



## CORRUPTION AND ROLE OF CENTRAL VIGILANCE COMMISSION

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### Abstract

*Vigilance in any government organisation ensures that a check is kept upon the activities of officers in authority so that the purpose of such department/ ministry/ authority is safeguarded from corrupt practices by such officials which might break the integrity in their official transactions and affect general public at large. Vigilance is required to ensure clear and prompt administrative action in order to sustain the effectiveness and efficiency of the workforce and the organisation as a whole. Lack of awareness frequently causes waste, losses, and economic decline. The Central Vigilance Commission was formed in 1964 in order to counteract corruption it was done in accordance with the suggestions of the Committee on the Prevention of Corruption. The committee was headed by Shri K. Santhanam Committee whose purpose was to advise and direct Central Government agencies. Corruption is one of the primary issues that people in a country are usually worried about. Nowadays, corruption is inescapable, particularly in democracies where there are an excessive number of powerful people.*

**Keywords:** Vigilance, Corruption, Central Vigilance, Administrative body, Constitution.

### I. Introduction

The administrative part of democracy faces high corruption and has an impact on Indian politics. Public trust in the management of government agencies depends crucially on their incorruptibility. In order to counteract corruption and the faulty system, Central Vigilance Commission was established by government in February 1964. The key issues with the CVC were preventing corruption and maintaining integrity among government employees, and guaranteeing reasonable and equitable use of the administrative powers granted to various bodies by statutory regulations. Here, two important issues—cases of corruption and cases of bad administration—were intended to be handled but were later rejected by the government. The vigilance commission has jurisdiction over and authority

over subjects under the center's purview of executive power.

Since independence, corruption in India has increased to such alarming levels that it is now a genuine threat to the country's democracy and socioeconomic development, despite the country's overall progress and development. Its ties and interconnections frequently transcend local borders and, on occasion, encompass several countries, their people, governments, and commercial interests. We only need to think back to the sugar crisis, the Jain Hawala, and the Harshad Mehta Bank scam.

Central Vigilance Commission is an independent authority which holds superior position over all other executive authorities, the committee is responsible to keep checks and balances/ vigilance over the activities being carried on in the executive sector and it helps in



providing guidance and advise to the Central Government to plan, effectuate, assess, and alter vigilance work as and when required.

The Central Bureau of Investigation was created by the government in 1963 through an executive resolution. Before 1963, it was Delhi Special Police Establishment Act which made a special police unit which used to investigate upon the crimes and misconduct happening in executive, CBI got its authority from The Delhi Police Establishment Act, 1946, which created a wing of SPE for such investigative cases.

## II. CVC: Its Formation, Jurisdiction, And Development

The Government of India Resolution of 11.2.1964 established the Central Vigilance Commission (CVC) in 1964 as an apex body to exercise general supervision and control over vigilance administration. As was previously indicated, the report of the Committee on Prevention of Corruption, also known as the Santhanam Committee, served as the foundation for the Commission's primary mandate. The situation was different prior to 1963. Under the Delhi Special Police Establishments Act of 1946, a special police unit was established to investigate corrupt acts done by government employees while they were performing their responsibilities. SPE became a division of the CBI when it was established in order to conduct investigations. The Resolution gave the CVC the authority to investigate any transaction in which a public official is suspected or believed to have acted dishonestly or corruptly, regardless of that person's standing. The Government has expanded the Commission's duties and authority by subsequent laws and ordinances. The Central Bureau of Investigation's participation was condemned in the case of Jain Hawala<sup>55</sup>, and the Supreme Court issued instructions regarding the higher function of CVC. The court mandated that CVC be granted a supervisory role over CBI. The Government then published an Ordinance in 1998. The 1998

Ordinance gave the CVC legal standing and the authority to supervise how the Delhi Special Police Establishment operates as well as to assess how well their investigations into alleged violations of the 1988 Prevention of Corruption Act are going. Although it was unsuccessful, the Government attempted to replace the Ordinance in 1998 by introducing the CVC Bill in the Lok Sabha. The Bill was reintroduced in 1999 and stayed in the Parliament until September 2003, when it was duly passed by both Houses of Parliament and received the President's approval, at which point it became an Act. The Act's provisions cover inquiries into alleged crimes committed by specific categories of Central Government employees, corporations created by or under any statute, government companies, registered societies, and local governments owned or controlled by the Central Government, as well as for matters related to or incidental to those matters. The Central Vigilance Commission Act of 2003 was passed by the Parliament in a way that ensures the Commission performs all duties assigned to it by the Government of India Resolution and does not conflict with this Act.

