned with effort.

He views supports the argument that a homeowner who learns by observation that his home is infested with termites has not conducted a search for valuable information and therefore should be required to disclose his information to a buyer. But a buyer who determines through geological investigation that minerals lie under a parcel of land should be allowed to suppress his discovery in negotiations to buy the land, so that future buyers will have reason to invest in geological research.

Saul Levmore (1992) has pointed out that rules permitting those in possession of information to trade without disclosure are not enough to secure benefits of this kind³³. If courts are serious about encouraging production and revelation of information through trade, they must also permit false assertions. Otherwise, a party who lacks information can always ask a blanket question such as, "Do you have information pertinent to the value of the goods?" If a false answer to this question triggers liability for fraud, incentives to search or reveal will be lost.

Levmore also suggest that if a developer of a land is to disclose his intentions about the land, then the individual land holders from which the developer has to buy lands may turn to hold-out strategies. Then the profits secured by hold-out sellers are monopolistic, and the sellers' demands may ultimately defeat an otherwise efficient plan. If the developer is permitted to suppress or even lie about his intentions for the land, the hold-out problem may not arise.

³⁰ Strahlberg, David. (2001), "Nice Young Man Goes Wild", *Chicago Tribune*, November 8.

³¹ Tennyson, Sharon. (1997), "Economic Institutions and Individual Ethics: A Study of Consumer Attitudes toward Insurance Fraud", *Journal of Economic Behavior and Organization*, 32(2), at pp. 247-65.

³² Anthony, J. Kronman. (1978), "Mistake, Disclosure, Information, and the Law of Contracts", *J. Legal Stud.* 7 (1978), pp. 1, 9-13.

³³ Saul Levmore, "Securities and Secrets: Insider Trading and the Law of Contracts", *U. L. Rev.* 68 (1992), pp. 117, 140.

Above all, according to (Larry and Emily, 2003), Deception may have other greater economic functions. It is the only actual facilitator of transactions. Deception is required to encourage efficient exchange by facilitating division of surplus gains from trade. Suppose a potential buyer and seller, are discussing a simple exchange of cash for goods. The buyer in fact values the goods more than the seller, so the contemplated exchange is efficient. To fix a price, however, the parties must agree on how to divide the mutual benefit resulting from the trade. If they cannot allocate this surplus satisfactorily, no transaction will occur. The various behavioural science studies suggest that although the co-operation if possible in all these transactions, it may not work always³⁴, for example, when one of the party is in the control of affairs, or anonymity of the decision maker is maintained or even when any of the parties has a sense of earned or at least justified entitlement to the goods or cash they bring to the bargain.

To remove these impasses, one of the suitable ways is deception. Suppose, for example, that a seller falsely maintains that others are interested in his goods, or that he must demand a certain price in order to remain in business. As a result, the buyer may form a false belief that the seller's offer represents a division of surplus that is favourable to him, the buyer, and this belief may lead him to buy. Similarly, a buyer may falsely assert that he cannot and will not buy above a certain price.

Accordingly, what appear to be strong rules against deception, allow the various qualifications to those rules, which still remain obscure. Nevertheless, the Modern Deception laws are more encompassing in nature. The progress in telecommunication sciences, evolutions of big data and larger scales intercontinental and intra-regional finance flows, formations of global supply chains and global value chains, single-minded global pursuit of economic progress had all boosted the trade and the allied activities. This situation in turn promotes structural changes in the socio-economic and political spheres of every nation and polities round the globe, which are more conducive to uncontrolled markets and commerce. But then, the international legal systems had started recognising the increase in commercial activities leaves chances for more probability for commercial frauds and as much as they advocate for free trade and ease of business, they also advocate stricter and deterrent punishments for fraudsters plying on the economy. The examples can be seen in the revival of punishment forms of criminal forfeiture of assets, public censure, stoppage of business, increased and multiplied terms of imprisonment, disqualification as to applying for new business licenses etc. in many international and national statutes round the globe³⁵.

India too, had brought in serious administrative regime changes in tackling such crimes, by incorporating Economic Offences Wing of Police, Court of Economic Offences, Serious Fraud Investigation Office under Ministry of Corporate Affairs, India. On one hand, these are all serious replica of authorities and other special bodies which are established in U.K. and U.S.A³⁶ but, on the other side, these institutions in India are ordained to work under the old legal regime. The laws and procedures have not undergone evolution. None of these agencies

³⁴Forest Jourden and Jeffrey J. Rachlinski.(1998), "Remedies and the Psychology of Ownership", *Vand L Rev* 51, p. 1541

³⁵Explained in chapters following.

³⁶Serious Organised Crime Agency and Economic Crimes Agency in U.K., Fraud Control Units of different Federal departments of Justice, Treasury, Health and Human Services, Economic and Financial Crimes Commission in Nigeria etc.



Indian Government installed had the backing of specialised laws nor are they provided with a detailed legal framework, rules of conduct, special powers, or independency from other institutions. This would mean unfortunately, when the system is lacking inherently in its legal parameters, the reforms of Indian policy makers were focussed on institutional reforms. Therefore, the situation warrants a change in Laws.

ENHANCING LEGAL CONTROLS ON DECEPTION AND DECEPTIVE TRADE PRACTICES: RECOMENDATIONS

Despite the seriousness of the offence under Section 420 IPC, and wide popularity of the charge under this section, there are numerous practical anomalies and challenges in establishing these crimes before the court. Therefore, in a way, it can be said the State failed to curb this evil effectively. The practical difficulties and challenges which revolved around the technical nature of the offences as presented above.

Over the years, the Indian legal system had to endure enormous notoriety among the society as it fails to deal with fraudulent activities and this inefficiency itself has emerged out as a reason or excuse for recurrences of major scams and business frauds. Given the current state of affairs where the Indian economy is all set to fast forward with more and more ease of business, curbing these evils is inevitable and it is humbly submitted that new laws should be made with holistic vision to control the crime through enhanced substantive and procedural regulations.

I. SUBSTANTIIVELY THE LAW SHOULD PRESCRIBE AND DEFINE THE CRIME DECEPTIVE TRADE PRACTICE OF ADVANCE FEE FRAUD AND OTHER ALLIED FRADULUENT ACTIVITIES

1.1. The new law should accept a broader understanding on the term 'Deception'. The new law proposed shall recognise deception as a successful or unsuccessful deliberate attempt, without forewarning, to create in another a belief that the communicator considers to be untrue in order to increase the communicator's payoff at the expense of the other side³⁷.

1.2. The new law shall define the deceptive trade practice of collecting advance sum, *either successfully or unsuccessfully attempted*³⁸, *as against the public extensively*. As mentioned earlier the commercial offences of fraud and false pretence are larger threats to economy. Henceforth there shall be no reason why an unsuccessful attempt to deceive the market should not be penalised. Arguably the substantive laws can be wide enough to cover the simplest crime of making false representation intending to make gain for himself or another or to cause loss to another or to expose another to risk of loss and also the highly advanced crimes such as e-marketing frauds³⁹.

³⁷ Vrij, Albert. *Detecting lies and deceit: The psychology of lying and the implications for professional practice*. New York: John Wiley & Sons, 2001.

³⁸ Emphasis Supplied.

³⁹ Under the old law, it was necessary to prove that Defendant's conduct deceived Victim. Now there shall be no need to prove a result of any kind or that any person believed or acted on any representation. Indeed, there need not be any identifiable victim. It follows that the provisions must even broader in scope than a conspiracy to defraud, given that an individual may be liable even where there has been no prejudice caused to the economic interests of another. This shift from a result to a conduct based offence means that the crime is complete much



1.3. As the present case before the commission represents, the crime of collecting advance fees (sums) from public using deception techniques and the subsequent non delivery of goods or services shall be dealt under the name 'advance fee fraud'

1.4. If the extensiveness is a cause of worry for the legislators of India, then a perfect check to these laws shall be *using the phrase 'public extensively', as a qualifier to the offences contained in the new law.* Individual and singular cases of fraud and deception again can be dealt under Section 420IPC. Moreover by the general concept, Deceptive Trade Practice, the import must be made clear that they are not just individualised or particular false promises or false statements presented to an individual or a consumer, i.e., the crime is not a mere breach of contract. The offence clearly denotes the idea these acts should be practiced in such a manner that the criminal enterprise has become a part of regular behaviour of the offender or offending business organisation.

1.5. The specific crime of Advance Fee Fraud is extensively dealt by the country of Nigeria, and reliable provisions can be adapted. However an outright adoption can do no good. British Statute of Frauds can also be a good law to compare with. Nevertheless as mentioned in the introductory paragraphs, these laws can never be embraced fully without the necessary Indianisation.

1.6. The term advance fee fraud refers to the term "advance fee fraud" is generally used to refer to all fraudulent activities carried out with the intent of obtaining money from another person by false pretence³⁰. Examples of acts that can constitute a false pretence include false promise, cheating, falsification, impersonation, counterfeiting and fraudulent misappropriation of facts.

1.7. In most advance fee fraud scams, a potential victim is usually persuaded to part with a sum of money or property as a form of investment in a bogus business scheme in anticipation of gaining a substantial benefit as a result of such investment. However in the instant case, victims of the victim were asked to pay money as an advance part payment of the consideration for the delivery and installation of solar equipment.

