

CENTRAL VIGILANCE

COMMISSION

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TABLE OF CONTENTS

SERIAL NO.	CHAPTER	PAGE NOS.
I	INTRODUCTION	1-2
II	VIGILANCE COMMISSION <ul style="list-style-type: none"> • Introduction • Organisation • Appointment • Removal • P.J. Thomas Case 	3-8 3 4 5 5 6
III	ROLE OF VIGILANCE COMMISSION <ul style="list-style-type: none"> • Chief Vigilance Officer • Who are Chief Vigilance Officers? • Role and Functions of Chief Vigilance Officers • Loopholes in the 	9-15 10 10 10

IV

	Central Vigilance Commission	14
IV	CONCLUSION	16-20
	BIBLIOGRAPHY	21

ABBREVIATIONS

CVC - Central Vigilance Commission

CBI - Central Bureau of Investigation

CVO - Chief Vigilance Officers

ACA - Anti-Corruption Authorities

ICAC - Independent Commission Against Corruption

CPIB – Corrupt Practices Investigation Bureau

CHAPTER I

INTRODUCTION

The problem of how best to control corruption has challenged policymakers from the dawn of civilization. Strategies and institutional responses have varied, but in recent decades the approach of choice has increasingly become to establish an anti-corruption agency. This supposedly straightforward nostrum actually poses a lot of difficulties. How much authority, and which specific powers, to give it? How big should the agency – and its jurisdiction – be? What should we expect of such an agency, and how will we know whether it has been successful?

As a result of the prevalent interest in anti-corruption agencies, and the many questions they raise, the World Bank determined the need to assess the experiences of these institutions. In recent decades, Singapore and Hong Kong have provided the momentum, and the model, for the establishment of strong, centralized agencies in this field. Other countries, such as the U.S. and India, have chosen the alternative strategy of strengthening anti-corruption capabilities in government, by spreading these powers across multiple agencies. These differences of approach can have important implications, although background conditions such as effective legal institutions appear to be more critical. Given the level of interest in centralized or single-agency approaches, our focus lies there.¹

¹ Anti-Corruption Agencies : A Review of Experience, by Patrick Meagher IRIS Center, University of Maryland, Submitted to the World Bank PREM-ECA, pg 1.

In assessing these experiences, determining success poses knotty problems. Many agencies' missions are broadly defined in terms of reducing corruption or changing values. Measuring an agency's impact on the level of corruption, let alone public values, appears impossibly problematic. Even where objectives are more concretely defined, the data on agency outputs, and especially on intermediate outcomes, are spotty. Keeping these difficulties in mind, we review the experiences of anti-corruption agencies using the tools at hand. In doing so, we attempt to provide practical guidance to the World Bank and member states who are considering the establishment of such an agency. We also attempt to identify promising strategies for developing a more rigorous assessment framework over the long term².

² Anti-Corruption Agencies : A Review of Experience, by Patrick Meagher IRIS Center, University of Maryland, Submitted to the World Bank PREM-ECA, pg 1.

CHAPTER II

VIGILANCE COMMISSION

INTRODUCTION :

An Act to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto³.

Central Vigilance Commission (CVC) is an apex Indian governmental body created in 1964 to address governmental corruption. It has the status of an autonomous body, free of control from any executive authority, charged with monitoring all vigilance activity under the Central Government of India, and advising various authorities in central Government organizations in planning, executing, reviewing and reforming their vigilance work. It was set up by the Government of India in February, 1964 on the recommendations of the *Committee on Prevention of Corruption*, headed by Shri K. Santhanam, to advise and guide Central Government agencies in the field of vigilance. Nittoor Srinivasa Rau, was selected as the first Chief Vigilance Commissioner of India⁴.

The Annual Report of the CVC not only gives the details of the work done by it but also brings out the system failures which leads to corruption in various

³ The Central Vigilance Commission Act 2003, The Bare Act.

⁴ Available at www.wikipedia.org, visited on 4th April 2014

Departments/Organisations, system improvements, various preventive measures and cases in which the Commission's advises were ignored etc.

The current Central Vigilance Commissioner is Pradeep Kumar, and the Vigilance Commissioners are R Sri Kumar and J M Garg⁵.

ORGANISATION:

The Central Vigilance Commission is a non-statutory body, whose jurisdiction and function can be amended not by the Parliament but by the Government order.