## III. Functions Of CVC

The commission's primary focus is on issues related to corruption, misconduct, a lack of integrity, or other types of malpractices or crimes committed by government employees. The commission solely has advisory authority. It is unable to carry out adjudicatory duties. Except in very specific circumstances, the commission is not permitted to investigate or inquire about allegations of corruption.

The CBI or the relevant department is contacted by the commission when it receives complaints about the issues and is asked to investigate them. After the investigation, these bodies must submit the report to the commission. The commission will provide recommendations on the subject. The allegations cannot be investigated by the commission itself. However, the commission's Chief Technical Officer

<sup>55</sup> Central Bureau of Investigation v. V.C. Shukla, (1998)3 S.C.C. 410.

performs technical inspections of public works, including examining contractor invoices, etc.

The following situations are addressed by the commission's recommendations for next steps: (i) Reports of C.B.I. investigations resulting departmental action or criminal prosecution (ii) Reports on inquiries made by the ministry or department that resulted in disciplinary action in situations either referred by the commission or not. (iii) Cases that were directly received from statutory corporations and public sector undertakings.

The commission has the authority to mandate that any departmental process that involves an oral inquiry be assigned to one of the Commissioners for Departmental Enquiries. It is responsible for supervising the commissioners' investigations, which must be swiftly concluded. The commission also provides recommendations to the disciplinary authorities so they can act on the commissioners' reports. A recap of the vigilance work done in the organisation, with a focus on preventive vigilance, must be sent by all vigilance officers to the commission for its evaluation. The commission should perform independent technical examinations of building and other related activities carried out by various Central Government bodies, primarily from a vigilance angle, through its organisation of Chief Technical Examiners; the commission should carefully consider, approve, and evaluate proposals for Chief Vigilance Officer appointments in various organisations. The commission should also start reviewing administrative practises and procedures at intervals it deems appropriate insofar as they pertain to upholding administrative integrity. For the Chief Vigilance Officers and other vigilance personnel in Central Government organisations, the commission should provide training sessions.

As under 2003 Act:

- Exercise supervision over the Delhi Special Police Establishment (CBI)'s operations

insofar as they pertain to the investigation of offences under the Prevention of Corruption Act, 1988, or an offence under the Criminal Procedure Code (Cr.P.C) for certain categories of public employees.

- Insist that the Delhi Special Police Establishment (CBI) oversee overseeing the investigation of crimes under the 1988 Prevention of Corruption Act.
- To investigate a referral made by the Central Government, or to cause such an investigation to be made.
- To investigate any complaints made against any official who falls under the category of officials listed in subsection 2 of Section 8 of the CVC Act, 2003, or to cause an investigation to be conducted.
- Review the results of the DSPE's investigations into alleged violations of the Prevention of Corruption Act of 1988 or a violation of the Criminal Procedure Code.
- Examine the status of the applications for sanction or prosecution pending with the relevant authorities under the 1988 Prevention of Corruption Act.
- Give the Central Government and its organisations advice on any issues they may refer to it for.
- Exercise supervision over the numerous Central Government Ministries, Departments, and Organisations' vigilance administrations.
- Shall, during any inquiry, have all the authority of a Civil Court.
- Respond to the Central Government's request for information regarding the requirement that the Commission be consulted before any rules or regulations governing the vigilance or disciplinary actions relating to those individuals appointed to public services and posts associated with Union affairs or to members of the All-India Services are made.
- The Central Government chooses the Director of Enforcement based on recommendations from the Vigilance Commissioners (Members) of the Committee, which are led by the Central Vigilance Commissioner (CVC).



- After consulting with the Director of Enforcement, the committee in charge of choosing the director of enforcement has the authority to suggest the appointment of individuals to positions in the Directorate of Enforcement at the level of deputy director and above.
- The Central Vigilance Commissioner (CVC) serves as the committee's chair and has the authority to recommend, following consultation with the director (CBI), the appointment of officers to posts at the level of SP and above, except for the director, as well as the extension or reduction of those officers' terms of service in the DSPE (CBI).