1.8. In many other cases, (Okolo, 2009) the sum of money that the victim is being persuaded to part with is usually presented in the form of processing fees, attorney fees, money transfer charges or taxes. These fees are usually in small sums of money in order to bait the victim into making the payment. Where the victim is deceived into paying the money, he/she will not receive anything in return. On the other hand, the scammer will always invent reasons why the victim may need to pay more money or part with more properties. The process will

³⁰See in fine-as soon as the representation is made-and there will be less need to rely on attempts Assessments of blameworthiness and, therefore, appropriate punishment will be difficult for the sentencing tribunal in cases where there is no evidence of direct loss, or even potential loss, to Victim's interests. Reliance can be placed U.K. Legislation of Fraud Act 2006.

³¹See Black's Law Dictionary, 8th edn (West Group, 2004), p.252. False pretence is defined as "a representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true." See Section 20 of the Nigerian Advance Fee Fraud and other Fraud Related Offences Act 2006. See C.O. Okonkwo, *Criminal Law in Nigeria* (Ibadan: Spectrum Books Ltd, 2002), p.312.

continue until the victim realizes that he/she has been duped or simply gets tired of committing more funds to the scam⁴¹.

1.9. Moreover, the scammers would as far as possible receives unaccounted money from the victims or money from victim's secret sources i.e. the fraudsters actually rely on the weakness of the men/people such as greed etc.

1.10. The law proposed shall be more trite for this special crime, once it's proved that the advance sums for services and goods have been already paid by the complainant and *on a balance of probabilities the intent not to deliver proper services and goods to his customers or consumers is inferred*⁴².

1.11. Also it is suggested that for the legal controls to be efficient, the provisions should specifically attack the crimes at each and every stage of the crime, starting from its preparations to transportation and transactions on the proceeds of the Crime.

1.12. It must be understood that this special crime does falls under any of those categories where the economic theorists support deception as a useful strategy. The deception in the offence of Advance fee fraud does not fall under the purview a matter of asymmetric information (Akerlof, 1970), nor is sensitive as Bentham (1979) and Gneezy (2005) intentions. Also, it is not intended to promote efficient negotiation or exchange of information (Lavy and Pomy, 2003). Further, the most importantly, these fraudsters in India rely on the Berger Model(1989) explaining deception in terms of incentive-compatibility. The lower success rate of Section 420 IPC, the long judicial procedures and aboriginal investigative manuals and rules of conduct all adds to the confidence of the offenders.

1.11. In the cases of attempts of false pretences are made against public extensively, the intent to defraud shall be presumed and the onus of proving innocent state of mind shall be that of the offender or the accused⁴³. He should also prove it beyond reasonable doubt.

1.12. Moreover, a fraudulent invitation, oral or written, made in furtherance of false pretence would in itself be an offence and the receipt of such invitation by the person to whom the false pretence is directed shall initiate the proceedings or charge.

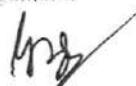
1.13. The use of premises, any place of residence or business or occupation for the purposes of the advance fee fraud is prohibited and any person who is allowing such places under his ownership or possession for the conduct of the fraud shall be made liable.

1.14. Any person, being a lawful authority for handling and managing such places of business or occupation, of governmental or non-government organisation, shall be made liable for the crime and such organisation not being his proprietary shall be an aggravating circumstance while considering the sentencing order. An officer or clerk of an organisation using this

⁴¹ J.S. Okolo, "Demystifying the Advance Fee Fraud Criminal Network" (2009) 18 *African Security Review* 7, 11. See the 419 Coalition Website, "The Nigerian Scam Defined", at <http://home.ring1.ng/~alpha419coal/news2010.htm> [Accessed October 4, 2011]. See "West African Scam/Nigerian Advance Fee Fraud in Internet Web Mail Frauds and Email Letter Scams", at <http://www.crimes-of-persuasion.com/contents.htm> [Accessed October 4, 2011].

⁴² Emphasis supplied.

⁴³ The Forty Seventh Law Commission Report on The Trial and Punishment of Social and Economic Offences, 1972 had already advocated this argument.



official seat or any other places nearby the premises of organisation, over which either he has an individual right to access is deemed to have committed this offence.

1.15. Also, the preparation or possession thereafter, of a document containing a false pretence, shall also be constituted an attempt to commit an advance fee fraud offence, where having regard to the circumstances of the case the person in possession of the document knows or ought to know that the document contains a false pretence. The standard of knowledge required for establishing this offence shall be whether a reasonable man would know the document contains a false pretence. Possessor of the document shall be presumed to have prepared such document unless the possessor clarifies the source or origin of the document.

1.16. Money doubling scams/ high yield investment scams (as in Total 4 U scam) can also be treated as separate crime under the new law, as and when a person promises unduly large financial benefits such as double rates to an another while asking him to part with a sum of money as an advance fee or an investment, the promisor shall be deemed to be committed advance fee fraud.

1.17. The New Law shall also prohibit the conduct of financial transactions which ought to transact the proceeds of advance fee fraud in as many as these situations

- (i) Where there is an intent to promote the execution of an act that constitutes an advance fee fraud offence.
- (ii) Where the said transaction is designed to conceal the location, the source, the ownership or the control of the proceeds of an advance fee fraud offence or to avoid a lawful transaction under the existing law of the Nation.

1.18. Any person who knows or reasonably ought to know, or any institution or any organisation that knows or reasonably ought to know, the funds or property which are to be transacted are the proceeds of deceptive trade or advance fee fraud, helps the transaction shall be made liable.

1.19. A financial institution such as banks, non-banking financial institutions, and foreign exchange institutions, may be held liable for the negligence in conducting the transaction of proceeds from advance fee fraud shall also be made liable for the pecuniary loss to the victim.

1.20. Transporting of the proceeds of advance fee fraud, either as cash funds, monetary instruments or in kind, shall also be deemed to be offence as in the case of conduct of financial transaction.

1.21. Above all, counselling, aiding, abetting and conspiring to conduct advance fee frauds shall be dealt as seriously as the crime in itself is dealt with.

1.22. Abuse of any position of trust, governmental job, or fiduciary relationship or technical expertise for the furtherance of advance fee frauds or for endowing reputation to such fraudsters or scammers shall be constituted as an aggravating circumstances. The central element of this section is the concept of a legal duty. It was proposed by the Law Commission of U.K. (Fraud 2002) to extend to duties arising; under statute, (e.g. obligations of accuracy in company prospectuses); in transactions of the utmost good faith, (e.g. insurance); from

9/2/2023

general contractual terms or from the custom of a particular trade or market; and from the existence of a fiduciary relationship between the parties.

2. ENHANCING THE EFFICIENCY OF PROCEDURAL LEGAL FRAMEWORK IN CURBING THE CRIME OF ADVANCE FEE FRAUD

2.1. Empowering the Economic Offence Wing of the police and the Court of Economic Offences should be the priority of the laws. Having said so, giving due consideration to the fact that there is only one court of economic offences for the state, and also since there is no economic offence wing of police for every district, the powers shall be equally distributed to other police departments and to courts of chief judicial magistrate, sessions etc.

2.2. Modern developed societies in search for better efficiency of legal controls recently advocate greater integration of investigation, prosecution and adjudicatory powers in highly technical committee. For example, in U.K. by virtue of Financial Services and Markets Act 2000, the Financial Services Authority, which regulates banks, insurance companies, financial advisers, the mortgage business (since 2004) and general insurance intermediaries (since 2005), is responsible for prosecution and adjudication of liability, and has oversight of investigation by the enforcement teams. FSA operates this through its Regulatory Decision Committee.

2.3. Though such a greater integration of powers cannot be adopted into the territory of India, there is another similar arrangement in U.K., whereby various powers of investigation had been integrated to successfully investigate, and prosecute economic or financial crimes. For example, Serious Organised Crime Agency has the combined powers of the police, customs and immigration, is involved in tackling fraud and money laundering carried out by organised criminal groups.

2.4. Therefore in India, it is suggested that there should be a greater portfolio of powers to Economic Offence Wings or Serious Fraud Investigation Office which may combine the powers of policing, tax authorities and customs (it would be useful to conduct raids and search in an efficient and expedient manner), immigration (it might be noted that the accused and suspects in Total 4 U scam had international connections and mobility) and registrar of companies or firms (review of business licensing and monitoring powers shall put into use). Arguendo; if this integration of powers seems untimely for India, at present, then the Law should advocate for greater interaction and co-operation of various regulatory authorities such as Police, Customs, Tax officials, etc.

2.5. The law shall provide for greater powers of arrest and bail. The powers of arrest with regard to an offence under the new provisions shall be exercised in accordance with Criminal Procedural Code, but then the crime shall be considered as non-bail able. Nevertheless the Court shall have the power to condone or compound the offence if the accused pleads guilty and remit the payments back to the victims along with due interests which court shall fix. The court shall be the intermediary of such a transaction of restitution and repayment and no compounding of offences shall be allowed without the involvement of the court.

2.6. Also, power to conduct warrantless search and seizure of the any funds, property or evidentiary articles and documents shall be given to investigating officers or police, once he has the reason to believe that the funds, articles, persons or places are linked to advance fee frauds. Nevertheless restrictions to this power shall also be encoded in the provisions, such as

once the search is conducted the report shall be filed with the judicial court empowered to issue the warrant, within no time, as soon as the search is over.

