Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

Central Bureau of Investigation (CBI)

Introduction

There is a clear-cut and well-demarcated sphere of activities in the fields of crime detection and prosecution of an accused.\(^1\) It is beyond any doubt or dispute that investigation of an offence is the field exclusively reserved for the police.\(^2\) It may be subject to supervision of higher ranking officers of the police department. Thus, the overall superintendence in this regard vests in state government. The executive is charged with a duty to maintain vigilance over law and order situation. It is obliged to prevent crime. If an offence has allegedly been committed, it is the state's duty to investigate into the offence and bring the offender to book. During investigation, if it is found that an offence has been committed then it is duty of state through police department to collect evidence for the purpose of proving the offence. After completion of investigation, the investigating officer submits report to the court requesting the court to take cognizance of the offence under section 190 Cr. P.C. and his duty comes to an end. Section 2 (h) of Cr. P.C. defines the term investigation, according to which it includes all the proceedings under this code initiated for the purpose of collection of evidence conducted by a police officer or by any person other than a magistrate in this behalf. Investigation, inquiry, and trial are quite different things and represent different stages of criminal process. The first stage of a criminal case is reached where a police officer, either by himself or under an order of magistrate investigates into case. If he finds that no offence has been committed, he drops the proceeding. But if he forms an opinion that an offence has been committed, he sends up the case to a magistrate. Then, at the second stage, the magistrate inquires into the case. If no \textit{prima facie} case is made out, he dismisses the complaint or discharges the accused. If in the opinion of magistrate, the \textit{prima}

\(^1\) M.C. Mehta (Taj Corridor Scam) v. Union of India (2007) 1 SCC 110
\(^2\) Id., para 44.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

facie case is made out, he frames a charge and calls upon the accused to plead the same. These proceedings are termed inquiry. The third and final stage is reached when the charge is farmed. The magistrate may then try the case himself, or commit it for trial to the Court of Sessions as the case may be. The object of investigation is to find out whether the offences alleged have been committed and if so who have committed them. Investigation should be fairly and impartially done. It must be fair and effective also, must proceed in the right direction in consonance with ingredients of the offence and not in a haphazard manner, more so in serious cases based on circumstantial evidence. Powers to investigate an offence is exclusively reserved for police, but it must be legitimately exercised in strict compliance with the provisions of statute. The High Court exercising its writ jurisdiction under Article 226 of the Constitution can interfere with investigation only in the rarest of the rare case where a case of abuse of power of investigation and non-compliance with the provisions of statute is clearly made out. In investigation proceedings, the following steps are included:

1. To visit the crime place.
2. To ensure the facts and circumstances of the case.
3. To search and arrest of the suspected offender.
4. To collect evidences related with the occurrence of the crime.
5. To form an opinion whether any formal case is being made out on the basis of collected material so that accused is being sent to magistrate for the purpose of inquiry and trial and taking the necessary steps for the same by filing of a charge sheet under section 173 of Cr. P.C.

The final step in the investigation, namely, the formation of the opinion as to whether or not there is a case to place the accused on trial is to be of the officer in charge of the police station and this function cannot be delegated and can be

---


4 *H.N. Rishbud v. State of Delhi* AIR 1955 SC 196
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

performed by any other authority. There is no provision for delegation of the above function regarding formation of opinion but only a provision entitling the superior officer to supervise or participate under section 36 of Cr. P.C. Even a competent magistrate cannot compel the police officer concerned to form a particular opinion.