#### IV. Critical Analysis

The constitution and the powers assigned to CVC have several problems. The system is not open and transparent when it comes to the selection of the Chief Vigilance Officer. When PJ Thomas was appointed as the Chief Vigilance Commissioner in September 2010 at the recommendation of a High-Powered Committee (HPC) led by the Prime Minister of India, the issue was brought to light in 2010. Controversies surrounded the pick of the new CVC after Sushma Swaraj, one of the three members of the selection committee, objected to the selection of Thomas by citing the active criminal case against him. India Rejuvenation Initiative and the Centre for Public Interest Litigation have both filed public interest lawsuits with the Supreme Court of India. The Supreme Court nullified Thomas' nomination as Chief Vigilance Commissioner on March 3, 2011, citing the HPC's failure to consider pertinent information from the active charge sheet. There is an undeniable moral obligation on the part of the government representatives on the committee not to move forward with the appointment if the Leader of the Opposition objects to the choice of any specific person for any reasonable reason, even though there is no requirement in the law that the decision be unanimous or based on consensus among the committee members. In order to combat corruption in the government, the states now

only use the Vigilance Commission. The primary issue with the Vigilance Commission system is that it is an executive branch organisation rather than a legislative one. It was established by a government resolution rather than a statute. Additionally, the commission lacks any means for conducting investigations, therefore it is unable to investigate any complaints and must rely on other organisations to provide it. As it is not the appropriate authority to authorise criminal proceedings for acts committed by the officials while doing their duties, it lacks any sort of adjudicatory authority. It will always have to wait for the appropriate authority's approval. The CVC has been patiently waiting for approximately four months. The finest illustration is the recent delay by the public sector banks in sanctioning action against 98 bank personnel.

#### A. Difference between CBI and CVC

The Government of India established the Central Vigilance Commission (CVC) as an apex body to exercise broad supervision and control over vigilance issues in administrative and public life. With effect from August 25, 1998, "The Central Vigilance Commission Ordinance, 1998" gave CVC legislative status.<sup>56</sup> The Central Government established the Central Bureau of Investigation (CBI) as its primary investigation agency in accordance with the DSPE Act of 1946 for the purpose of conducting investigations into exceptional crimes and corruption cases. Its authority has been expanded to include looking into crimes allegedly committed in violation of the 1988 Prevention of Corruption Act as well as other crimes to which the Central Government has delegated investigation.

#### B. Shortcomings on the part of CVC

The Commission is an executive branch agency, not a legislative one. Ho's position is due to executive will because it lacks a formal foundation. It relies on other governmental organisations for the purpose of investigation because it lacks any internal mechanisms.

<sup>56</sup> Vigilance Manual, Volume 1 (Sixth edition 2005) Pg. 2.



In the case of *Sunil Kumar v. State of West Bengal*<sup>57</sup> an investigation officer was appointed to investigate the allegations made against the appellant, who was a member of the Indian Administrative Service. A report of the investigation was given to the Vigilance Commissioner for comment. The state government, which serves as the disciplinary authority, then reached a decision. In the same grade, the appellant's pay was decreased from a higher to a lower level. He contested the order, claiming that the government had not provided the officer's report and that he had not been consulted by a Vigilance Officer who had no official authority. The court ruled that the disciplinary committee had not acted improperly and that its findings were not influenced by information provided by the Vigilance officer. It was not important that the early conclusions of the disciplinary authority agreed with the Vigilance commissioner's opinions. Consultation with him is a pointless ritual that serves no purpose if the commissioner's report is not to be considered at all by the relevant body or if it has no bearing on how it makes decisions. As a result, the institution has effectively become otiose. While Vigilance Commissioner just has an administrative status, PSC had a constitutional status. According to Natural Justice, decision-making authorities must use their own judgement and should not be swayed by outside factors.<sup>58</sup>

