

# CENTRAL VIGILANCE COMMISSION

## ABSTRACT:

Corruption is one of the most significant problems in India. To avoid that situation Central Vigilance Commission on recommendations of committee on Prevention of Corruption headed by Shri. Santhanam to advise and guide central government agencies in the field of vigilance. CVC is an apex Indian governmental body. CVC is often considered as powerless agency as it is treated as an advisory body only with no power to register criminal case against government officials or direct CBI to initiate inquiries against any officer of the level of joint secretary and above. Although CVC is “relatively independent” in its functioning, it neither has the resources nor the power to take action on complaints of corruption. In this paper, I covered the Role and purpose of this commission like its major role is to recommend government agencies in “planning, executing, reviewing and reforming” their vigilance capacity. And I dealt with the Functions of CVC with respect to both CBI and Vigilance. And finally inserted the limitations and related case laws.

## INTRODUCTION :

Corruption<sup>1</sup> is one of the most serious problems in India. Serious attempts have often been made and are still being made to get rid of this malady. This distorts the decision making process by the administration and give rise to all kinds of vices. Incurruptibility is an essential requirement for public confidence in the administration of government departments. A word may therefore be said on the subject of law and the machinery to fight administrative corruption.

### S.A. Kiri v. Union of India<sup>2</sup>

The Supreme Court has said that “no employee of a nationalised bank or any other public sector corporation should engage himself in collecting donation for any trust or other organisation from persons with whom he comes into contact in the course of his employment”. Such a practice is likely to lead to harmful results because “in the world of commerce quid pro quo and not charity is the rule”.<sup>3</sup>

To strengthen the existing mechanism for checking corruption amongst government servants, the Central vigilance commission was created in February, 1964, by resolution of the government of India. The commission was established as a result of the recommendations of the committee on prevention of corruption (known as the santhanam committee) which was appointed in 1962. The committee had recommended that the commission should be concerned with two major problems facing the administration, namely

a) Prevention of corruption and maintenance of integrity amongst government servants

b) Ensuring just and fair exercise of administrative powers vested in various authorities by statutory rules or by non-statutory executive orders.

The committee had recommended two major matters relating corruption and maladministration. The government accepted the recommendation of corruption but not maladministration, because the latter problem was big enough to require separate machinery by itself, and if the commission was burdened with the additional responsibility for maladministration along with corruption, it would dilute its effectiveness in dealing

<sup>1</sup>dishonest or fraudulent conduct by those in power like bribery.

<sup>2</sup> AIR 1985 SC 893

<sup>3</sup> Principles of Administrative law – M.P.Jain and S.N.Jain.

with cases of corruption. The central government envisaged the status and functions of the central vigilance commission corresponding to those of the Union Public Service Commission.

### **CENTRAL VIGILANCE COMMISSION ACT, 2003:**

The ordinance of 1998 conferred statutory status to the CVC and the powers to exercise superintendence over functioning of the Delhi Special Police Establishment (DSPE), and also to review the progress of the investigations pertaining to alleged offences under the Prevention of Corruption Act, 1988 conducted by them.

In 1998 the government introduced the CVC Bill in the Lok Sabha in order to replace the ordinance, though it was not successful. The Bill was reintroduced in 1999 and remained with the parliament till 2003. Then CVC Bill was passed by both houses of parliament in 2003 and the President gave his assent on 11<sup>th</sup> September 2003. Thus, the Central Vigilance Commission Act 2003 (No 45 of 2003) came into effect from the date. Nittoor Srinivasa Rau became the first Chief Vigilance Commissioner of India. The present Chief Vigilance Commissioner is K V Chowdary<sup>4</sup> (former chairman of the Central Board of Direct Taxes (CBDT)).

### **ORGANISATION:**

The CVC is headed by a Central Vigilance Commissioner who is assisted by two vigilance commissioners. The Central Vigilance Commission has its own Secretariat, Chief Technical Examiners' Wing (CTE) and a Wing of Commissioners for Departmental Inquiries (CDI). As on 21 March 2012, CVC has staff strength of 257 against sanctioned strength of 299 (including the post of CVC and 2 VC's).

