

Administration of Central Vigilance Commission: A critical Analysis

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Introduction:

Vigilance in the context of any organization would mean keeping a watchful eye on the activities of the officers and officials of the unit to ensure integrity of personnel in their official transactions. Vigilance, in other words, is to ensure clean and prompt administrative action towards achieving efficiency and effectiveness of the employees in particular and the organization in general, as lack of Vigilance leans to waste, losses and economic decline¹.

Corruption in the administration is a serious problem affecting Indian polity. Incorruptibility is an essential requirement for public confidence in the administration of Government departments. Government in order to strengthen the existing mechanism created Central Vigilance Commission in February 1964². And the main concerns regarding formation of CVC was to (a) Prevention of corruption and maintenance of integrity amongst Government servants and (b) ensuring just and fair exercise of administrative powers vested in various authorities by statutory rules. Here, two major matters were meant to be addressed, cases related to corruption and cases related to maladministration but later was not accepted by the Government. The vigilance commission has jurisdiction and powers in respect of matters to which executive power of the center extends.

The Central Vigilance Commission comprises of:-

- a) Central Vigilance Commissioner – chairperson;
- b) Not more than three Vigilance Commissioners – Members;

Secretary to the Government of India,

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² The commission was appointed in 1962, which is a result of recommendations of the “*committee on prevention of corruption*”(known as Santhanathan Committee”).

History of creation of CVC:

In 1963, by an executive resolution, The Government established the Central Bureau of Investigation. Before 1963, there existed the special Police establishment under the Delhi Special Police Establishment Act, 1946 to investigate offences committed by the Central Government servants while discharging their official duties. With the creation of CBI, SPE was made a wing of the CBI for purposes of investigation; the CBI derives its power from the Delhi Police Establishment Act, 1946³. Under CVC, there existed the Chief vigilance Officer in each ministry/department having a number of vigilance officers under him. There existed Commissioners for departmental enquiries attached to the ministry of Home Affairs for the purpose of conducting enquiries in disciplinary proceedings against Government servants. After formation of Commission, following changes were made: Commissioners for dept. inquiry was transferred to administrative control of the commission. Vigilance officer in each ministry came to be appointed in consultation with the commission. But its role is limited. It is only advisory. The main tasks are coordination, supervision and advisory rather than investigating the complaints itself, it has no adjudicating power nor power to give sanctions for criminal prosecutions for offences committed by public servants while discharging their official functions⁴. It has no machinery to investigate or enquire into complaints of corruption except to a limited extent.

³ Kartikeya Tanna (Tanna associates) , Research paper Reforms in the central bureau of investigation and Establishment of independent prosecuting entity.

⁴ In Jammu & Kashmir, the Government Servants' prevention of Corruption of 1975 provides for an anti-corruption Tribunal to conduct inquiries into allegations of corruption and to recommended appropriate action and a vigilance commission to conduct the investigations. The Tamil Nadu public Men (Criminal misconduct) Act of 1973 covered only political corruption, but it was repealed in 1977.

JURISDICTION OF CVC:

The Commission's jurisdiction is co-terminus with the executive powers of the Union therefore it extends to all matters. It can undertake any inquiry into any transaction in which a Public Servant is suspected or alleged to have acted for an improper or corrupt purpose; or cause such an inquiry or investigation to be made into any complaint of corruption, gross negligence, misconduct, recklessness, lack of integrity or other kinds of malpractices or misdemeanors on the part of a public servant. The Commission tenders appropriate advice to the concerned disciplinary authorities in all such matters having a definite or potential vigilance angle and an element of corruption or criminal misconduct or malafide⁵.

CVC exercises superintendence over CBI in the matters relating to the investigation of the offences alleged to have been committed under the prevention of Corruption Act - 1988⁶.

CVC renders advice at two stages on vigilance matters:

a) **FIRST STAGE:** To consider investigation report and advice about the type of proceedings (major/minor) to be initiated.

b) **SECOND STAGE:** To consider inquiry report and advice about the penalty to be imposed.

VIGILANCE DEPARTMENT - STRUCTURE:

- Chief Vigilance Officer
- General Manager (Vigilance)
- Dy.Chief Vigilance Officer (Investigation)
- Dy. Chief Vigilance officer (Technical)
- Sr. Managers/Managers/Asst. Managers.

⁵ <http://www.oocities.com/kstability/projects/inquiry3/spchap1.html>, last visited on 14th February 2011, Personal Website of R.Kannan, on Vigilance Management in Public Sector Banks vis-à-vis the Role and Functions of the CVC.

⁶ <http://www.cvc.nic.in/faqs.htm>, last visited on 11th January 2011.

However with the increase in the scope of administration in India, a feeling has arisen in the public mind that vesting of such vast powers in the administration has generated possibilities and opportunities of abuse or misuse of power by administrative functionaries resulting in maladministration and corruption⁷.

