

Code on Social Security, 2020

(The fine art of poor-bashing)

**Drastic reduction of
time-tested Social Security Benefits**

by

meddling with the
definition of the term

'Wages'

to enable the rich to bash the poor

&

**Handing over the medical colleges and
hospitals to private persons**

The saga of manipulation

of the law-making-process

by

three IAS officers

Some facts
pertaining to the manner in which
the Secretaries of the Ministry of Labour &
Employment, Ministry of Law & Justice and the
Ministry of Parliamentary Affairs
manipulated
the decision-making-process
and
the law-making-process
of the Code on Social Security, 2020 notified on
29.09.2020
which resulted in the denial of
time-tested human rights
and which affects
the livelihood of the working population
of the nation.

**Part I: Manipulation in the definition of the term
“wages”.**

**The PSCL 2020 advice to pay enhanced compensation was ignored
by the three IAS officers.**

The Parliamentary Standing Committee on Labour (hereinafter referred to as the PSCL) had observed, vide Para 4.8 and 8.37 of its report dated 30.07.2020, that enhanced compensation should be given to the workers depending on the wages of the workers:

“4.8. The Ministry also stated that most of the definitions have been taken from the Code on Wages or from the Occupational Safety, Health and Working Conditions Code, 2019, to maintain uniformity in definitions, which was one of the main objectives of codification.”

“8.37. The Committee note the Ministry's assurance that the formula for compensation to the accident affected would be prescribed which would benefit the workers. The Committee desire that the procedure be prescribed in such a manner so as **to calculate the enhanced compensation** amount from time to time **depending on the wages** of the workers, the prevailing circumstances and imperatives involved.”

But the Respondents did not want to honour the spirit of the suggestions of the law makers.

On the other hand, they meddled with the definition of the term ‘wages’ in an unauthorised manner and had inserted an extra phrase in definition, totally unlawfully, (after the PSCL had given its report in July 2020) and introduced it as a fresh Bill, the Bill No. 121 of 2020, which was placed before the Parliament on 19.09.2020 and got passed on 22.09.2020. Now the benefit to the working population is not an enhanced

one based on the total wages, as advised by the PSCL but only on the minimum wages.



Insertion of extra phrase unlawfully in the Cl. 2 (88) in the Bill No. 121 of 2020 after the PSCL had given its report on the Bill No. 375 of 2019.

These three officers had, without following the procedure laid down in Para 9.11.7 of the Manual of Parliamentary Procedure, after the receipt of the Parliamentary Standing Committee on Labour (PSCL), tampered with the provisions in Cl. 2 (88) of the Bill No. 375 of 2019 and inserted through the 'fresh' Bill No. 121 of 2020 the phrase "**under any law for the time being in force**". The resultant Sec. 2 (88) (k) of the impugned Code reads as under now:

"(k) any retrenchment compensation or other retirement benefit payable to the employee or any *ex gratia* payment made to him on the termination of employment **under any law for the time being in force**"

These three IAS officers are guilty of having not followed the 'Due Process of Law' in the law-making-process and, thereby, scuttled the decision-making-process in the Parliament.

They had no authority to make any kind of modification, in this manner, after the PSCL had given its report.



*The definition of the term 'wages' given in the impugned Sec. 2 (88) of the Code on Social Security, 2020 with the definition of the term of 'wages' given in Sec. 2 (y) of the Code on Wages, 2019, would take the nation back to the pre-1948 era on the social-security front. **There cannot and should not be one and the same definition of the term 'wages' in and for both the enactments.***



**Methods of manipulation from 2017 to 2020
in the definition of the term 'wages'**

Cl. 2 (147) of the draft Code circulated on 16.03.2017

Cl. 2 (147) of the draft Code dated 16.03.2017 said that the term 'wages' **included** "(ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period; (iii) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name); (iv) any house rent allowance".

The text:

"Wage" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment,

and **includes**, –

- (i) any remuneration payable under any award or settlement between the parties or order of a court;
- (ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (iii) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (iv) any house rent allowance;
- (v) any sum which by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;

but **does not include**-

- (a) any annual bonus payable under the payment of Bonus Act, 1965 , which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity and expenditure on perquisites incurred by the employer and not paid directly to the employees ;
- (c) any contribution paid by the employer to any Social Security fund, and the interest which may have accrued thereon;
- (d) Value of any Leave travelling concession;

- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (f) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (v)
- (g) Shares, prizes gifts given occasionally.