The CBI was established on 01.04.1963 vide government resolution issued by the Ministry of Home Affairs, Government of India. CBI, being a premier investigation agency of the country has a very crucial job to investigate into very technical and high profile cases of crimes. A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation into crime should be fair, impartial and uninfluenced by external influences. When investigation into crime is being conducted by the CBI, it is supposed that CBI, as a premier investigating agency of the country, will discharge its responsibility with competence, promptness, and fairness and without being influenced and hindered by external influences. In the criminal justice system the investigation of offences is the domain of the police. The investigation of offences is one of the important duties which the police have to perform. The aim of investigation is ultimately to search for truth and bring the offender to the book. Lord Denning,5 has described the role of the police as follows6:

“In safeguarding our freedoms, the police play vital role. Society for its defence needs a well-led, well-trained and well-disciplined force or police whom it can trust, and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice. The Police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants”……

However, what is crucial for an investigation is that it should conclude expeditiously from the point of view of all concerned. From the point of view of

5 The Due Process of Law, First Indian Reprint (1993).
6 Id., at 102
the accused, a quick conclusion to the investigation will clear his name and image in society if he is innocent. Certainly, it is necessary for the interest of person who has been wrongly accused or framed for an offence. From the point of view of society, a quick closure to investigation is necessary so that those against whom there is evidence of the commission of a crime are tried at the earliest and punished if they are guilty. This, so far as society is concerned, is essential for maintaining the rule of law and from the point of view of the investigation, an expeditious conclusion of investigations is necessary because greater the delay, greater the chances of evidence being destroyed, witness being compromised or the accused being able to manipulate circumstances to his or her advantage. In *Samaj Parivartan Samudaya v. State of Karnataka*, Supreme Court observed that our criminal jurisprudence contemplates that “an investigation should be fair, in accordance with law and should not be tainted. But, at the same time, the court has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law”.

**Legislative history of the Delhi Police Establishment Act, 1946**

During world war second, the huge expenditures were incurred for various purposes which were connected with the war. It had brought situations in which unscrupulous and anti-social persons including both, officials and non officials, were enriching themselves dishonestly at the cost of public and government fund and therefore, the Government of India had decided to set up an organization to investigate offences relating to such transactions. The organization known as Special Staff, War Department was set up in 1941 by an executive order of the Central Government. It was kept under administrative control of Deputy Inspector-General of Police with Headquarters at Lahore. The superintendence of this special force was vested in the Defence Department which also, was known as

---

7 (2012) 7 SCC 407
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

War Department. Thus, the purpose of setting up to this organization was, to make investigation into cases of corruption which were connected to War Department. The activities of this Special Staff were extended to the railways by the end of 1944. The jurisdiction and powers of investigation of officers of the Special Staff were challenged in a High Court, consequently, an ordinance⁸ was promulgated⁹.

On July 12, 1943 the then Governor-General, exercising his powers conferred upon him under section 72 of the Government of India Act, 1935 promulgated an ordinance.¹⁰ Owing to world war second, an emergency had been declared and therefore, the powers were exercisable by him. The Ordinance was called as Special Police Establishment (War Department) Ordinance, 1943¹¹. It extended to the whole of British India and came into force at once. By section 2(4), the Special Police Establishment (War Department) was constituted to exercise, throughout British India, the powers and jurisdiction exercisable in a province by the members of the police force of that province, possessing all their powers, duties, privileges and liabilities. It was constituted for the purpose of investigation of certain offences committed, wherever in British India, in connection with departments of Central Government. Under section 4, the superintendence of the Special Police Establishment (War Department) was vested in the Central Government. Under section 3, it was provided that:

“The Central Government may by general or special order specify the offences or classes of offences committed in connection with departments of the Central Government which are to be investigated by the Special Police Establishment (War Department), or may direct any particular offence committed in connection with a department of the Central Government”.