The CVC is primarily entrusted with the task of looking into matters of corruption in administration. This is clarified in the official website of the CVC⁸. It is further clarified that “Complaints to the Commission are meant to result in punitive action against the erring public servant(s). Relief as such in the matter to the complainant is only incidental to the vigilance action. Redressal of grievances vis-à-vis Government organizations or public sector enterprises should not be the focus of complaints to the Commission⁹.”

CORRUPTION:

‘Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain gratification whatever, other than legal remuneration as a motive or a reward for doing or for bearing to do any official act or for showing or for bearing to show, in the exercise of his official functions favour or disfavour to any person with the Central or State Government or Parliament or Legislature of any State or with any public servant as such¹⁰.

It is held to be the abuse of public office for private gain¹¹.

Corruption is also described as the acquisition of forbidden benefits by officials or employees, so bringing into question their loyalty to their employers.

⁷ M.P. Jain & S.N. Jain, *Principles of Administrative Law* (Wadhwa & Co. Nagpur, New Delhi, Fifth edition, 2007) p.905.

⁸ *Complaint handling policy*, http://cvc.nic.in/comp_policy.pdf as visited on 23rd September 2010.

⁹ *Ibid*

¹⁰ Section 161 of IPC describes corruption.

¹¹ Definition of World bank on Corruption.

Complaints¹²:

Information about corruption, malpractices or misconduct on the part of public servants may come to light from any source, such as: administrative authority, Complaints received or intelligence gathered by the Central Bureau of Investigation and by Police authorities, inspection reports and stock verification surveys, Audit reports on Government accounts and on the accounts of public undertakings, Reports of any irregularities in accounts revealed in the routine audit of accounts e.g. tampering with records, over-payments, misappropriation of money or materials.

Complaints received in the Central Vigilance Commission will be registered and initially examined in the Commission. The Commission may decide, according to the nature of each complaint, that¹³:

1. It should be sent for inquiry and disposal/report to the administrative Ministry/Department concerned.
2. It should be sent to the Central Bureau of Investigation for inquiry/ Investigation.
3. Commission should undertake the inquiry itself.

The Government of India have reason to believe that a good many anonymous complaints are false and malicious and that such complaints are not a reliable source of Information. Inquiries into such complaints have an adverse effect on the morale of the services. The Government of India have accordingly decided

¹² Procedure to lodge a complaint, <http://www.cvc.nic.in/lodgecomp.htm> as visited on 25th September 2010.

¹³ <http://cvc.nic.in/vigman/chapterii.pdf>, last visited on 10th January 2011.

that no action should be taken on anonymous complaints against Government servants¹⁴.

ACTION AGAINST PERSONS MAKING FALSE COMPLAINTS:

There is remedial action available against those who send false petitions.

If complaint made by a public servant is found to be malicious, vexatious or unfounded, serious action may be considered against the complainant¹⁵.

A person making a false complaint can be prosecuted on a complaint lodged with a court of competent jurisdiction by the public servant to whom false complaint was made or by some other public servant to whom he is subordinate¹⁶.

Alternately, if the complainant is a public servant, it may also be considered whether departmental action should be taken against him as an alternative or in addition to prosecution.

Problems:

1. Appointment of Chief vigilance officer is not transparent and clear. As there does no statutory requirement about the selection have to be unanimous or based on consensus among the members of the committee.
2. Its function is only advisory, not investigative.
3. Emphasis is not given to finding of Vigilance Commissioner.

Recently a group of eminent citizens have called for effective safeguards to maintain the “purity of the selection process” for appointments to the post of the Chief Vigilance Commissioner. There should be effective safeguards for

¹⁴ <http://www.oocities.com/kstability/projects/inquiry/complaints2.html>, last visited on 12th February 2011 on How to conduct/defend Departmental Inquiries?

¹⁵ Section 182 IPC provides for prosecution of a person making a false complaint.

¹⁶ Section 195(1) (e) Cr. P.C.

maintaining the purity of the process of selection for future appointments to the post, regardless of the merits of the current appointment¹⁷.

*It is not wisdom alone but public confidence in that wisdom which can support an administration*¹⁸. This statement underscores the importance of public confidence as a test of the efficacy of administration. The fundamental principle of administrative law has always remained the same, namely, that in a democracy, the people are supreme, and hence all State authority must be exercised in the public interest¹⁹.

The CVC is not a creature of statute. His office is enmeshed with the executive of a state which subjects him to political interference. The CVC has much weaker status than the ombudsman²⁰. Additionally, the role of the Commission is restricted in that it encompasses only the advisory function. No investigative powers are conferred upon it and its functions are confined to exercising a general check and supervision over government department as compared to the wider powers of the ombudsman. The Commission also does not qualify as a 'competent authority' to sanction criminal prosecutions for offences committed by public officials. Furthermore, in a number of cases the SC has held that the Recommendation of the Chief Vigilance Commissioner regarding question of punishment is not binding on disciplinary authority²¹.