Provided that for the purpose of contribution, wages shall not be less than applicable minimum wages notified for the said area by the -State Government;

Provided further that If the establishment operates in one state and in case of establishment having branches in more than one state, minimum wages notified by the Central Government will be applicable.



Cl. 2 (137) of the draft Code circulated on 01.03.2018

The subsequent draft Code dated 01.03.2018 repeated the same as was in Cl. 2 (137) of the earlier draft of 16.03.2017.

The text:

“Wage” means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment,

and **includes**, –

- (i) any remuneration payable under any award or settlement between the parties or order of a court;
- (ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (iii) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (iv) any house rent allowance;
- (v) any sum which by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;

but **does not include**-

- (a) any annual bonus payable under the payment of Bonus Act, 1965 , which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity and expenditure on perquisites incurred by the employer and not paid directly to the employees ;
- (c) any contribution paid by the employer to any Social Security fund, and the interest which may have accrued thereon;
- (d) Value of any Leave travelling concession;

- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (f) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (v)
- (g) Shares, prizes gifts given occasionally.

Provided that for the purpose of contribution, wages shall not be less than applicable minimum wages notified for the said area by the -State Government;

Provided further that If the establishment operates in one state and in case of establishment having branches in more than one state, minimum wages notified by the Central Government will be applicable.



Cl. 2 (xxxxix) of the draft Code dated 17.09.2019

Drastic change in the stand of the MOL&E

But Cl. 2 (xxxxix) of the draft Code circulated on 17.09.2019 mischievously and deliberately, left out these three components from the definition of the term 'wages'.

How this drastic change came to be effected all of a sudden, on 17.09.2019, to turn the entire social security system upside down has not been explained anywhere by the Secretary, MOL&E, especially when he had, through his conduct, accepted the fact, until 01.03.2018, that the purposes of the already enacted Code on Wages, 2019 and the draft bill meant for the Code on Social Security were altogether different.

The text:

2(xxxxxix) —wages|| means all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment,

and **includes**:-

- (a) basic pay;
- (b) dearness allowance; and
- (c) retaining allowance, if any;

but **does not include**—

- (a) any bonus payable under any law for the time being in force, which does not

- form part of the remuneration payable under the terms of employment;
- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any conveyance allowance or the value of any travelling concession;
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- (f) house rent allowance;
- (g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- (h) any overtime allowance;
- (i) any commission payable to the employee;
- (j) any gratuity payable on the termination of employment;
- (k) any retrenchment compensation or other retirement benefit payable to the employee or any ex-gratia payment made to him on the termination of employment:

Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (A) to (I) exceeds one half, or such other per cent. as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the percent so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages the emoluments specified in clauses (D), (F), (G) and (H) shall be taken for computation of wage.

Explanation.— Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee.



Clause. 2 (80) of the Bill No. 375 of 2019

The subsequent Bill No. 375 of 2019 also contained the same contents in its Cl. 2 (80) as they were in the draft dated 17.09.2019.

2(80) "wages" means all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment,

and **includes**,—

- (a) basic pay;
- (b) dearness allowance; and

(c) retaining allowance, if any,

but **does not include**—

- (a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any conveyance allowance or the value of any travelling concession;
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- (f) house rent allowance;
- (g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- (h) any overtime allowance;
- (i) any commission payable to the employee;
- (j) any gratuity payable on the termination of employment;
- (k) any retrenchment compensation or other retirement benefit payable to the employee or any *ex gratia* payment made to him on the termination of employment.

Provided that for calculating the wages under this clause, if payments made by the employer to the employee under sub-clauses (a) to (i) exceeds one half, or such other per cent. as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in sub-clauses (d), (f), (g) and (h) shall be taken for computation of wage.

Explanation.—Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee;



The climax

Clause. 2 (88) of the Bill No. 121 of 2020 and the consequent Sec. 2 (88) of the Code on Social Security, 2020

Unlawful addition of new phrase made in the Bill No. 121 of 2020 without the knowledge and without any recommendation of the PSCL.