It deals with the cases of corruption against the gazetted officers of (1) Central Government , (2) Union Government and (3) Nationalised Banks etc. It is independent of Government and works as an autonomous body like the Union Public Service Commission.⁶

It is one man commission headed by Central Vigilance Commissioner, assisted by secretary and five branch officers and eleven commissioners for departmental inquiries known as Central Vigilance Commissioner, appointed by the President for a term of 6 years or till he attains the age of 65 years whichever is earlier this term has been reduced to three years with a provision for an extension of two years. He can be removed from the office by President on the ground of misbehaviour, it after holding an inquiry the Supreme Court finds him guilty thereof and recommends action against him.⁷

⁵ Available at www.wikipedia.org, visited on 4th April 2014

⁶ Adv Sharvari Vaidya, Priviledged Class Deviance, 1st Ed., pg 72.

⁷ Ibid.

APPOINTMENT (Sec 4)⁸ :

The Central Vigilance Commissioner and the Vigilance Commissioners are appointed by the President after obtaining the recommendation of a Committee consisting of:

- The Prime Minister — Chairperson
- The Home Minister — Member.
- The Leader of the Opposition in the Lok Sabha — Member

Oath or affirmation

The Central Vigilance Commissioner and a Vigilance Commissioner, before he enters upon his office, is required to make and subscribe to an oath or affirmation.⁹

REMOVAL(Sec 6)¹⁰ :

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 misbehavior or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought to be removed. The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference. The President may, by order, remove from office the Central Vigilance Commissioner or any Vigilance

⁸ The Central Vigilance Commission Act 2003, The Bare Act, pg 3.

⁹ Ibid.

¹⁰ Supra at pg 4.

Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be:

- a) is adjudged an insolvent; or
- b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- c) engages during his term of office in any paid employment outside the duties of his office; or
- d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.¹¹

P.J. THOMAS CASE

The Supreme Court quashed the appointment of P J Thomas as Central Vigilance Commissioner, saying the recommendation made by the high-powered committee headed by the Prime Minister did not consider the relevant material and as such its advice "does not exist in law".¹²

The bench severely criticised the committee for not considering the relevant material including the pending criminal case against Thomas in the Palmolein import case and the

¹¹ Available at www.wikipedia.org, visited on 4th April 2014

¹² Available at http://articles.economictimes.indiatimes.com/2011-03-03/news/28650975_1_palm-oil-pj-thomas-central-vigilance-commissioner

recommendations of the DoPT between 2000-04 for initiating disciplinary proceedings against him.¹³

"It is the duty of the high-powered committee (HPC) to not to recommend the name of a person who can affect the institutional integrity of the CVC," the bench said, adding the institutional integrity and the integrity of a person holding the post of CVC is the touchstone of the office under the CVC Act.¹⁴

Apart from the Prime Minister, the high-powered committee consisted of Home Minister P Chidambaram and Leader of Opposition Sushma Swaraj. The court said the HPC failed to consider relevant material against Thomas and the entire focus was on his bio-data and none of the government bodies including the DoPT focussed on larger issue of institutional integrity.¹⁵

Thomas was Kerala's civil supplies secretary in 1992 when the alleged palm oil scam took place. The palm oil case was registered in 1999, accusing Thomas and others of a criminal conspiracy and causing a loss of Rs.2.32 crore to the state exchequer.

They were accused of importing 15,000 tonnes of palm oil from Malaysia at an inflated price for distribution through fair price shops. Thomas is a 1973 batch Indian Administrative Service officer of Kerala cadre. He has earlier also served as the telecom secretary.¹⁶

A Bench of Chief Justice S.H. Kapadia and Justices K.S. Radhakrishnan and Swatanter Kumar set aside his appointment acting on the writ petitions filed by the Centre for

¹³ Available at http://articles.economictimes.indiatimes.com/2011-03-03/news/28650975_1_palm-oil-pj-thomas-central-vigilance-commissioner

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

Public Interest Litigation, the former Chief Election Commissioner, J.M. Lyngdoh, and others. And within hours of the judgment, Mr. Thomas stepped down from the post.¹⁷

Justice Kapadia, who wrote the judgment, held invalid the HPC's decision and pointed out that as of date, Mr. Thomas was accused No. 8 in the Kerala palmolein case pending in the Court of the Special Judge, Thiruvananthapuram, for offences under Section 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988 and under Section 120B (conspiracy) of the Indian Penal Code.¹⁸

The Bench, quoting an earlier judgment, said eligibility criteria would indicate that eligible persons should be without any blemish whatsoever and they should not be appointed merely because they were eligible to be considered for the post.¹⁹

¹⁷ Available at <http://www.thehindu.com/news/national/supreme-court-strikes-down-thomas-appointment-as-cvc/article1505831.ece>

¹⁸ Ibid.