The CVC, entrusted with the responsibility of enforcing the adherence to the most stringent standards of probity, propriety and prudence by the various

¹⁷ The Hindu, 18th September 2010, kolkata edition.

¹⁸ Thomas Jefferson told to James Monroe, 1824.

¹⁹ Justice Markandey Katju, *Administrative Law and judicial review of administrative action*, (2005) 8 SCC (J) 25.

²⁰ M.P. Jain & S.N. Jain, *Principles of Administrative Law* (Wadhwa & Co. Nagpur, New Delhi, Fifth edition, 2007) p 938.

²¹ *Sunil Kumar v. State of West Bengal*, AIR 1980 SC 1170, also see *Satyendra Chandra Jain v. Punjab National Bank*, (1997) 11 SCC 306.

grades of functionaries in the Central government and Public Sector Undertakings, should be a person above controversy and of unsullied background and impeccable integrity. His selection and appointment should give no room for even the faintest whiff of misgivings on any count whatsoever. The selection process should not violate the spirit of the Central Vigilance Commission Act. “Although there is no statutory requirement about the selection having to be unanimous or based on consensus among the members of the committee, there is an undeniable moral obligation on the part of the representatives of the government on the committee not to proceed with the appointment in case the Leader of the Opposition, on any reasonable ground, disagrees with the selection of any particular individual.”²²

“Need for Amending the Act”:

Amending the CVC Act has been suggested to provide 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 selection must be by consensus among the members, and selection by the majority of the members present should be adopted only in exceptional circumstances and for reasons to be recorded in the committee's proceedings. The proceedings, along with full particulars of persons considered for the preparation of the panel and the reasons based on which the final selection was made, should be published. This would ensure that the composition of the committee does not give a steam-roller majority to the government and that the committee functions in a non-partisan and transparent manner.²³

The vigilance commission has jurisdiction and powers in respect of matters to which the executive of the center extends. The following categories of employees

²² The Hindu, 18th September 2010, on “Call for safeguards in CVC selection process”.

²³ ibid

come within the commission's purview: government servants employed in the ministries and departments or the Government of India and Union Territories, employees of Public sector undertakings, statutory corporations and port trusts. But as a practical matter, the commission has restricted itself to cases pertaining only to: Gazetted Officers, employees of public undertakings and nationalized banks etc. drawing a basic pay of Rs. 1000 per month and above.

The Central Vigilance Commissioner is to be appointed by President. The commission is attached to the Ministry of Home Affairs, but it is not subordinate to any Ministry or Department and has same measure of Independence and autonomy as the UPSC.

Difference between CVC and CBI:

Central Vigilance Commission (CVC) is an apex body constituted by the Government of India for exercising general superintendence and control over vigilance matters in administration and probity in public life. CVC was accorded statutory status with effect from 25.8.1998 through "The Central Vigilance Commission Ordinance, 1998"²⁴.

Central Bureau of Investigation (CBI), the prime investigation agency constituted by the Central Government under DSPE Act 1946 for conducting investigation in special crimes and corruption cases. Its jurisdiction has been extended to conduct investigation of the offences alleged to have been committed under Prevention of Corruption Act 1988 and for other offences entrusted by the Central Government²⁵.

Demerits of CVC:

Commission is an agency of Executive and not of the legislature. Ho owes his position to executive will as it has no statutory basis. It has no investigation

²⁴ <http://cvc.nic.in/man04.pdf>, Vigilance Manual Volume 1, Sixth edition 2005.

²⁵ www.aai.aero/.../Handbook_of_General_Vigilance_for_Officers.doc, last visited on 10th January 2010.

mechanism at its disposal; it depends upon other public agencies for the purpose.

In *Sunil Kumar v. State of west Bengal*²⁶, An enquiry officer was appointed to enquire into certain charges against the appellant who was a member of Indian Administrative Service. Report of enquiry was sent to Vigilance commissioner for his advice. Thereafter the disciplinary authority, I.e. state Government came to conclusions. The appellant was reduced from higher to lower salary in the same grade. He challenged the order, and contended that consultation with Vigilance officer, who had no statutory status and Government, did not furnish report of Officer. Court held that Disciplinary committee committed no irregularity, and conclusions were not based on advice tendered by Vigilance officer, but arrived independently. The preliminary findings of the disciplinary authority happened to coincide with the views of Vigilance commissioner was neither here nor there²⁷. If the commissioner's report is not to be taken into account at all by concerned authority or if it does not play any role in influencing its mind, then consultation with him is an empty formality which serves no purpose, therefore, institution practically become otiose. PSC had a constitutional status, while Vigilance Commissioner has merely an administrative status. And according to Natural Justice, which requires decision making authority must apply its own mind, and ought not to be influenced by others.