The text:

2(88) "wages" means all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment,

and **includes**,—

- (a) basic pay;
- (b) dearness allowance; and
- (c) retaining allowance, if any,

but **does not include**—

- (a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any conveyance allowance or the value of any travelling concession;
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- (f) house rent allowance;
- (g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- (h) any overtime allowance;
- (i) any commission payable to the employee;
- (j) any gratuity payable on the termination of employment;
- (k) any retrenchment compensation or other retirement benefit payable to the employee or any *ex gratia* payment made to him on the termination of employment, **under any law for the time being in force**;

Provided that for calculating the wages under this clause, if payments made by the employer to the employee under sub-clauses (a) to (i) exceeds one half, or such other per cent. as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in sub-clauses (d), (f), (g) and (h) shall be taken for computation of wage.

Explanation.—Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee;



Part II: Ignoring appointment of High Court judges as arbitrators

The three IAS officers had, unlawfully, meddled even with Clause 40(4) of the Bill No. 375 of 2019 when they presented the new Bill, a 'fresh' one as Bill No. 121 of 2020.

The Cl. 40 (4) of the Bill No. 375 of 2019 specified that the disputes in certain cases shall be determined by an arbitrator "who shall be or shall have been a Judge of the High Court of a State appointed by the Chief Justice of India". But this clause, in its entirety, had been removed and a new clause inserted specifying that such issues will be determined by "an arbitrator who shall be appointed by the Central Government in consultation with the State Government".

This modification was not done as per any suggestion of the PSCL.

The Report of the PSCL does not contain any reference to any such arbitration at all.

But the Secretaries of the MOL&E and MO Law & Justice informed the Parliament in Para 4 of the Statement of Objects and Reasons of the Bill No. 121 of 2020 that it was introduced afresh after "**after incorporating the valuable suggestions of the (PSL) Committee**".

This was a clear case of perjury on the part of these two IAS officers.

The Bill No. 121 of 2020 contained numerous such additions and deletions which were not suggested by the PSCL in any part of its report.

The Code on Social Security, 2020, being an offshoot of such deceitful practices on the part of the aforesaid two IAS officers and the Secretary, Ministry of Parliamentary Affairs, is required to be declared as null and void, on this single count itself.



Part III: Additions and deletions without specifically informing the House.

The three IAS officers had, unlawfully, meddled with Definitions which they cannot do on their own, after the introduction of the Bill No. 375 of 2019 which had been vetted by the PSCL.

The aforesaid three IAS officers had, without the prior approval of the PSCL, inserted and deleted many definitions, in the Bill No. 121 of 2020, without following the procedure laid down in Para 9.11.7 of the Manual of Parliamentary Procedure.

The newly-inserted ten definitions

- (38) "Insured Person" means the Insured Person referred to in section 28;
- (39) "Insurance Fund" means the Deposit-Linked Insurance Fund established under clause (c) of sub-section (1) of section 16;
- (40) "Insurance Scheme" means the Deposit-Linked Insurance Scheme framed under clause (c) of sub-section (1) of section 15;
- (43) "maternity benefit", in respect of Chapter VI, means the payment referred to in sub-section (1) of section 60;
- (49) "National Social Security Board" means the National Social Security Board for Unorganised Workers constituted under sub-section (1) of section 6;
- (57) "Pension Fund" means the Pension Fund established under clause (b) of subsection (1) of section 16;
- (58) "Pension Scheme" means the Employees' Pension Scheme framed under clause (b) of sub-section (1) of section 15;
- (63) "Provident Fund" means the Employees' Provident Fund established under clause (a) of sub-section (1) of section 16;
- (64) "Provident Fund Scheme" means the Employees' Provident Fund Scheme framed under clause (a) of sub-section (1) of section 15;
- (77) 'sickness' means a condition which requires medical treatment and attendance and necessitates abstention from work on medical ground;

The newly-deleted two definitions

- (39) "major port" has the meaning assigned to it in clause (8) of section 3 of the Indian Ports Act, 1908;

(46) "motor transport worker" means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend the duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time-keeper, watchman or attendant, but does not include any such person —

- (i) who is employed in a factory;
- (ii) to whom the provisions of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments apply;



Part IV: Provision to hand over Medical Colleges with Hospitals to private individuals in the garb of 'organisation of persons'

The Secretary of the Ministry of Labour & Employment and the Secretary of the Ministry of Law & Justice, who had prepared the Code on Social Security, 2020, which had, earlier, been prepared as a draft dated 17.09.2019, and then as the Bill No. 375 of 2019 and later as the Bill No. 121 of 2020, had taken that opportunity to manipulate the law-making process to hand over the aforesaid medical colleges of the ESI Corporation, which are public institutions, to private individuals or 'organisation of persons', for running them.