¹⁹ Ibid.

CHAPTER III

ROLE OF THE CENTRAL VIGILANCE COMMISSION

The power and functions of the Central Vigilance Commissioner have been stated in the resolution under which it has been established. It has been empowered to exercise general control and supervision over the vigilance and anti-corruption work carried on in various ministries department and public undertaking. It has been empowered to conduct inquiry into the transactions in which public servants are suspected of malpractices, misdemeanor, etc. It is assisted by the C.B.I.²⁰

After receiving the complaint, the commission refers it to the Central Bureau of Investigation (C.B.I.) or the concerned Ministry or department. After investigation the investigation report is sent to the commission for advice. The commission, thus does not make investigation itself and depends on other organization which is attached to it, conducts technical examination of public works including checking of bills of contractors, contracts and muster rolls.²¹

The jurisdiction of the Central Vigilance Commission extends to the matters of which the executive powers of union extend. The Central Vigilance Commission is an advisory body. The commission gives advice in matters relating to the interpretation of laws and procedures governing departmental proceedings.

²⁰ Adv Sharvari Vaidya, Priviledged Class Deviance, 1st Ed., pg 72.

²¹ Id. at pg 73

The commission conducts the orientation courses for vigilance officers and reviews the vigilance arrangements in the ministries, departments or public undertakings. It submits its annual report to the Ministry of Home Affairs. The report includes the cases in which its recommendations were accepted and acted upon. A copy of the report alongwith the Government's memorandum explaining the reasons for non-acceptance of its recommendation is required to be laid by the Ministry of Home Affairs before each house of Parliament²².

CHIEF VIGILANCE OFFICERS :

Who are the Chief Vigilance Officers?

The Chief Vigilance Officers are extended hands of the Central Vigilance Commission. The Chief Vigilance Officers are considerably higher level officers who are appointed in each and every Department/Organisation to assist the Head of the Department/Organisation in all vigilance matters²³.

Role and functions of Chief Vigilance Officers

Even though detection and punishment of corruption and other malpractices are certainly important, what is more important is taking preventive measures instead of hunting for

²² Adv Sharvari Vaidya, Priviledged Class Deviance, 1st Ed., pg 73.

²³ Available at <http://cvc.nic.in/rnfcvo.htm#cvos>, visited on 4th April 2014.

the guilty in the post corruption stage. Therefore, the role and functions of CVOs has been broadly divided in to two parts, which are (I) Preventive and (II) Punitive²⁴.

On the preventive side -

The Chief Vigilance Officers (CVOs) undertake various measures, which include:

- (a) To examine in detail the existing Rules and procedures of the Organisation with a view to eliminate or minimise the scope for corruption or malpractices;
- (b) To identify the sensitive/corruption prone spots in the Organisation and keep an eye on personnel posted in such areas;
- (c) To plan and enforce surprise inspections and regular inspections to detect the system failures and existence of corruption or malpractices;
- (d) To maintain proper surveillance on officers of doubtful integrity; and
- (e) To ensure prompt observance of Conduct Rules relating to integrity of the Officers, like:
 - (i) The Annual Property Returns;
 - (ii) Gifts accepted by the officials
 - (iii) Benami transactions

²⁴ Available at <http://cvc.nic.in/rnfcvo.htm#cvos>, visited on 4th April 2014.

(iv) Regarding relatives employed in private firms or doing private business etc.