⁸ Ordinance No. XXII of 1943.
¹⁰ Ordinance No. XXII of 1943.
¹¹ Ibid.
This ordinance would have lapsed on September 30, 1946. Before that on September 25, 1946, another ordinance\(^\text{12}\) of the same name was promulgated. This constituted a Special Police Force for the Chief Commissioner's Province of Delhi for investigation of certain offences committed in connection with matters concerning departments of the Central Government. The scheme of this ordinance was slightly different. Under section 2, Special Police Establishment was constituted for the Chief Commissioner's Province of Delhi for the investigation in that province of offences notified in section 3. This was notwithstanding the provisions of the Police Act of 1861\(^\text{13}\). The Police Establishment had throughout the Chief Commissioner's province of Delhi in relation to those offences the powers, duties, privileges and liabilities of the regular police officers however, subject to any orders which the Central Government might make in this behalf. Section 3 of the new ordinance was almost the same as section 3 of previous ordinance. The only changes were that the offences had to be notified and the power to refer any particular case was not repeated. In the ordinance, section 5 provided that the consent of the Government of the Governor's province or the Chief Commissioner’s province should be obtained to extend the powers and jurisdiction of Special Police Establishment, before it would be exercised in those provinces.\(^\text{14}\) Ordinance No XXII of 1946 was repealed by the Delhi Police Establishment Act, 1946\(^\text{15}\), which re-enacted the provisions of the ordinance. This Act came into force on 19\(^\text{th}\) November, 1946 and it succeeded two ordinances which had been earlier passed by the Governor-General. After the Act came into force, the superintendence of Special Police Establishment was transferred to the then Home Department, Government of India, and its jurisdiction was extended to cover all the Departments of the Government of India. Now, its jurisdiction extends to all the states and union territories of India. Later, this Act had also been

---

\(^{12}\) Ordinance No. XXII of 1946.

\(^{13}\) Act No. V of 1861.

\(^{14}\) Supra note 9.

\(^{15}\) Act No. XXV of 1946.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

amended from time to time by way of adaptation and modification.\(^\text{16}\) It was passed when the Government of India Act, 1935 was in force. Entry no. 3 of the provincial legislative list in the 7th schedule to the Government of India Act, 1935, read “police including railway and village police.” Entry 39 of the federal legislative list (now it corresponds to entry 80\(^\text{17}\) of the list I (union list) of the seventh schedule to the Constitution of India) was as follows:

“39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.”

It was substituted by the India (Provincial Constitution) Order, 1947, as follows:

“39. Extension of the powers and jurisdiction of members of a police force belonging to any province to any area in another province, but not so as to enable the police of one province to exercise powers and jurisdiction in another province without the consent of the government of that province; extension of powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.”

\(^{16}\) Subsequently, original Act is amended by the Acts of 30 of 1950; 26 of 1952; 62 of 1956; 40 of 1964; 45 of 2003 and 20 of 2006. These amendments do not in any way materially affect the substance of the Act. Certain amendments have also been made in the Act by the adaptation of Laws Orders of 1950 and 1956. For instance, the words’ State of Delhi’ was substituted for ‘Chief Commissioner’s province of Delhi’. The words ‘parts A and C states’ were substituted for the words ‘Provinces’ occurring in section 5 and 6 and subsequently the words ‘states and union territory’ were also substituted.

\(^{17}\) Constitution of India, List I entry 80 reads: “Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State”. 262
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

outside that unit”. By putting an explanation it was said that in this entry "province" includes a “Chief Commissioner's province”. In this way the jurisdiction exercisable under entry 39 was made co-extensive again by the explanation with what was formally British India, which was meant both kinds of provinces.\textsuperscript{18} The Delhi Police Establishment Act, 1946 was also adapted and amended on more than one occasion\textsuperscript{19}. The first changes came by the Adaptation of Laws Order, 1950, enacted under clause 2 of article 372 of Constitution of India, on January 26, 1950. It made two changes. The first was throughout the Act for the words “Chief Commissioner's Province of Delhi” the words “State of Delhi” were substituted and for the word “provinces” the words “part A and C states” were substituted. This was merely to give effect to the establishment of “states” in the place of “provinces” under the scheme of Constitution of India.\textsuperscript{20} The next changes were introduced by the Part B States (Laws) Act, 1951\textsuperscript{21}. They were indicated in the schedule to that Act. Those changes removed the words “in the states” in the long title and the preamble. The purpose of this was to remove reference to the states in the phrase “for the extension to other areas in the states”. The more significant changes came in 1952 by the Delhi Special Police Establishment (Amendment) Act, 1952\textsuperscript{22}. In the long title (after the Adaptation of Laws Order, 1950) the words were: “an Act to make provision for the constitution of a special police force for the State of Delhi for the investigation of certain offences committed in connection with matters concerning department of the Central Government etc”.