In the case of *Nagraj Shivarao Kargaji v. Syndicate Bank*<sup>59</sup>, the Supreme Court ruled that the Chief Vigilance Commission could not tell the disciplinary body how to use its jurisdiction or what punishment to inflict on a criminal officer. *Satyendra Chandra Jain v. Punjab National Bank*<sup>60</sup>, the Supreme Court ruled that the Chief Vigilance Officer Commissioner's opinion regarding the subject of punishment is not binding on the disciplinary committee. The

disciplinary actions against government employees are taken in accordance with the service regulations created by the government pursuant to Article 309 of the Constitution.<sup>61</sup> Additionally, a public official may face charges in a criminal court for bribery and corruption. The Prevention of Corruption Act, 1947 (now known as the P.C. Act) contains several provisions intended to speed up such proceedings. In the same way that it is in the public interest to remove corruption, it is also in the public interest for honest public officials to be able to carry out their jobs without fear of false, baseless, and malicious charges. PCA therefore aims to balance the two goals. On the one hand, it aims to establish specific safeguards against pointless trials, while on the other, it aims to establish a quick trial process for corruption cases. One such safeguard is found in Section 17 of the PCA, which states that in cases where a person is employed in connection with state affairs and cannot be removed from his position without the consent of the State Government, the State Government's approval is required before a public servant can be prosecuted for any specific offence.<sup>62</sup> The only administrative role is sanctioning. The sanctioning authority must be presented with facts gathered over the course of the investigation, and the sanctioning authority must take the facts into consideration. The necessity to give the accused a chance to be heard does not arise because the sanction-granting process is an administrative one. This is also true for the national government. In the case of *Superintendent of Police (CAI) v. Deepak Chowdhary*<sup>63</sup> according to the Supreme Court's explanation of the clause, just that competent authority's approval is required in order to remove the public worker from the position that he is accused of abusing or misusing for corrupt purposes. Additionally, the sanction-granting authority must consider the case's

<sup>57</sup> *Sunil Kumar v. State of West Bengal*, AIR 1980 SC 1170.

<sup>58</sup> M.P. Jain, Justice Jasti Chelameswar, and Justice Dama Seshadri Naidu, editors, *Indian Constitutional Law*, 8th Edition, 2018, Ch. 31

<sup>59</sup> *Nagraj Shivarao Kargaji v. Syndicate Bank*, AIR 1991 SC 1507.

<sup>60</sup> *Satyendra Chandra Jain v. Punjab National Bank*, (1997) 11 SCC 306.

<sup>61</sup> INDIA CONST. art. 309.

<sup>62</sup> The Prevention of Corruption Act, §17, No. 02, Acts of Parliament, 1947 (India).

<sup>63</sup> *Superintendent of Police (CAI) v. Deepak Chowdhary*, AIR 1996 SC 186.

circumstances, the evidence gathered, and other materials before imposing a sanction.

In *Mohd. Iqbal Ahmed v. State of Andhra Pradesh*<sup>64</sup>, the Supreme Court placed special emphasis on two crucial elements of criminal prosecution sanctions. Any case that is brought without the requisite sanction must first fail since the entire proceeding is void from the start. Therefore, the prosecution must demonstrate that the sanctioning authority has issued a legal sanction. The sanctioning authority must also be convinced that an offence has been established that justifies a sanction. The sanctioning authority must use its judgement and be aware of the circumstances surrounding the offence at the time it imposes the sentence. The sanctioning process is not merely a formality. It is an act of sanctity that protects government employees against baseless prosecution. The protection under section 197 is only accessible when the claimed act committed by a public worker is reasonably related with the performance of his official duties<sup>65</sup>, as was determined in the case of *State of Maharashtra v. R.S. Nayak*<sup>66</sup>. In the case of *Centre for Public Interest Litigation v. Union of India*<sup>67</sup> it was held that governor must act on his own in this situation in the interest of democratic government and its proper operation.

## V. Conclusion

The CVC's current situation is perilous because it is not a legislative body. The Vice-President of India was proposed as the selection committee's chairman and a nominee of the Chief Justice of India was proposed as a member in a 2010 amendment to the CVC Act. Because there will be a system for judicial oversight, the concept sounds sound. There is always a need for a strong, autonomous, and legally recognised ombudsman system. The Vigilance Commission will be more respected if

it is given legal standing and is freed from the influence of the government and politics. To combat corruption and the misuse of power by senior officials, a robust structure is required. The economy of India has recently become more progressive and vibrant. As a result of the economy's rapid expansion in all areas, huge investments were made in the country's infrastructure, as well as retail, construction, and many other government sectors. The obstacles facing CVCs in the fight against the corruption threat are brought on by the economy's rapid expansion, making it more important than ever to fix the CVC system's flaws.

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<sup>65</sup> The Prevention of Corruption Act, §197, No. 02, Acts of Parliament, 1947 (India).

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