2.7. All forms of sentencing shall be included in the new laws as in the case of other socio-economic offences such as longer term imprisonment, fine, mandatory minimum imprisonment, public censure, confiscation and forfeiture, stoppage of business, cancellation of licenses or registration of companies or firms etc. Enhanced punishment can be given for repeated commission of crimes and in such cases the persons shall be declared of ineligible to create new firms or business start-ups.

2.8. India, however, in principle don't concur to the idea there must a forfeiture of assets as a method of punishment. India doesn't consider it inhumane approach to the criminals, leaving them devoid of their economic resources to start new dignified life. But then in the cases of economic offences and several other serious crimes such as drug trafficking, illicit enrichment, bribery and money laundering, international community has accepted the confiscation or forfeiture of properties of the guilty as a matter of deterrence is found largely successful⁴⁴. Confiscation is also, a penalty measure that results in the permanent

⁴⁴ The United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances provides that signatories should adopt the measures to enable the restraint, seizure and confiscation of the proceeds and instruments of drug trafficking and connected money laundering. The confiscation measures of the Vienna Convention were extended by the UN Convention against Transnational Organised Crime, to include the proceeds of serious crime. Serious crime was defined as including "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty". The international confiscation measures were further extended by the UN Convention against Corruption to include for example the bribery of national officials, the bribery of foreign public officials and officials of public international organisations, embezzlement, misappropriation or other diversion of property by a public official, trading in influence, abuse of functions, illicit enrichment, bribery in the private sector and laundering the proceeds of bribery.

In recognition of the problems associated with drug money laundering the US Government introduced a series of legislative measures that permitted the forfeiture of the proceeds of drug related criminal activity. Owing to their success, the forfeiture provisions were extended to include a plethora of criminal activities including human trafficking, racketeering and corruption. This is a strategy that has been duplicated by the international community, a point illustrated by the breadth of the international confiscation measures outlined above. Additionally, the United States has suffered from a number of high profile financial scandals, a consequence of which has been a significant increase in the use of its forfeiture provisions. Well-documented examples include Ivan Boesky, Barry Minkow, Enron, WorldCom, Adelphia Communications, Tyco International, Bernard Madoff, etc. More recently there has been a substantial increase in the levels of mortgage fraud, which costs the US economy \$10 billion per year. Therefore the forfeiture of the proceeds of crime has become an important part of the US counter-fraud strategy, especially during the credit crunch.

The initial scope of the United Kingdom's confiscation provisions was similar to those in the United States, in that they only applied to drug trafficking offences. The range of criminal offences was extended to all "non-drug" indictable offences and specific summary offences by the Criminal Justice Act 1988. Further amendments were introduced by the Drug Trafficking Act 1994 and the Proceeds of Crime Act of 1995 and 2002. In 2005, the role of managing the United Kingdom's confiscation mechanisms was transferred to SOCA by the Serious Organised Crime and Police Act 2005. SOCA was mistakenly referred to as the "British FBI", and its performance was measured against tackling the "400 major crime bosses in the UK, the so-called untouchables". SOCA was granted additional powers under the Serious Crime Act 2007 to bring "organised criminals to justice". The measures included Serious Crime Prevention Orders which allow courts to impose restrictive conditions on those proved to be involved in serious crime. Furthermore, SOCA is allowed to scrutinise the monetary dealings and interactions of "serious acquisitive criminal" over a period of up to 20 years where the defendant has been sentenced to life imprisonment via a financial reporting order. When a court grants a financial reporting order, the criminal is required to report within a specified periodic time details of their financial transactions. Sproat took the view that financial reporting orders "would be obtained in cases of criminals convicted of a qualifying offence who law enforcement believes pose a long-term threat". Qualifying

dispossession, or removal of finances, or other resources by which a person can commit further crimes (continuing criminal enterprise). Though the major aim of confiscation of civil forfeiture of criminal properties is restitution or compensating victims, on the other hand it shall deprive the criminals of the resources thereby incapacitating them for further commission of the crime.

2.9. The investigating agency, or the said economic offence wing of police shall can receive complaints or information from any person whether victim or not, and can act upon it. The Serious Fraud Investigation Office of India does not have this power. Upon reliable evidence to conduct investigation, the police or the investigating agency shall be mandated to conduct investigation *sub silentioso* that suspect shall not part away with proceeds of crime. Also, Police may approach High court in such necessary cases, and shall also file for an ex parte application to freeze bank accountsof such persons where it is reasonably suspected that the person has already obtained the advance fees or money or other considerations and it is reasonably believed that any failure to do so will be detrimental to victim's interest. The court, at this stage shall also be empowered to issue prohibition order as to transfer of all personal assets of the suspects.

2.10. However such orders may be withdrawn upon suitable guarantee or surety. For such a relief,in addition to guarantee, the accused shall satisfy the court that the assets frozen are earned through lawful and legitimate sources and transactions. A classic example shall be that the provision in U K legislation Drug Trafficking Offences Act 1986. The confiscation regime under the Act 1986 states thus boldly: "A set of statutory assumptions that assets in possession, and those transferred to the defendant over the previous six years, were profits from his criminal activity. These were then included in the calculation of the defendant's benefit. The burden of proof thus shifted to the defendant to show to the civil standard that the assumptions were inaccurate, or that 'the amount which might be realised' was less than the benefit."

2.11. The court sentencing the guilty shall be empowered to make orders of confiscation and forfeiture of assets and also make orders of restitution of the victims at the time of conviction and sentencing. The court shall then follow the procedures of civil court by itself in order to make effective remedy for the victim.

2.12. Time-limits shall also be fixed within which the complaint must be investigated and also, for the restitution of the victims. Once there are reasonable grounds to believe the crime of advance fee fraud has been committed on public extensively, on the basis of balance of probabilities, and also if it is proved that the complainant had paid the advance fee, he shall have the right for restitution and restoration of the funds, whether the criminal case is pending

offences are contained in Sch.2 to the Proceeds of Crime Act 2002 and they include for example, drug trafficking, money laundering, directing terrorism, people trafficking, arm trafficking, counterfeiting and intellectual property offences etc.

See, Nicholas Ryder (2013), "To confiscate or not to confiscate? A comparative analysis of the confiscation of the proceeds of crime legislation in the United States and the United Kingdom", *Journal of Business Law*, pp 767-798. See also, H. Nelen, "Hit them where it hurts most? The Proceeds of Crime approach in the Netherlands" (2004) 41 *Crime, Law & Social Change* 517, 517. This is a view supported by A. Smellie, "Prosecutorial Challenges in Freezing and Forfeiting Proceeds of Transnational Crime and the use of International Asset sharing to Promote International Cooperation" (2004) 8 *Journal of Money Laundering Control* 104, 104.



in the court or not. Having said so, such restorations at pre-conviction stage shall be made from the proceeds of crime and no personal property of the accused shall be attached at this stage for the purposes of the repayment. Such a procedure or measure shall only be adopted once the accused is held guilty.

3. REGULATORY AND PREVENTIVE OPTION: INDEPENDENT OBSERVERS/ FACT FINDING BODY UNDER DISTRICT CONSUMER PROTECTION COUNCILS

3.1. Very recently, though with a different aim to prevent corporate frauds, a similar attempt has been made by the Companies Act, 2013 by incorporating the provisions for Independent Directors in Indian Public and Listed Companies. However the idea was first accepted in 1998 Corporate Governance Code, when Indian policy makers were faced with the question how to deal with the problem of trust deficit afflicting Indian Business corporations. However, as Madhuryya Arindam (2013, p:232) points out, it is submitted that the idea has been transplanted almost wholesale from existing Anglo-Saxon jurisprudence without enough Indianisation²⁵.

3.2. From historical experience, Madhuryya (2013) argues that it is evident that the institution of the independent director has not managed to check the excesses of controlling shareholder even if the promoter does not hold a significant stake. She reasons the same by way of illustration, in the Satyam case, the Raju family owned only about 5% of the company's shares but was still able to keep a seemingly independent (and well qualified) board in the dark about one of the greatest frauds in Indian corporate history.

3.3. This is because, as pointed out in introductory chapter, that any Foreign Concept or Legal measure can be adopted, but, only after giving due weightage to Indian situations and the working culture and philosophies of Indian societies. When it comes to Business affairs, then again, it is more difficult to bring in exclusively foreign-made regulatory regimes, since the consumer behaviour, trading customs, labour force characteristics, and Consumer per service provider/trader ratios all differ invariably from foreign lands.

3.4. Therefore, it is submitted as a regulatory measure to constitute an independent fact finding body or independent observers under Consumer Protection Councils, anonymously, without letting one observer known to the other or public.

3.5. Every observer can have suo motu powers to observe upon the business firms, associations, companies, proprietaries or any such business undertakings and submit reports to Consumer Protection Councils on their findings about the firm's relationship with the consumer.

3.6. Once any observer submits the an indicting report, the Protection council can deploy a more number of independent observers form the fact finding body to test the degree of certainty of findings of the primary observer. A similar procedure can also be adopted on receiving complaints from consumer to identify whether the violation with regard to particular consumer is a part of systemic violations done by the firm against the larger public.