They were actuated by their ulterior motive of aiding some private organisation of persons and do not make the parliament aware of the manner in which they would identify those organisations of persons. They want to convert the service-oriented infrastructure created out of public money into money-spinning business ventures.

These two IAS officers have inserted improper, nebulous and unlawful phrases in Sec. No. 39 (5) of the Code on Social Security, 2020 and have, thereby, acquired absolute power for the bureaucrats to do whatever they please to hand over the aforesaid properties to whomsoever they prefer on whatever conditions they are pleased to impose.

They had not even resorted to any further rule-making power for that purpose, through Subordinate Legislation, as they wanted to avoid further scrutiny by the Parliament over the issue of power of the Executive.

They had chosen to include the phrases, 'any body' and 'organisation of persons', in the aforesaid Cl. 39 (5) without explaining any legal necessity or justification for doing so, especially when no such phrases were there in the earlier drafts of 2017 and 2018.

This duo did not even discharge their bounden duty of recording the reason for such inclusion of such phrases in the Statement of Objects or Reasons accompanying the said Bill, especially when the Parliamentary Standing Committee on Labour (PSCL) wanted the ESIC to absolve itself of the medical education projects.

They had also tampered with the text in Sec. 39 (4) and 39 (5), after the PSCL had given its report, without any suggestion from the PSCL to make such changes in those Sections and without the knowledge of the PSCL.

The 'fresh' Bill No. 121 of 2020, with all these serious flaws in the decision-making-process, has been tabled on the Lok Sabha on 19.09.2020 and got passed on 22.09.2020. The impugned phrases had been inserted at the Executive level of these two officers in the Bill No. 121 of 2020, without making the public aware of the exact phraseology beforehand, as mandated in Decisions No. 2, 5 & 8 of the Committee of Secretaries communicated in the D.O. Letter dated 05.02.2014 of the Respondent-3. This was in violation of Para 9.11.7 of the Manual of Parliamentary Procedure also.

The activities of these officers affect the Parliamentary privilege very clearly.

The Cl. 39 (5) of the Bill No. 375 of 2019, read as under:

“The colleges and training institutions referred to in sub-section (4) may be run by the Corporation itself or on the request of the Corporation by the Central Government, any State Government, any Public Sector Undertaking of the Central Government or the State Government or any other body notified by the Central Government.

Explanation: For the purposes of sub-section (5), the expression “other body” means any such organisation of persons which the Central Government considers capable to run colleges and training institutions referred to in sub-section (4).”

13.f. The aforesaid Clause was modified with different phrasologies by the bureaucrats on their own, after the receipt of the PSCL but without any suggestion from the PSCL. The resultant Cl. No. 39 (5) in the ‘fresh’ Bill No. 121 of 2020 and the Sec. 39 (5) of the Code on Social Security, 2020 notified on 29.09.2020 read as under:

“The medical education institutions and training institutes referred to in sub-section (4) may be run by the Corporation itself or on the request of the Corporation, by the Central Government, any State Government, Public Sector Undertaking of the Central Government or the State Government or any other body notified by the Central Government.

Explanation.—For the purposes of this sub-section, the expression “other body” means any such organisation of persons which the Central Government considers capable to run colleges and training institutions referred to in sub-section (4).”

This was in clear violation the Due Process of Law. The Respondents did not adhere to the law-making-process codified in Para 9.11.7 of the Manual of Parliamentary Procedure published by the Government of India in May 2018.

Part V: Pictures of some of the ESIC Medical Colleges with Hospitals which are, at present, run by the ESIC and which might be handed over to private persons because of the aforesaid provision are given below.