### **APPOINTMENT AND REMOVAL OF CVC:**

The central vigilance commissioner and the vigilance commissioners are appointed by the President after obtaining the recommendation of committee consisting of:

- ❖ The Prime Minister – Chairperson
- ❖ The Home Minister – Member
- ❖ The Leader of the Opposition in the Lok Sabha – Member

The Central Vigilance Commissioner or any Vigilance Commissioner can be removed from his office only by order of the president on the ground of proved misbehaviour or incapacity after the supreme court, on a reference made to it by the president, has, on inquiry, reported that the Central Vigilance Commissioner, as the case may be, ought to be removed. The President may, by order, remove Central Vigilance Officer, as the case may be:

- Is adjudged an insolvent; or
- Has been convicted of an offence which, in the opinion of the central government, involves Moral turpitude; or
- Is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body; or
- Engages during his term of office in any paid employment outside the duties of his office; or
- Has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner (As per CVC Act, 2003).

<sup>4</sup> K.V.Chowdary is an officer of the 1978 batch of Indian Revenue Service (IRS). He assumed the charge as Central Vigilance Commissioner on 10 June 2015.

## **ROLE AND PURPOSE OF CVC:**

The central vigilance commission is not an investigating agency. The only investigation conducted by CVC is that of examining civil works of the government which is carried on by the chief technical officer. The CVC conducts its investigations through the CBI or through departmental chief vigilance officers.

The main purpose of this organisation is:

- Technical audit of construction works of governmental organisations from a vigilance perspective ;
- Investigation of specific cases of complaints relating to construction works ;
- Extension of assistance to CBI in their investigations involving technical matters and for evaluation of properties in Delhi ;
- Tendering of advice and assistant to the commission and chief vigilance officer in vigilance cases involving technical matters.

## **POWERS AND FUNCTIONS OF CVC:**

### **With respect to vigilance:**

- To undertake an inquiry or cause an inquiry or investigation to be made into any transaction in which a public servant working in any organisation, to which the executive control of the government of India extends, is suspected or alleged to have acted for an improper purpose or in a corrupt manner ;
- To tender independent and impartial advice to the disciplinary and other authorities in disciplinary cases, involving vigilance angle at different stages i.e, investigation, inquiry, appeal, review etc...
- To exercise a general check and supervision over vigilance and anti-corruption work in Ministries or Departments of the government of India and other organisations to which the executive power of the union extends ;
- To undertake or cause an inquiry into complaints received under the Public Interest Disclosure and Protection of Informer and recommend appropriate action.
- Respond to Central Government on mandatory consultation with the commission before making any rules or regulations governing the Vigilance or disciplinary matters relating to the persons appointed to the public services and posts in connection with the affairs of the union or to members of the All India Services.
- The Central Government is required to consult the CVC in making rules and regulations governing the vigilance and disciplinary matters relating to the members of Central Services and All India Services.

### **With respect to CBI:**

- To exercise superintendence over the functioning of the Delhi Special Police Establishment (DSPE) (i.e.CBI) with respect to investigation under the Prevention of Corruption Act , 1988; or offences under CrPC for certain categories of public servants and to give directions to the DSPE for purpose of discharging this responsibility ;
- To give directions and to review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the Prevention of Corruption Act;
- As fallout of Vineet Narain case<sup>5</sup>, the supreme court of India ruled that the Director of the CBI (and the Director of Enforcement) should be appointed on the recommendations of a committee headed by the Central Vigilance Commissioner, the Home Secretary and the Secretary in the Department of Personnel as

<sup>5</sup> Vineet Narain & others vs Union Of India & Another on 18 December,1997

members. The Committee should also take the opinion of the incumbent Director CBI before forwarding their recommendations to the Appointments Committee of the cabinet.

➤ The committee concerned with the appointment of the Director of CBI is also empowered to recommend, after consultation with the Director (CBI), appointment of officers to the posts of level of SP and above in DSPE

#### **LIMITATION OF CVC:**

- CVC is only an advisory body, Central Governments are free to either accept or reject CVC's advice in corruption cases.
- CVC cannot direct CBI to initiate inquiries against any officer of the level of Joint Secretary and above on its own. Such permission has to be obtained from the concerned Department and Ministries.
- CVC does not have power to register criminal case. It deals only with vigilance or disciplinary cases.
- CVC has supervisory powers over CBI. However, CVC does not have the power to call for any file from CBI or to direct CBI to investigate any case in a particular manner. CBI is under administrative control of Department of Personnel and Training (DoPT) which means that, the powers to appoint, transfer, suspend CBI officers lie with DoPT.
- As a result, although CVC is relatively independent in its functioning, it has neither may act as an effective deterrence against corruption.