²⁵Madhuryya Arindam (2013); "The Independent Director: Has It Been Indianised Enough?", NUJS Law Review, at p:232. She argues that



3.7. The mandate of the independent observers is to conduct their fact finding missions, behaving as potential consumers or customers to the firm. They shall have no policing powers nor are they permitted to conduct espionage tactics of violating into the privacy of the firms. However any act conducted in good faith and in due furtherance of their obligations under Law, shall be indemnified and no action shall be taken against them for such activities within the scope their powers and functions. The independent observers are also not to be called upon to any court of law, for the purposes of examination or evidences. Their names shall also not be disclosed at any point of time whether during the case proceedings or even after the termination of case proceedings.

3.8. Upon detailed scrutiny and verification of multiple observer reports, the Consumer Protection Council shall decide upon the liability of the firm or if necessary commit the case to session's court or other such courts the government may by law specify.

3.9. However these reports of fact finding observers, as practiced in International Courts cannot be considered as able to or tasked to make authoritative or binding judicial declarations. Its findings cannot therefore be compared to those made by courts or tribunals. Also, Independent Observers do not, and cannot be expected to apply the same degree of scrutiny or standard of certainty and it follows that, if the findings of formal criminal processes subsequently contradict them, this does not of itself invalidate the value or justification of multiple reports. Their reports are mainly dealing with monitoring and reporting, they are only independent sources of information and a precursor for formal judicial or reparatory action.

CONCLUSION

As far as laws regarding frauds in trade practice are concerned, it is high time in India, that the lawmakers must recognise that deception is not anymore considered as a necessary evil for effective functioning of business operations. No law concerning commercial frauds can be softer for that reason, the persons who committing such frauds base their decision to commit fraud on the incentive-compatibility given the material outcomes whether it is profit or punishment. No country on the globe which preaches free enterprise and ease of business, this day, is advocating soft law methods on regulating business regimes. India, being the largest market with maximum number of consumers cannot anymore afford to tolerate large scale deception as it affects the reputation of the markets, and economy. Even the International Organisations had started to recognise for having increased deterrence levels using more of hard laws. India needs to adapt and evolve.

Also, we can't anymore solely rely upon foreign modelled penal codes, criminal or civil procedures which can address only to situations the foreign nations have confronted with. India being a country, who has largely adopted the British system, inherently lacks an indigenous legal system which can cater to situations (geo-political/economic and social situations) of Indian sub-continent. The Indian legal system, for more than five decades has managed to fill this gap with its judiciary's efficient interference. However, the judicial law has got serious handicap that it works more on substantive, subjective and individualistic levels. Meanwhile, the law enforcement agencies who are supposed to act at large scales fall short of efficiency levels. The commission identifies that to rectify this malfunctioning the executive organs of our nation have to be empowered with new mechanisms and legal supports.

A handwritten signature in black ink, appearing to read "Abdul", is positioned below the conclusion text.

More importantly, India is a young country relatively in the case of victim jurisprudence. The effective restoration and restitution is always a problem in Indian legal system. Basically, its archaic civil execution procedures are to be blamed. Therefore, the commission recommends at least in the case of commercial frauds, a better, speedy and prompt compensatory regime.

The commission hopes, by its recommendations at three levels as detailed in the above chapters, had contributed to these calls of the justice.

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NOTES BY DR.K.M.CHANDRASEKHARAN PILLAI

Having regard to the circumstances in which the transactions took place it has to be appreciated that all parties – not only the fake company's representatives – but also those who directly or indirectly provided to the perpetrators situations to instate confidence are in any way or other responsible for what has happened as a result of the solar scam. It is astonishing that the Government agencies like ANERT could not be of any help to the gullible public who became victims of the scam. The various outlets established or opened by the perpetrators came to be inaugurated or opened by political big wigs who thereby showed acceptance of the activities of the perpetrators. Thus the action or inaction on the part of the Government and its officials contributed to the scam.

When one examines the crime committed by the perpetrators one could find the ingredient of fraud/cheating, if, on the other side, one looks at scenerio one may get the impression that the perpetrators did have the belief that they could materialize their scheme if everything went smoothly. However, this view may not hold water when one comes across the fact that the perpetrators impersonated themselves and misrepresented facts to induce others to shell out money. In this sense the perpetrators could be described as fraudsters. The influential people like MLAs / M.Ps./ and Ministers had been acting as abettors though not intentionally. Being at the team of affairs in Government they owe a duty to act responsibly and if they fail



in this duty and create situations to help the fraudsters they will have to beat not only the moral responsibility but also the legal duty not to act irresponsibly.

In these circumstances, we may have to think of a separate legislation dealing with the scam in all its aspects including investigation, trial evidence, sentencing etc. Perhaps it may become necessary for us to spell out special rules of evidence, new modes of punishment etc.

Mass Fraud (Prevention) Act, 2016

An Act to prevent Fraud on a mass level committed by some dishonest people on public. Be it enacted in the th year of Republic by Legislative Assembly of the State of Kerala.

- i) It shall come into force on the date of its publication in the Gazette.
- 2) a) In this Act fraud means dishonestly making false representation Intending to make gain to oneself or cause loss to another.
- b) A false representation is an untrue or misleading representation made by a person knowing it to be false/untrue at the time of making it.
- c) A 'representation' means representation as to fact or law expressly or impliedly made.
- d) Misrepresentation includes willful and dishonest non-disclosure of required information which one is under a duty by virtue of his position.



- e) 'Government' means Government of the State of Kerala.
 - f) Mass Fraud means fraud committed at a mass level.
- 3) Abettors of mass fraud mean those who knowingly or unknowingly about the fraudsters by associating themselves in their activities giving an impression of Governmental recognition instilling a false confidence in the public.
- 4) The perpetrators of mass fraud shall be punished with imprisonment for 7 years or with fine of 5 lakhs of rupees or with both.
- 5) The abettors who facilitate the commission of mass fraud by their association with the fraudsters shall be punished with 5 years of imprisonment or with a fine of Rs.3 lakhs or with both.
- 6) In addition to the punishment mentioned in S 5 the fraudsters properties shall be seized and forfeited?
- 7) There shall be a special wing in the Directorate of Vigilance to investigate and conduct prosecution against the fraudsters.
- 8) Mass frauds shall be tried by a special judge of the rank of Sessions Judge.

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Prof. (Dr.) Rose Varghese
LL.M., M.Phil., Ph.D.
Vice-Chancellor
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To

Sri. P.S. Divakaran,
Secretary,
Sel. Grade District Judge (Retd.),
Solar Scam Inquiry Commission,
8th Floor, Housing Board Building,
Panampilly Nagar, Ernakulam,
Kochi- 682 036.

Sir,

Sub: Solar Scam Inquiry Commission- Request for opinion / view on a legal issue of Public Importance- reg.

Ref: Letter No. SSC/2/2015 dated 01/06/2016.

Received the re- sent office letter, referred to above, on June 03, 2016. Besides scheduled Meetings, the University Examinations and spot evaluation by teachers were going on until June 17, 2016.

I have sought the opinion of three colleagues and am enclosing the same.

The opinion sought is on point (v) as to the adequacy of the existing laws and arrangements to prevent cheating and deception of the public extensively by giving false promises and to take action against these and suggestions if any.

1. The transactions under scan are basically agreements between the persons involved and various members of the public. The allegation is that the accused persons have cheated the members of the public at large as they willfully kept themselves away from discharging the liability arising out of the agreement.

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This in general terms amounts to cheating which is dealt with in Section 415 of the Indian Penal Code, 1860. The provision in the IPC is self-contained and comprehensive. Though the provision was enacted to contain individual complaints of cheating, it does not distinguish stray instances of cheating and mass-scale ones. The same provision can be invoked to deal with allegations of cheating the public also, subject however to the condition that there has to be individual complaints filed by the affected individuals.

The persons allegedly cheated (as is known from the newspapers) are not poor or illiterate but business magnets. Hence, there is no point in raising the allegation that transactions were entered into under coercion, undue influence or threat. Nor can there be a point in alleging that they were with the acquiescence of those in power.

But, of late, one finds that there is an increase in the number of cases of cheating on a large scale such as in Chitty or Land Transactions or those relating to Flat Constructions, where many illiterate and poor people are cheated losing money and/or property. In many cases, the cheated persons are left without any remedy and the swindlers granted impunity. In such a context, it may not be out of place to deal with such cases by enacting a separate Law, bringing such mass-scale transactions under a legal scanner making such persons specifically liable under civil and criminal laws for breach of terms of such transactions. Such a venture may be welcome from the social point of view.

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- H. Cheating and deception of people at large are dealt with under different laws, criminal as well as civil.

Under Criminal Laws, for the perpetrators, the conventional provisions are adequate provided the offences alleged are appropriately investigated, credible evidence collected to bring out the truth and the trial is conducted in a fair environment, not swayed by public opinion either way. For the genuine and so called victims (even those who claim themselves to be 'victims' after learning that the intended not so genuine business opportunities have been a mirage), business interests/losses are to be remedied under civil law if and when proved. However, if the evidence is forthcoming of ingredients of criminal provisions being satisfied, the same may be initiated by the State under the existing provisions. If the 'so called victims' are co-conspirators to the scheme, they ought to be proceeded against too.