However present day situation is very unsatisfactory. In order to avoid, options available are:

1. Government shouldn't consult vigilance commissioner for drawing conclusions from record.
2. Vigilance commissioner be given a legal status. And provisions must be made in law for consulting him.

²⁶ AIR 1980 SC 1170

²⁷ The govt. findings in this case were first in accord with view of Vigilance commissioner. The govt. changed its mind later after consulting the Public Service Commission. The public service commission is a constitutionally created body and consultation with the PSC is required in disciplinary matters. , see M.P Jain, Indian Constitution Law, Ch.31

Supreme Court held that Chief vigilance Commission cannot dictate the disciplinary authority as to how they should exercise their power and what punishment they should impose on delinquent officer²⁸. Once again Supreme Court held that recommendation of Chief Vigilance officer Commissioner regarding question of punishment is not binding on disciplinary committee²⁹. The disciplinary proceedings against government servants are taken under Service rules framed by Government under Art.309 of Constitution. Besides, a public servant can also be prosecuted for bribery and corruption in a criminal court. With a view to expedite such trials, the Prevention of Corruption Act, 1947 (now replaced with P.C. Act) makes certain provisions. As it is in the interest of public that corruption be eradicated, so also it is in the public interest that honest public servants should be able to discharge their duties free from false, frivolous, and malicious accusations. PCA thus seeks to balance both objectives. One hand, it seeks to provide for certain safeguards against frivolous trials, other hand it seeks to provide for expeditious trial of corruption cases. One such safeguard contained in Section 17 of PCA is that before a public servant can be prosecuted for any specific offence³⁰, sanction of State Government is necessary in case of a person who is employed in connection with the affairs of a state and is not removable from his office save by or with the sanction of the State Government. Grant of sanction is only an administrative function. Facts collected during the course of investigation have to be brought before the sanctioning authority and the sanctioning authority has to consider the material. The grant of sanction being an administrative act, the need to provide an opportunity of hearing to the accused, does not arise³¹. Similar is in case of central Government Explaining

²⁸ Nagraj Shivarao Kargaji v. Syndicate bank, AIR 1991 SC 1507

²⁹ Satyendra Chandra Jain v. Punjab national Bank, (1997) 11 SCC 306

³⁰ The offences are those punishable under s.161 or s. 164 or s.165, IPC or s. 5(2) or 5(3A) of the PCA.

³¹ Superintendent of Police (CAI) v. Deepak Chowdhary. AIR 1996 SC 186.

the provision Supreme Court has said that sanction of that competent authority alone is necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motive. Further the authority, entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other material before according sanction.

In *Mohd. Iqbal Ahmed v. state of Andra pradesh*³² SC has emphasized on two significant aspects of of sanction for prosecution. First, any case instituted without a proper sanction must fail as the entire proceedings are rendered *void abinitio*. Therefore the prosecution must prove that valid sanction has been granted by the sanctioning authority. Secondly, the sanctioning authority must be satisfied that a case for sanction has been made out constituting the offence. the sanctioning authority at the time of giving sanction must be aware of the facts constituting the offence and must apply its mind. The grant of sanction is not an idle formality. It is a sacrosanct act which affords protection to the Government Servants against frivolous prosecution. In *State of Maharastra v. R.S. Nayak*³³ it was held that protection under section 197 is available only when alleged act done by public servant is reasonably connected with discharge of his official duty³⁴. For the interest of democratic government and its functioning, the governor must act in such a case on his own.

Conclusion:

Considering the working of CVC (Central Vigilance commission), whose office is enmeshed with powers, there are few suggestions:

- It is suggested amending the CVC Act to provide 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.

³² AIR 1979 SC677

³³ AIR 1982 SC 1249

³⁴ Centre for public interest litigation v. Union Of India, AIR 2005 SC 4413.

- The selection must be by consensus among the members, and selection by the majority of the members present should be adopted only in exceptional circumstances and for reasons to be recorded in the committee's proceedings.
- The proceedings, along with full particulars of persons considered for the preparation of the panel and the reasons based on which the final selection was made, should be published. This would ensure that the composition of the committee does not give a steam-roller majority to the government and that the committee functions in a non-partisan and transparent manner,
- The Central Vigilance Commissioner is to be appointed by President. The commission is attached to the Ministry of Home Affairs, but it is not subordinate to any Ministry or Department and has same measure of Independence and autonomy as the UPSC
- Government shouldn't consult vigilance commissioner only for drawing conclusions from record.
- Vigilance commissioner be given a legal status. And provisions must be made in law for consulting him.
- Status of CVC should be equal to Ombudsman.