#### **RELATED CASE LAWS:**

##### **Centre for pil & Anr vs Union Of India & Anr<sup>6</sup>**

PJ Thomas was appointed as the Chief Vigilance Commissioner in September 2010, on the recommendation of a High Powered Committee (HPC) headed by the Prime Minister of India. The selection of the new CVC was marked by controversies, after Sushma Swaraj, who was part of three member selection committee, objected to the choice of Thomas, citing the pending charge sheet against him. Public interest litigation was filed in the Supreme Court of India by Centre for Public Interest Litigation and India Rejuvenation Initiative.

On March 3, 2011, the Supreme Court quashed the appointment of Thomas as the Chief Vigilance Commissioner, noting that HPC did not consider the relevant materials on the pending chargesheet. Subsequently, Mr. Thomas resigned.

##### **Satyendra Dubey Murder Case<sup>7</sup>**

On March 27, 2010, three persons were sentenced to life imprisonment by a special CBI court for murdering NHA engineer Satyendra Dubey, the young whistleblower who had exposed corruption in the Golden Quadrilateral highway project in Bihar, in 2003.

Special CBI court judge Raghvendra Singh found Mantu Kumar, Udai Kumar, Pinku Ravidas guilty of murdering the 31-year-old IIT-Kanpur alumni and awarded life term to them.

##### **Nagaraj Shivarao Kargaji v. Syndicate Bank<sup>8</sup>**

The Supreme Court held that the aforesaid direction is wholly without jurisdiction and is plainly contrary to statutory regulations governing disciplinary matters. No third party like Chief Vigilance

<sup>6</sup>On March 3<sup>rd</sup>, 2011.

<sup>7</sup>www.indiatoday.in

<sup>8</sup>(1991) 3 SCC 219: AIR 1991 SC 1507.

Commission or the Central Government could dictate the disciplinary authority or appellate authority as to how they should exercise their power and what punishment they should impose on delinquent officer.

**Satyendra Chandra Jain v. Punjab National Bank<sup>9</sup>**

Once again the Supreme Court held that recommendation of Chief Vigilance Commissioner regarding question of punishment is not binding on disciplinary authority.

**Union of India v. Alok Kumar<sup>10</sup>**

The Supreme Court held that unless the rules so required, advice of the CVC is not binding. The advice tendered by the CVC, is to enable the disciplinary authority to proceed in accordance with law. In the absence of any specific rule, that seeking advice and implementing thereof is mandatory, it will not be just and proper to presume that there is prejudice to the officers concerned. Even in the cases where they action is taken without consulting the vigilance commission, it necessary will not vitiate the order of removal passed after inquiry by the Departmental Authority.

**Manzoor Ali Khan v Union of India and others<sup>11</sup>**

The Supreme Court of India held that the constitutional validity of section 19 of Prevention of Corruption Act, 1988.

**Jain Hawala Case**

The Supreme Court directed for the separation of four investigative agencies from the control of the executive. These include CBI, Enforcement Directorate, Revenue Intelligence Department and the CVC. The court shifted CBI to under the administrative control of CVC into a statutory body.

**CONCLUSION:**

The formation CVC is to tackle the happening of corruption. As we have seen, in the present stage the status of CVC is weak since it is not a legislative body. In 2010 amending the CVC act has been suggested, which provided for including the Vice President of India as the chairman and a nominee of the Chief Justice of India as a member of the selection committee. The suggestion looks good as there will be a check mechanism from the side of the judiciary. It is always essential to have strong and an independent ombudsman system having constitutional sanction which has its own autonomy. The status of Vigilance Commission should be improved by giving it a legal status and by removing it from the clutches of the executive and politics as a strong mechanism is highly essential to fight the corruption and misuse of power by holders of high officers.

<sup>9</sup> (1997) 11 SCC 306; (1997) 91 ELT 259.

<sup>10</sup> (2010) 5 SCC 349, Para 79; AIR 2010 SC 2735.

<sup>11</sup> On August 6, 2014.