The alleged issue here is how the Offices of elected representatives have been used as reference points to gain greater acceptability in business circles and utilise the same for enhancing business interests, with an intention to cheat and deceive. The personal Staff are political appointments with absolutely no background check and accountability and, knowing that their appointments generally last the tenure of the current Government, these individuals try to make the most of the 'golden opportunity' and this is with respect to whichever Government is in power.

The laws are, in my opinion, more than adequate to deal with similar situations. The Offices of the elected representatives ought to maintain a higher degree of integrity. The Staff appointed should adhere to highest standards of probity

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and, if they do not, should be visited with a great level of punishments for the proved wrongdoings. Vicariously, the elected representatives ought to be made answerable equally, and more so, as they are the ones who create the opportunity for these unscrupulous individuals. However, there can be no vicarious liability for a crime.

These are matters of policy to be decided by the Government in maintaining the credibility of these high Offices of elected representatives. For the ordinary mortals the current law is more than sufficient if implemented in letter and spirit.

- III. Since any measure to prevent cheating and deception of the public extensively by giving false promises must also take into account all legitimate business activity where private individuals must offer and accept promises to other private individuals without any law that hinders such activity, all that can be done is, to prevent persons with a proven track record of deception, from entering into any commercial activity for all times or for specific periods. The law (IPC and CrPC) may be amended to this extent. It must also be borne in mind that legitimate business failures should never be treated as 'cheating and deception of the public'.

From the peculiar circumstances of the present case, it may also be a concern that private individuals allegedly indulging in deceptive activity claimed access to politicians in power to show their ability to facilitate deals. This is not something that legislation can prevent. Only an alert intelligence wing can caution the political executive from associating with such individuals. The existing laws on corruption are adequate to deal with the political figures and

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the administrative personnel who are found to indulge in corrupt practices. For speedy disposal of cases to ensure a deterrent effect, special Courts and fast track procedures may be adopted.

A credit rating system may be mooted as mandatory for individuals undertaking business activity beyond a threshold limit so that the gullible members of the public will be able to judge for themselves the ability of the promisor to execute any given project. A threshold limit is required to prevent all sundry legitimate commercial activity from being burdened with licence raj.

Deceptive and fraudulent practices resulting in loss of credibility for the industry itself may be treated to be a serious matter for concern and punishment.

However, the most important fact with respect to any 'Scam' for that matter is that the allegations and accusations are mostly politically motivated. Any and every ruling party faces such allegations mostly prompted by the Opposition. This has been going on in the State of Kerala and for that matter all over India, for ages. Even before it is proved as all Criminal Cases have to be proved beyond all reasonable doubt, without creating even an iota of doubt in the mind of the judge, the Media will flash the matter as if it is totally proved and create a prejudice in the mind of the public so that the voters will be influenced against the ruling party.

Hence, in matters relating to Scams, the most important law that has to be enacted is that if false allegations are proved to be false or in the contrary, if there is no evidence to prove the allegation, those who concoct false allegations



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should be held liable for their irresponsible behaviour, for misleading the public and for defaming the ruling party. A deterrent punishment under Criminal Laws should be provided to control this kind of tactic of overthrowing a Government. This opinion is applicable to any Government, as this is an apolitical opinion being expressed to be applied to any of the Parties at fault. This is a very serious matter to be taken into account with respect to any scam against any Government in power.

Defamation is a crime but it is not being used in such cases. Those who make allegations try to creep into exceptions of defamation, ie. justification by truth or fair comment.

Again, there is Vicarious Liability in tortious and other Civil matters but not in Crimes.

So as to not to take an opinionated and subjective approach, I have tried to be objective by adding the viewpoints of three colleagues. This is one area where the judiciary has to exercise a lot of caution because of the innumerable cases of fabricated and misleading information to target persons with a motive of tarnishing the image of persons in power.

Apologising for the delay, as we could not give a hasty response to a matter of great significance. Moreover, as mentioned earlier, examinations and time-bound evaluations were going on.



With Regards,



Vice-Chancellor

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Commission

ପ୍ରମାଣିତ ହେଲା କି ଏହା କାହାର ଦେଖିଲୁ ନାହିଁ । ଏହାର ଅଧିକାରୀ କିମ୍ବା ଏହାର କାହାର ଦେଖିଲୁ ନାହିଁ । ଏହାର ଅଧିକାରୀ କିମ୍ବା ଏହାର କାହାର ଦେଖିଲୁ ନାହିଁ । ଏହାର ଅଧିକାରୀ କିମ୍ବା ଏହାର କାହାର ଦେଖିଲୁ ନାହିଁ ।

കേരള പ്രകാശന (Of Cheating)

415. പാരിക്കേന്ത്

ପ୍ରକାଶକ ମେଳେ

(a) தான் ஸைவூல் ஸஸ்டீரியோஸ் இருக்கிறதாலும் அதற்குபொதுமைக்கூடிய கால்டி Z லை மூன்பு நிறுஷலை வடிவிலைக்கூடு (Decolives) கணம் கடித. கால் பெள். சுகங்குலங்கள் உட்புகூலிகளை கருத ஸாயானதை நடவடிக்கையை கொண்டு கொண்டு கொண்டு பாதுபொருத்துயான் Z லை எவ்விப்பிழைக்கூடு வடிவிடுகிறது. A வத்திக்குருதாகும் கால்டி.

(b) கூரு வஸ்*கருவினங்கள் வடித் தாழ்த் தாங்குமிகு அதாவது கூரு காத்து. சுத் வஸ்*ல் கொடு பொசிஸ்*ஸ்டிரீட் உத்துப்பாக்கங்கள் (Manufacturer) உத்துப்பாக்கங்களிலைக்கால்டி வடிவிலைக்கால்டி A, காலபுத்திரங்கூடு Z லை வடிவிலைக்கால்டி கூரு வஸ்*கருவினங்களைக் கொடுக்கின்றன. சுத் வஸ்*கருவினங்களைக் கொடுக்கின்றன. கால்டி Z லை எவ்விப்பிழைக்கூடு வடிவிடுகிறது. A வத்திக்குருதாகும் கால்டி.

(c) தான் ஸைவூல் ஸஸ்டீரியோஸ் இருக்கிறதாலும் அதற்குபொதுமைக்கூடிய கால்டி Z லை மூன்பு கொடுக்கூடு வடிவிடுகிறது. A வத்திக்குருதாகும் கால்டி.

(d) தான் ஸைவூல் ஸஸ்டீரியோஸ் இருக்கிறதாலும் அதற்குபொதுமைக்கூடிய கால்டி Z லை மூன்பு கொடுக்கூடு வடிவிடுகிறது. A வத்திக்குருதாகும் கால்டி.

(e) தான் ஸைவூல் ஸஸ்டீரியோஸ் இருக்கிறதாலும் அதற்குபொதுமைக்கூடிய கால்டி Z லை மூன்பு கொடுக்கூடு வடிவிடுகிறது. A வத்திக்குருதாகும் கால்டி.

ஒரு முறை கட்டியதே நிலைமை என்று அழைகின்ற போது வீரர்கள் தான் அதை கட்டி வாட்டுவதை அழைகின்றன. அதை வாட்டுவதை அழைகின்ற போது வீரர்கள் தான் அதை கட்டி வாட்டுவதை அழைகின்றன. அதை வாட்டுவதை அழைகின்ற போது வீரர்கள் தான் அதை கட்டி வாட்டுவதை அழைகின்றன.

423. പെട്ടിമാല്ലിൽരഞ്ജുറിച്ചുകളവും ക്രപസ്‌തുലവും അടക്കാം മ. 41-0. വകുപ്പിന്റെസാമീറ്റർ കുട്ടമായ പ്രക്രിയ വിവരങ്ങൾ അണിസ്‌റ്റേറ്റുവായി കണക്കുകളും അഥവാ നടപ്പാക്കുവാനുള്ള സംഭവമില്ല. ഒരു ക്രപസ്‌തുലവും തന്നെ കുട്ടമായ പ്രക്രിയയും കണക്കുകളും അണിസ്‌റ്റേറ്റുവാനുള്ള സംഭവമില്ല.

५८०

ଓଡ଼ିଆରେତ୍ତମାନୀ (Of Mischief)

- ପାଇରେ କିମ୍ବା 2 — ନିରାକାର ଲୁଗନ ଦୟାବୀଙ୍କରଣ ହେବା, ଏହାରେ କିମ୍ବା
କିମ୍ବା 3, କର୍ତ୍ତବ୍ୟକୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ
କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ
କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ କାହାରୁ

ଓଡ଼ିଆରେତ୍ତମାନୀ (Of Mischief)

କୁମାର ପାତ୍ରଙ୍କିଳୀ ଏବଂ ଉଦ୍‌ଧରଣିତ କାନ୍ତି ପାତ୍ରଙ୍କିଳୀ ଏବଂ
କାନ୍ତି ପାତ୍ରଙ୍କିଳୀ ଏବଂ ଉଦ୍‌ଧରଣିତ କାନ୍ତି ପାତ୍ରଙ୍କିଳୀ ଏବଂ
କାନ୍ତି ପାତ୍ରଙ୍କିଳୀ ଏବଂ ଉଦ୍‌ଧରଣିତ କାନ୍ତି ପାତ୍ରଙ୍କିଳୀ ଏବଂ
କାନ୍ତି ପାତ୍ରଙ୍କିଳୀ ଏବଂ ଉଦ୍‌ଧରଣିତ କାନ୍ତି ପାତ୍ରଙ୍କିଳୀ

ପିଲାତ୍ମକ ଯେତେବେଳେ ଏହାରେ ଦେଖିଲୁ କିମ୍ବା କିମ୍ବା କିମ୍ବା କିମ୍ବା କିମ୍ବା

“କୁଳାର୍ଥିରେ ପାଦମଣିରେ ପାଦମଣିରେ ପାଦମଣିରେ ପାଦମଣିରେ

ରୋକମ୍ବୋଡ୍ ଯାହିମାନପୁରିକାଳରେ

କାହାର ପାଇଁ କାହାର ପାଇଁ କାହାର ପାଇଁ କାହାର ପାଇଁ କାହାର ପାଇଁ

‘మాటలు ప్రాణికి విషం కావచిత్తం ఉన్నాయి’ అన్నాడు. అందులో మాటలు ప్రాణికి విషం కావచిత్తం ఉన్నాయి’ అన్నాడు.