On the punitive side-

(i) To ensure speedy processing of vigilance cases at all stages. In regard to cases requiring consultation with the Central Vigilance Commission, a decision as to whether the case had a vigilance angle shall in every case be taken by the CVO who, when in doubt, may refer the matter to his administrative head, i.e. Secretary in the case of Ministries/Departments and Chief Executive in the case of public sector organisations;

(ii) To ensure that charge-sheet, statement of imputations, lists of witness and documents etc. are carefully prepared and copies of all the documents relied upon and the statements of witnesses cited on behalf of the disciplinary authority are supplied wherever possible to the accused officer alongwith the charge-sheet;

(iii) To ensure that all documents required to be forwarded to the Inquiring Officer are carefully sorted out and sent promptly;

(iv) To ensure that there is no delay in the appointment of the Inquiring Officer, and that no dilatory tactics are adopted by the accused officer or the Presenting Officer;

(v) To ensure that the processing of the Inquiry Officer's Reports for final orders of the Disciplinary Authority is done properly and quickly;

(vi) To scrutinise final orders passed by the Disciplinary Authorities subordinate to the Ministry/Department, with a view to see whether a case for review is made out or not;

(vii) To see that proper assistance is given to the C.B.I. in the investigation of cases entrusted to them or started by them on their own source of information;

(viii) To take proper and adequate action with regard to writ petitions filed by accused officers;

(ix) To ensure that the Central Vigilance Commission is consulted at all stages where it is to be consulted and that as far as possible, the time limits prescribed in the Vigilance Manual for various stages are adhered to;

(x) To ensure prompt submission of returns to the Commission;

(xi) To review from time to time the existing arrangements for vigilance work in the Ministry/Department for vigilance work subordinate officers to see if they are adequate to ensure expeditious and effective disposal of vigilance work;

(xii) To ensure that the competent disciplinary authorities do not adopt a dilatory or law attitude in processing vigilance cases, thus knowingly otherwise helping the subject public servants, particularly in cases of officers due to retire;

(xiii) To ensure that cases against the public servants on the verge of retirement do not lapse due to time-limit for reasons such as misplacement of files etc. and that the orders passed in the cases of retiring officers are implemented in time; and

(xiv) To ensure that the period from the date of serving a charge-sheet in a disciplinary case to the submission of the report of the Inquiry Officer, should, ordinarily, not exceed six months²⁵.

LOOPHOLES IN THE CENTRAL VIGILANCE COMMISSION (CVC) :

Instead of noble character of C.V.C. there are many loopholes which are responsible for lowering down estimation of C.V.C. they are as follows²⁶:

- (1) Though C.V.C. is an advisory body, but the Government is not bound to act according to the advice of the commission. The CVC in its 1982 annual report has mentioned several cases where the advice of the commission or imposing penalty on the erring officials have not been accepted by the Government.
- (2) It is a non-statutory body, established by resolution only.
- (3) The commission has restricted itself to the cases pertaining only to the Gazetted officers and employees of the public undertakings and nationalized banks.
- (4) The C.V. Commissioner has no adjudicatory function as such in disciplinary proceedings against the Government. It is not competent for giving sanction for criminal prosecution of offence committed by public servant while discharging their official functions.
- (5) CVC never investigate itself but depends upon the report on the investigation of the C.B.I. or ministry or department concern.

²⁵ Available at <http://cvc.nic.in/rnfcvo.htm#cvos>, visited on 4th April 2014.

²⁶ Adv Sharvari Vaidya, Priviledged Class Deviance, 1st Ed., pg 73.

(6) Though it is said that CVC function independently without Govt. interference but in actual practice the picture becomes different, the ministers interference in the working of CVC and use of their influence many a time suppress any report of corruption²⁷.

²⁷ Adv Sharvari Vaidya, Privileged Class Deviance, 1st Ed., pg 74.

CHAPTER IV

CONCLUSION

What are anti-corruption agencies expected to do, and how does an observer know if such an agency has been successful? In general, ACAs are set up as a political response to scandal, and provide a mechanism for political leaders to reassure voters and reformists that action is being taken to bring corruption under control. The extent to which the objectives of a new agency reflect a desire for systemic change, as opposed to a drive to score political points, is rarely clear – and is rarely intended to be clear. This poses a dilemma for the observer in defining and measuring success²⁸.

Establishment: The “constitutional moment” of establishment seems to be critically important, at least for agencies that operate in contexts that are effectively pluralistic. This means capturing the momentum created by scandal and crisis, gaining consensus on a reasonably clear and realistic strategy, and mobilizing the resources to implement it. Totalitarian regimes, and even “lite” authoritarian regimes such as those of Singapore and Malaysia, can to some extent do without this, relying instead on hierarchical command and social norms of rule-obedience.