ESIC Hospital and Medical College, Kolkata



ESIC Hospital and Medical College, Faridabad



ESIC Hospital and Medical College, Gulbarga



ESIC Hospital and Medical College, Hyderabad



ESIC Hospital and Medical College, Odisha



ESIC Hospital and Medical College, Paripalli, Kerala



ESIC Hospital and Medical College, Alwar, Rajasthan



ESIC Hospital and Medical College, Chennai



Warning signal given already by the Hon'ble Supreme Court

Hon'ble Supreme Court has already given warning signal to the people in power who want to usurp public property. In the matter involving the property of a public institution, the TANSI, acquired by the then Chief Minister of Tamil Nadu, (*R. Sai Bharathi Vs. J. Jayalalitha and others on 24.11.2003*) Hon'ble Apex Court had held as follows:

"Officers even holding small posts like a Railway Property Keeper or a Cattle Pound Keeper or a Process Nazir who is put in charge of the sale of properties in a court auction cannot purchase the properties over which they have control. In the present case, in view of the fact that Government headed by the 1st Respondent has to give permission in respect of the sale of property of these two companies, it certainly exercises powers over the same and thus there is conflict of interest. Where there is conflict of interest law has always avoided such sales being effected in favour of those who can jeopardise the fair outcome of the transaction. Whatever may be our findings on the question of valuation of the property whether it resulted in a pecuniary advantage to A-1 or not, we are clear in our mind that if the officers and others become aware of the fact that the Chief Minister of the State is interested in purchasing some properties, the bureaucracy will be over-enthusiastic to see that the sale goes through smoothly and at a price desired by such Chief Minister. Though we can visualise such situation, such facts have to be established by concrete evidence to be convicted in a criminal case and is hard or difficult to get. At any rate, it is plain that such conduct is opposed to the spirit of the Code of Conduct if not its letter.

Morally speaking, Can there be one law for small officials of the Government and another law for the Chief Minister? In matters of such nature, is the Code of Conduct meant only to be kept as an 'ornamental relic' in a museum but not to be practised ? These aspects do worry our conscience. Respondent No.1 in her anxiety to save her

skin went to any length even to deny her signature on documents which her auditor and other Government officials identified.

Report leading to IPC makes it clear that criminal law merely prescribes the minimum standards of behaviour, while in public life, those who hold high offices should not take shelter under the umbrella of criminal law but stand by high probity. Further, criminal law is meant to deal with criminals ordinarily, while Code of Conduct is observed as gentlemen's agreement. Persons in public life, who are gentlemen, follow such Code instead of taking escape routes by resorting to technical pleas as arise in criminal cases. Persons in public life are expected to maintain very high standards of probity and, particularly, when there is likely to be even least bit of conflict of interest between the office one holds and the acts to be done by such person, ought to desist himself from indulging in the same. Such standards of behaviour were scrupulously observed in the earlier days after independence, but those values how now dwindled and instances of persons holding high elective offices indulging in self-aggrandisement by utilising Government property or in distribution of the largesse of the Government to their own favourites or for certain quid pro quo are on the increase. We have to strongly condemn such actions. Good ethical behaviour on the part of those who are in power is the hallmark of a good administration and people in public life must perform their duties in a spirit of public service rather than by assuming power to indulge in callous cupidity regardless of self-imposed discipline.

Irrespective of the fact whether we reach the conclusion that A-1 is guilty of the offences with which she is charged or not, she must atone for the same by answering her conscience in the light of what we have stated not only by returning the property to TANSI unconditionally but also ponder over whether she had done the right thing in breaching the spirit of the Code of Conduct and giving rise to suspicion that rules and procedures were bent to acquire the public property for personal benefit, though trite to say that suspicion however strong cannot take place of legal proof in a criminal case and take steps to expiate herself."



The fact is that such acquisitions need not only be through outright purchase but can also be in the guise of long-term lease for token considerations. The purpose for which this kind of phraseology, as has been used by the Secretary of the Ministry of Labour & Employment and the Secretary of the Ministry of Law & Justice, in Sec. 39 (5) of the Code, is apparently visible. It is not for bonafide purposes in public interest.

This provision shows that these IAS Officers forget the extent of their accountability and the importance of their role in defending the constitutional values.

The Secretary, Ministry of Labour & Employment has chosen even to ignore the fate of bureaucrats involved in the Coalgate and TANSI cases.

The sudden inclusion of the phrases as given in Cl. 41 (5) of the in the draft circulated on 17.09. 2019 was a calculated misconduct on their part, and needs deeper probe into the issue, as such phrases were not there in the earlier drafts of the year 2017 and 2018. This Cl.41(5) was the forerunner to the impugned Sec.39 (5) of the Code, which makes such a probe necessary.