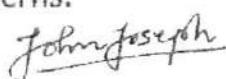
ମୁଖ୍ୟମନ୍ତ୍ରୀଙ୍କ ଦେଇଲି ସାହିତ୍ୟର ପରିଵାରରେ ବ୍ୟାପାରରେ ଆଧୁନିକ

କେଣ୍ଟାର୍ଜି ପରିଯାନ କାର୍ଗରୀ କେନ୍ଦ୍ରରେଙ୍କୁ (Irrigation Works) ଲୋକଙ୍କ ବ୍ୟାଚାରୀ କରାଯାଇଛନ୍ତି ।

କାହିଁ କାହିଁ କାହିଁ କାହିଁ କାହିଁ କାହିଁ କାହିଁ କାହିଁ କାହିଁ କାହିଁ

Views on Item Nos. 5 & 6 of the Terms of Reference

1. As the general public reposes confidence more in registered companies than in other forms of business organizations, persons who intend to cheat the public by means of their business get their business concerns registered as companies. In view of this, the Hon'ble Commission may recommend that the offices of the Registrar of Companies shall have a scheme or a programme to scrutinise and investigate the activities of the companies periodically to find out whether there are tendencies to cheat the public in any manner and also as to whether the company adheres to fair practices of trade, needless to say, with a view to prohibit illegal practices of the companies. This necessitates amendment of the Companies Act. The Hon'ble Commission may consider the possibility of making such a recommendation also.
2. The Consumer Protection Act, 1986 provides that a government can file complaints before the Consumer Fora on behalf of the public and secure orders of public nature to protect the interests of consumers. In the cases of cheating and deception committed by business establishments, an appropriate provision enabling the government to do the needful to protect the interests of the public may be made in either criminal legislations or such a special provision may be made in the Consumer Protection Act. This also may warrant amendment to the legislations. The Hon'ble Commission may consider the possibility of making such a recommendation.
3. The Kerala legislature has enacted Kerala Protection of Investment Deposit Act 2013 and the same has obtained President's approval but the law seems to remain on paper without being enforced. The Hon'ble Commission may consider the possibility of making the suggestion that the aforementioned statute is enforced with full vigour and is publicised for the benefit of the common consumer.
4. In order to prevent corruption, the government proposes to initiate a strong public movement against corruption based on a promise included in the LDF Election Manifesto placed before the people prior to the last Assembly elections. The Hon'ble Commission may consider the possibility of making a suggestion to the government to initiate a similar strong public movement against cheating and deception of the public by business concerns.

5. A new economic order is proposed by a group of socio-political intelligentia of Pune and the same is named as 'Arthakranthi'. Its website is <http://www.arthakranti.org/>. It puts forth an economic order which is free of fake currency, black money and any type of economic crimes. The people will be able to lead a truly ethical life without being led astray by financial allurements. The Hon'ble Commission may consider the possibility of making a recommendation to the government to adopt arthakranti.
6. In relation to reference no. 6, the governments should own the responsibility if the public is subjected to cheating and deception through organized business crimes and should compensate the members of the public who have suffered financial loss. It is for the government to look for ways and means to recover such amounts from those who are responsible for organized crimes. In other words, compensation to victims shall be automatic and recovery and such things shall be the duty of the government. The Hon'ble Commission may consider the possibility of making such a recommendation to enact a law providing for the above.
7. In the Solar Scam, cheating and deception of the public were abetted by political leaders in the sense that the public was made to believe that the business of the perpetrators of the crime had governmental support and patronage. Taking the same into account, in order to prevent such tendencies in future on the part of the political leaders, the Hon'ble Commission may consider the possibility of making a recommendation to the effect that the Representation of People's Act may be amended to add such abetment as offences that may disqualify MLAs, MPs etc.

Dated this the 18th day of October, 2016



John Joseph
John Joseph
F Party

BEFORE THE HON'BLE JUSTICE. G. SIVARAJAN (JUDICIAL
COMMISSION FOR SOLAR SCAM ENQUIRY), ERNAKULAM

K. Rajan

: H' Party

**STATEMENT FILED BY THE H' PARTY REGARDING VIEWS OF ITEM
Nos (V) AND (VI)**

1. It is submitted that this Hon'ble Commission has directed the H Party to give suggestion regarding the item Nos (v) and (vi).

"Whether the existing laws and arrangements are adequate to prevent cheating and deception of the public extensively by giving false promise and to take action against these. If not, what are the suggestions for taking stringent laws and for taking other appropriate measures to eliminate such cheating and deception".

The suggestions of the H Party regarding the same is that even though sufficient laws are available in statutes including offence U/s 406, 420 of IPC and offence U/s Binami Transactions (Prohibitions) Act etc, there are no sufficient laws in order to take appropriate measures to eliminate such cheating and false promises. Stringent laws are necessary in order to prevent such cheating in future.

2. "Suggestions to get back the amount lost to those who subjected to financial scams as referred above".

It is submitted that the view of the H Party regarding the same is that at present there is no law enabling the government to repossess the amount lost to the private parties in huge scams. A new law has to be implemented enabling the government to attach and re possess the properties and entire amount of the persons who had done cheating and after asserting the claims made by the peoples/affected persons, the same has to be refunded/returned to the aggrieved persons from the assets of the persons who had done cheating. That is the only mode to prevent financial scams in future.

Dated this the 18th day of October, 2016.

S. Renjith
Advocate for the H'Party

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Note on clause V&VI Submitted by B. Vinod, Senior Government Pleader.

The opinion expressed hereunder are my personal opinion given to assist this Hon'ble Commission and not given in consultation with the Government of Kerala or any other public servant.

I. Survey of present laws

- A. Section 420 & 408 IPC
- B. Competition Act
- C. Section 25 of the IPC defines "Fraudulently". It itself shows that legal Pandits are unable to define fraud.

II. Challenges

Fraud takes different colour and opportunity. The nature of fraud also advances with the complicity of the trade of business activity Rules/practices/Records & Trusts develops customarily in trades and other business activities. At Police investigating the issue is seldom acquitted with the process of the trade or business activities. Therefore, confusion can be breathed into the facts sought to be proved in criminal trial. Therefore, the Evidence Act need to have presumptions that favour the normal conduct of such business activity more over experts from those specified feels are to be made investigators of such crime. Eg:- 1) banking frauds, 2) bit money evolved in IT industry, 3) share market frauds, 4) real Estate frauds 5) frauds by drugs pharmaceuticals company, food production companies, company account products, taxation frauds.

Multilevel Marketing to be restricted

Advertisements to be restricted

Political lobby and accepting funds or benefits from private and other Governmental agencies to be made unlawful.

Law enforcement for price Chits, gaming, to be enforced effectively.

1) In investigation

- A) Absence of complainants - in black mail w. r.t. sexual conduct
 - Corrupt conduct
- B) Absence of Whistle blowing protection
- C) Proceeds of fraud are often lavished or fraudulently concealed
- D) Bail is the rule -
- E) Limited to securing conviction- redressal of victim is often forgotten.

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2) Seizure of wrongfully gained proceeds of fraud must necessarily be attempted. Victims complaint if redressed through investigation victims right to compound the offence is large scale fraud is to be restricted or such compounding in admitted in similar cases against the Principal accused.

III. Procedure of trial

In extortion cases to be compulsorily made in-camera . Investigation also must be entrusted to un-uniformed police personal to maintain secrecy. Victims identity must not be disclosed by media like in case of prosecutrix in rape cases. Special Courts for trial can be thought off.