Environment: Exogenous conditions, such as macroeconomic stability, public order, and the existence of effective complementary institutions (e.g. courts, audit agency, media), are equally fundamental. It is possible (though proof is unavailable) that

²⁸ Anti-Corruption Agencies : A Review of Experience, by Patrick Meagher IRIS Center, University of Maryland, Submitted to the World Bank PREM-ECA, pg 4.

these conditions themselves are sufficient to bring about the desired anti-corruption results without the need for a single powerful ACA – or that an ACA has impact by helping bring about such conditions. What does seem clear is that agencies absolutely need these prior conditions to succeed. The Argentine case shows the necessity of macroeconomic stability, while Uganda and Tanzania most clearly illustrate the need for effective and cooperative partner institutions.

Powers and Resources: The capabilities of the agency – in terms of powers, well-trained staff, budget, and capital resources – also play a central role in success. What we cannot say with any confidence is how much of a given capability or resource an agency will need in the abstract. There is no minimum or maximum size, no standard budget or number of investigators. Clearly, the staff cannot be so few as to be overwhelmed by their caseload, and it is also clear that the professional staff need to be highly trained and motivated – and such personnel are extremely difficult to find in significant numbers in most poor countries. A successful ACA cannot be run on the cheap. A small, comparatively inexpensive agency such as Singapore's CPIB invests a very large amount in compensation, training, technology, and support for each professional. Besides this, Singapore facilitates the agency's operation by giving it strong coercive powers and relieving it of any duty to mobilize or account to the public (one might think of these last as off-budget costs).

Safeguards: Both accountability and formal independence seem to be somewhat overrated in the literature – at least as they affect an agency's performance strictly in anti-

corruption terms. Formal independence, like formal dependence, can be overridden by political factors. It does appear, however, that an agency's de facto autonomy to operate in a professional and non-partisan manner increases its prestige, hence its ability to mobilize political support and cooperation for its aims. Accountability has much the same effect. It moreover affords observers within and outside government the opportunity to monitor the agency's performance and to propose corrections. Obviously, from a broader perspective considering civil rights and democracy, accountability and independence are desirable in their own right.

Focus: The element of focus turns out to be more fundamentally important than expected, and is underemphasized in the literature. No agency can cope with an unlimited mandate. Choices must be made. One approach is that of the Hong Kong ICAC, which has broad anti-corruption jurisdiction over the public and private sector – and interprets this as requiring it to pursue every allegation, without imposing selection criteria. One could consider this a “social contract” between ICAC and the people of Hong Kong, in which the citizens offer support and trust, in return for which ICAC handles all cases big and small – “without fear or favor.” Certainly, this is one way to avoid any hint of flawed or self-interested choices. It also seems to conform to the “broken window theory,” whereby every infraction, no matter how trivial, must be addressed in order to deter more serious offenses and to arrest a potential slide into a high-corruption equilibrium. This approach appears to enable social forces opposing corruption to gain the upper hand and sustain a low-corruption equilibrium. However, in Hong Kong this required a huge, and hugely expensive, agency.

An epidemic of corruption scandals often induces moral panic and over-reaction. In such contexts, corruption commissioners can almost seem to act as modern witchfinder-generals, playing on popular fears and asserting guilt where there was once a presumption of innocence. They deem customary political behaviour to be improper and they reject the legitimacy of established electoral systems....They encourage a climate of suspicion and distrust, thus undermining confidence and public trust in public figures and the wider political system. – WILLIAM.

Because of the loopholes the efficiency of the C.V.C.²⁹ is reduced and has no weightage. So, the Supreme Court in : *Vineet Narain vs. Union of India Case*³⁰, has issued several directions so as to make the C.V.C. more efficient, effective and per such direction of Supreme Court, the CVC must be given statutory status and for that, various recommendations drawn by the S.C.:

1. The selection for the post of Central Vigilance Commission shall be made by the Committee comprising the Prime Minister, Home Minister and the leader of opposition from a panel of outstanding civil servants and others' with unimpeachable integrity, to be furnished by the cabinet secretary appointment shall be made by the President on the basis of the recommendations made by the C.V.C.
2. C.V.C. shall be entrusted with the responsibility of superintendence over the CBI's functioning the CBI shall report to the cases in which chargesheets are filed and their progress.

²⁹ CVC – Central Vigilance Commission

³⁰ AIR 1998 SC 889

3. The recommendation for appointment of the director of CBI shall be made by a committee headed by the C.V. Commissioner.

These are some of the recommendations by the Supreme Court to increase effectiveness of the C.V.C.

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