IV. Classification of Fraud

a. 1st degree

- i. Claiming of Subsidy
 - Suppression of real income
 - Real age
 - Caste benefits
- ii. nepotism
 - favouritism with respect to Government largesse

b. 2nd degree

- 1. Promise to marry and evading marriage after consummating relationship
- 2. Capitation fee
- 3. Misrepresentation of qualification – to attain or attempt to obtain jobs
- 4. Misbranding - by advertizing
 - Brand ambassadors
 - Fixing unrealistic maximum retail price
- 5. Forging of documents to gain benefits (465)
- 6. Artistic & other professional frauds
 - a. Selling misbranded art works (phlagerism) *plagiarism*

hj

Q.J

7. Holding out and passing off³⁴ and other willful violation of patent and trade marks

c. 3rd degree

- a. Company frauds
- b. Accounts frauds
- c. Forgers of valuable security
- d. Public at large is cheated for small wrongful gain more than a prescribed limit
Eg: call drops
- e. Fraud mafia
- f. black mail and extortion
- g. Hospitals
- h. Drug & insurance

V. POLITICAL RAMIFICATION

- a. Public servants conduct Rule to be extended to people having influence in the corridors of power.
- b. All office bearers of political parties must necessarily submit IT returns. Inquisitorial system for tax evasion for political office bearers.
- c. Ministers and public servants if appearing in advertisements of Private companies to be deemed as directors with actual engagement in the firm and can be proceeded under civil, Criminal and revenue laws that is breached by the firm.
- d. If without consent of a person is acquaintance with a fraudulent firm is utilised by the fraudsters immediately, upon knowledge of such fact people such persons must be able to provide complaints that would be available in public domain and incorporated by the respective Registrars

VI. POLICE REFORMS .

- 1) Police service Rules must be made to bring police under rule of law rather than the rule of Political Executives
- 2) Filing of complaint to be made in public domain with time at the option of the complainant. Only one set of numbers for FIS must be available for the entire state. Concerned police officers to evaluate the complaints and register FIR in appropriate cases.
- 3) Self speaking videos to be entertained as complaints.

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- 4) Police to be divided into different Departments rather than multiple units under one Police Chief
- 5) Inter transferability of police to be avoided.
- 6) Inefficient police personal must be offered suitable Government jobs

VII. Fraud prevention

- a. Whistle blowing and protection to be extended to private frauds.
- b. Proper implementation of Competition Act.
- c. Price regulatory authority to be in state which has the power to call for the ingredients and design of production of the product manufactured or goods imported to India.

VIII. Fraud detection

IX. Prevention of escalation of consequences.

1. Fraud redressal
2. Fraud punishment
3. Future injunction from conducting the same business activity.
4. Ill gotten wealth of fraudsters whether transferred or not must be confiscated by administrative action to be distributed by the dissolution Tribunals.
5. Convicted cheats must be named and shamed. Crime records bureau to go digital with photographs and personal and biometric data that can be accessed by Registrar of Company, Societies and Firms to deny registration
6. Convicts of in large scale fraud must be deemed to be undischarged insolvents.
7. Negotiable instruments to bear only biometric signature
8. Negotiable instruments dishonor data is to be made available .
9. Transactions of companies, Partnerships, LLP and Societies or any other body of associations above thousand rupees to be routed through bank.
10. Customer data base to be revealed in an investigation.
11. Large scale fraud on public - to be made non compoundable, special tribunal
12. Prevention/restriction of multiple bank accounts and linking of account numbers with ITC

100% /

13. Violating regulations to further business after assessing the quantum of fine and financial prospects to be deemed as fraud.
14. Delaying tactics of repayment through prolonging litigations

X. Corruption Laws

Corruption can be mathematically equated as

$$C = (D - A) - a$$

C means Corruption

D means Discretion

A means Accountability

'a' means audit

In order to reduce corruption discretion must be restricted and accountability increased. Restriction of discretion can be furthered by giving the power to an association of persons rather than individuals. Accountability to different organizations can be made applicable rather than a single organization. Audits including social audits would deter discretion being used unlawfully and for illegal gains.

- a. Public servants /politicians/to extend to people who are in the corridors of power.
- b. Annual declaration of wealth and excessive annual declaration of wealth to be verified by superior officers.

XI. Fraud is intentional

Intention to deceive is acquired in the mind of a person.

When two or more persons join together to commit a fraud necessarily their minds have met to commit the act illegally, police will have to charge Section 120B IPC. Aid of Section 10 of the Evidence Act is to be taken for the purpose of charging the accused or else in large scale fraud valuable judicial time will be lost in trying different cases in different courts more over accused also will not be able to appear in all courts for proceedings to commence and thereby justice would be delayed. Human rights of the accused is also violated as they have to run from courts to courts on all working days preventing them from earning any other livelihood.

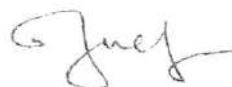
Tax evasion by body corporate is to be treated as fraud and all directors to be sentenced. Deeming provision to be incorporated.

Once money or valuable security is shown to have passed from the victim dishonest intention may be presumed unless rebutted.

XII. Legalizing certain consequences rather than declaring it to be ab initio void .

- 1) Deeds registered in counterfeit stamp papers when executants are innocent of the fraud.

Dated this the 5th day of October 2016



B. Vinod

Senior Government Pleader



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BEFORE THE HON'BLE SOLAR SCAM INQUIRY COMMISSION

205/2016

14 OCT 2016

✓

WRITTEN SUBMISSION ON TERMS OF REFERENCE NOS.V & VI
SUBMITTED ON 18.10.2016 BY THE ADVOCATE FOR THE COMMISSION

28 16
✓ ✓
✓

C.HARIKUMAR
ADVOCATE FOR THE COMMISSION

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BEFORE THE HON'BLE SOLAR SCAM INQUIRY COMMISSION

Written Submission on Terms of Reference Nos.v & vi submitted on
18.10.2016 by the Advocate for the Commission

Fraud- Preventive + Punitive Measures

Lack of transparency, accountability and opportunity for personal gain has fostered an environment in which fraud and corruption thrives. The institutions (such as a functioning civil service) are in their infancy in the country. This has created a informal economy along with unofficial process for 'getting things done' which can increase the risk of fraud and corruption.

Balanced against there increased risks, the potential rewards are high as our market has significant and growing potential customers and natural resources. In addition governments have now taken steps to make them more attractive to investors and trading partners. India now stands as 10th largest economy and as such in a very attractive target for fraudsters also. In recent years increasing focus on success of the Indian economy has been matched by a growing awareness of fraud, bribery and corruption cases in the country and the State of Kerala. Widespread coverage of frauds by the media by total 4 U Proprietor Sabarinath and the likes of Kavitha Pillai and the Solar scam have highlighted the risk of fraud and corruption in Kerala.

Legislative Response

Public frustration of corruption including Satyam, 2 G licence scandal, Coal Allocation Scam sparked protests. Supported by legislation such as Right to Information Act (RTI) and Public Internal Litigation Anti – Corruption campaigners have been given the tools to draw focus on financial abuse.

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A number of measures aimed at advancing corporate governance issues have been brought out by the Government. The Companies Act 2013 defines fraud in relation to affairs of the company or any body corporate to include any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner with intent to deceive to gain undue advantage from or to injure the interests of the company or its shareholders or any other persons whether or not there is wrongful gain or wrongful loss. It also provides a minimum mandatory punishment of 3 years imprisonment when the fraud involves public interest.

Sec 212 provides for investigation to the affairs of the company by the serious fraud investigation including in public interest. After investigation submit a report to the Special court to initiate prosecution against any person directly or indirectly connected with the affairs of the company. The report so filed shall be treated as a report filed by the Police officer under the Cr.P.C.

Sec. 245 provides for class action by members, depositors for any class of them to file an application before the Tribunal on behalf of the members of depositors seeking orders including damages of compensation against the firm as well as partners including the action by any depositors as may be prescribed.

Social Landscape

In India corruption is considered to be upstream of Secretary level and is to be prevented more stringently. In a fraud case a number of public sector banks were accused of receiving illicit payments from Real Estate Developers to sanction large scale loans overriding mandatory conditions for approvals. A common theme in the fraud cases is that of

fraudsters taking advantage of weakness in information systems- where information is not monitored or shared and data is not consolidated.

The fraudsters unlike earlier times are young people. In the state having a relatively young population this is reflected in the age profile of fraudsters. Thus there is growing risk that due to the technological and social changes the younger employees will have access to sensitive information and their ability to impact the organization also thereby increases. Some recent examples for novel fraud schemes illustrate the way in which changes in the society are being realized had youngsters in the forefront.

- Fraudsters posing as representatives of well known multinational companies making potential recruits invest in the company. This type of fraud is particularly common in sectors where the competition for jobs is intense.
- Fraudsters luring investors by assuring hundred percent returns for the amount invested as in the case of fraud committed by Total 4 U proprietor Sabarinath.
- Fraudsters advertising their influence and thereby promising undue advantage from the administration.

The growth opportunities for investment are often constrained by regulation and bureaucracy. The world bank ranked India 132nd out of 183 economies for doing ease of business,¹⁸¹ on dealing with construction permits and 182nd for enforcing contracts. The combination of a market with significant investment potential and high level of bureaucracy has resulted in some persons and organizations seeking to bypass accelerate or influence decisions including engaging directly or indirectly in acts of bribery and corruption.



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The way forward Ratification by the Indian Government of the United Nation Convention Against Corruption 2004 (UNCAC) in the year 2012 which aims to create stricter regulation to control bribery and corruption is a step in checking fraud also.

In the case of several projects licenses and subsidies are an integral part but the Government is not the sole stake holder. In other words the private participation in such an environment becomes indispensable and this leads a lot of room for 'trading in influence' pointing to the need for systemic reform being promoted by the UN across the world: the enactment of or adoption of measures to establish criminal offenses to prevent and fight corruption and fraud.

The preventive measures of UNCAC includes

- Article 8 Codes of Conduct for Public Officials
 1. To fight corruption, each Government is to promote inter alia integrity, honesty and responsibility among its public officials in accordance with fundamental principles of its legal system. In particular to apply within its own institutional system codes of standards of conduct of correct, honourable and proper performance of public functions.
 2.
 3. To establish measures to facilitate the reporting by public officials of acts of corruption to appropriate authorities when such acts come to their notice in the performance of their functions.
- Article 12 dealing with Private Sector
 1. To take measures to prevent corruption involving private sector by enhancing accounting and auditing standards and providing dissuasive

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civil, criminal and administrative penalties for failure to comply with such measures including

2. Measures including

a to achieve corporation between law enforcement and private entities.

b.....

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d. preventing misuse of procedures regulating private entities including procedures regarding 'subsidies and licences granted by public authorities for commercial activities'.

Here ANERT can be similarly provided with procedures to inform and cooperate with the local police as soon as any suspicious activities comes to its notice. Similarly stricter enforcement procedures in disbursing subsidies can also be necessitated.

Chapter 3 relates to criminalization and law enforcement

- Article 18 Trading in Influence.

Whoever knowingly solicits by being a public servant or any person directly or indirectly of an undue advantage for himself or for another person in order that the public servant or the person alone his or her real or supposed influence with aview to obtaining from an administration or public servant an undue advantage.

For the purpose of this section a public or government servant shall have the same meaning as defined under the Prevention of Corruption Act.

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Provided that knowledge may be inferred from objective factual circumstances.

Provided also that it shall not be necessary for the offence to result in damage or harm to state property.

Steps shall be taken in order to ensure that discretionary powers of investigating agency relating to the prosecution of any of the offences under the Mass Fraud Act are exercised to maximize the effectiveness of the law enforcement measures in respect of offences of mass fraud with due regard to deter the commission of such offences. For this purpose case has to be taken in appropriate places the conspirators should be brought within the purview of investigation by the aid of Sec. 120 B of the Indian Penal Code.

Dated this the 18th day of October 2016

C.HARIKUMAR
Advocate



Recommendations

The Commission has already found that the Chief Minister Sri. Oommen Chandy and through him his personal staff Tenny Joppan, Jikkumon Jacob, gunman Salimraj and his aid at Delhi, all had assisted Team Solar accused Saritha S.Nair and her Company in enabling them to cheat their customers. The Commission has also found that the then Home and Vigilance Minister Sri.Thiruvanchoor Radhakrishnan made all efforts from his part to ensure that the Chief Minister Sri.Oommen Chandy is extricated from criminal liability through police officers under him. Other allegations made against Sri. Thiruvanchoor Radhakrishnan is not supported by any evidence.

The next part is the role of Power Minister Sri.Aryadan Mohammed. It is found, as in the case of C.M Sri.Oommen Chandy, he had assisted Team Solar Company in whatever manner possible.

Coming to the SIT, the Commission found that the SIT has strained much by dubious methods to



extricate the Chief Minister from criminal liability. The SIT also did not probe into the involvement of other Ministers, Government officers, Central Minister, MLA's and Police Officers in the investigation of the solar cases with reference to the CDRs and other evidence on record.

The Commission has also found that all the Ministers who inaugurated the functions of Team Solar company, the MLA's who recommended Saritha Nair's Team Solar Company for installing solar street lights in their constituencies and also in settling their criminal cases and Sri. Thampannoor Ravi, Ex.MLA, Sri.Benny Behnan MLA etc. had worked for saving the C.M Sri.Oommen Chandy.

The persons mentioned in Saritha S.Nair's letter dated 19-07-2013 based on evidence found that they had contacts with Saritha and her advocate over phone.

The Commission recommends that the State Government shall seriously consider the

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applicability of the provisions of the Prevention of Corruption Act against all those persons against whom Corruption and illegal gratification are alleged based on evidence produced before the Commission.

The Commission has found that further enquiry by a competent authority is necessary to uphold the discipline of the Police force. The Commission has suggested for action against indiscipline on the part Sri.G.R.Ajith, the Secretary of the Kerala Police Association. In his case also the Commission recommends that the question of application of the P.C Act shall be considered.

The Commission incidentally notes that the Jail authorities and the concerned Police Departments are not taking proper steps for transportation of convicted and under trial prisoners before courts. In the case of solar scam accused Biju Radhakrishnan who has been convicted and sentenced to life imprisonment, in

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spite of intelligence reports that he will jump the jail, was taken to various courts both inside and outside the State only by two civil police officers both by train and by bus or by both. Strict directions in the matter are necessary in the case of such Prisoners. The jail authorities and concerned police officers who depute police escort are necessary.

Coming to the CCTV installed in the Secretariat for security purposes, necessary steps have to be taken for the preservation of the CCTV visuals at least for a period of one year or to preserve it by replacing the 500 GB Hard Disc installed once in 15 days when it become full or by taking the visuals therein in tape and keeping it properly.

The ANERT which is functioning under the Power Department of the Government and appointed as the Nodal Agency of the MNRE for the promotion of Non-Conventional Energy must be properly streamlined so that strong measures by availing the various

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benefits declared by the Central Government for
the production, distribution and development of
solar energy can be promoted.

Rajiv Gandhi

About the Commission

Though the Solar Inquiry Commission Justice G.Sivarajan, as per the Government orders, is entitled to salary and other benefits including conveyance of a sitting Judge of the High Court, I did not receive any remuneration or conveyance from the Commission, since I have also been holding the office of Chairman of the Kerala State Commission for Backward Classes during the relevant period.

Staff of the Commission

The Secretary of the Commission Sri.P.S.Divakaran, a Senior District Judge (Retd.) who had experience as a judicial officer of eminence, administrative experience as the Registrar of the Kerala High Court for years and working experience as the Secretary of Idamalayar Inquiry Commission of the High Court Judge Justice K.Sukumaran, was appointed as the Secretary of this Commission. Under his able guidance the commission could adopt proper procedure in the matter of

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conducting the sittings, taking evidence of the parties etc. He was totally entrusted with the correspondence and contacts with Government, the police and all the functionaries and he has been discharging it efficiently. The Commission complements and recognise his services as its Secretary.

Sri.V.L.Fulgence, who retired from the Advocate General's office as Joint Secretary has been serving the Commission as the head of the Ministerial staff and also as Court Officer attached to the Commission. Despite his physical ailments he has attended to the task of taking down the depositions of all the witnesses, even during the late hours of days without any demur. His unflinching loyalty to service and dedication to duty is quite un-paralleled.

Sri.N.K.Ratheesan, an officer retired as Sheristadar from Chief Judicial Magistrate's Court has been dealing the accounts of this office. He

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has always been attending to even the minutest matters of the accounting with a view to safeguard the dealings and to ensure the disbursement so as the disbursement of the salary of the staff properly. His dedication to duty is admirable.

Smt.G.Valsala, who retired as Under Secretary from the Advocate General's Office has been working as Stenographer, proved her efficiency in the work entrusted with her. Her expertise in typing and using computer coupled with her proficiency in English language has been of great help to this Commission. She is also quite devoted to her duty.

Sri.K.Mohan retired as Section Officer from the Advocate General's office joined the Commission staff as a Clerk. He was entrusted with the custody of all the records and he has kept all the files and registers properly and methodically arranged. He is a silent worker.

Sri.V.G.Venugopal, who retired as Office Superintendent (Higher Grade) from the High Court

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of Kerala joined the Commission as Confidential Assistant only at a late stage, but by his hard-work and sincerity to service he has proved himself inevitable in the functioning of the office.

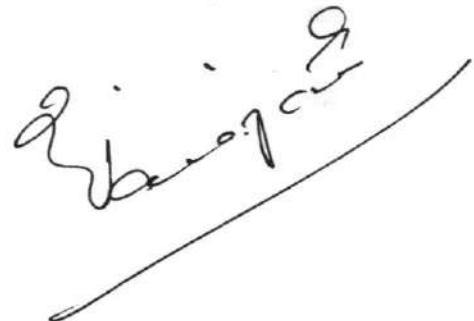
Sri.Chandra Bose and Sri.Mijohn who are drivers in the car used by the Chairman of the Commission as well as the Secretary thereof had proved themselves as very safe and reliable. They have proved their efficiency ensuring the travels undertaken by the Commission without leaving any room for complaints whatsoever. They are honest, straight forward and totally dependable.

Sri.T.V.Vijayan and Sri.M.A.Ashraf who retired from the High Court of Kerala have been serving as Peons in the Commission. It is found that they can be entrusted with any duty even during late hours of a day and they will carry out the task assigned to them with a smile on their face.

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Smt.Ajitha Prasad, Part-time Sweeper of the Commission has always been careful to keep the premises neat and tidy.

The Security staff of the Commission have always been alert and watchful, S.I. Sri.Musthaffa, ASI Sri.K.V.Saijan, Senior CPO Sri.Sanal Kumar, Sri.Ciby, Sri.Sandeep Kumar, Sri.Faisal, Sri.Sabu, Sri.Dinosh, Sri.Vimal, Sri.Vineesh, CPOs are officers of proved efficiency and integrity.

A handwritten signature in black ink, appearing to read "Ajitha Prasad", is written over a diagonal line. The signature is fluid and cursive, with the name being the most prominent part.