After the amendment the words read as: “an Act to make provision for the constitution of a special police force in Delhi for the investigation of certain offences in part C states”. Similar changes were also made in the preamble and in

\textsuperscript{18} Supra note 9.
\textsuperscript{19} Supra note 16.
\textsuperscript{20} Supra note 9.
\textsuperscript{21} Act No. III of 1951.
\textsuperscript{22} Act No. XXVI of 1952.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

section 3, and the reference to departments of Central Government was also deleted.\(^\text{23}\) After that, in 1956 the Constitution (Seventh Amendment) Act, 1956, was enacted. Previously the Constitution specified the states as part A, B and C states and some territories were specified in part D in the first schedule of Constitution. By the amendment the distinction between parts A and B was abolished. All states (previously part A and B states) were shown in the first schedule of Constitution under the heading "The States" and part C states and part D territories were all described as “Union Territories”.

Thereupon an Adaptation of Laws Order, 1956, was passed and in the Delhi Special Police Establishment Act, 1946 all references to “part C states” were replaced by the expression “Union Territory”. Another significant change made by the amending Act was to remove from section 2 the words “for the State of Delhi” and all references to offences by the words “committed in connection with the matters concerning departments of the Central Government” were deleted.

A brief analysis of Delhi Special Police Establishment Act, 1946

The police is a state subject. Since, by virtue of Article 239 of the Constitution of India the union territories are being administered by the Government of India and except the Union Territory of Delhi, the union territories do not have any legislative assembly of their own. The Parliament is empowered to make laws on the subject of police for union territories. Article 239AA (1) provides that the Union Territories of Delhi shall be called the National Capital Territory of Delhi and article 239 AA (2) clause (a) provides that there shall be a Legislative Assembly for the National Capital Territory of Delhi. Under article 239AA (3) clause (a) the Legislative Assembly is empowered to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the state list as well as concurrent list, except with the matters enumerated under entries 1, 2, and 18 of the state list and entries 64, 65, and 66 of

\(^\text{23}\) Supra note 9.
that list in so far as they relates to entries 1, 2, and 18. Article 239AA (3) (b) provides that nothing in sub-clause (a) shall derogate from the powers of Parliament to make laws with respect to any matter for union territory or any part thereof. Article 246 (4) of the Constitution of India provides that “Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State in respect of union territories notwithstanding that such matter is a matter enumerated in the State List”. Therefore, in respect of union territories, by virtue of article 246 (4) of the Constitution too, the Parliament is competent to make laws on the subject of police, covered by state list, entry 2 of the seventh schedule to Constitution of India. DSPE is a police force functioning in the Union Territory of Delhi. The DSPE Act has been enacted to achieve four major objectives, which are reflected in the preamble\textsuperscript{24}, of the Act. It is enacted to make provision:

i. For constitution of a special police force in Delhi.

ii. For investigation of certain offences in the union territories.

iii. For the superintendence and administration of the said force.

iv. For the extension of the powers and jurisdiction of members of the said force to other areas.

By virtue of section 1 (2), the Act extends to whole of India. Members of the Delhi Special Police Establishment have been given all powers, duties, privileges and liabilities of police the officers of state for investigation of offences such as lodging FIR, making arrest a person, filling final report or charge sheet etc. Any member of the DSPE of the rank of Sub-Inspector or above shall be

\textsuperscript{24} Delhi Special Police Establishment Act, 1946, preamble reads: “An Act to make provision for the constitution of a Special Police Force in Delhi for the investigation of certain offences in the Union Territories for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences.

Whereas it is necessary to constitute a Special Police Force in Delhi for the investigation of certain offences in the Union Territories and to make provision for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of the members of the said force in regard to the investigation of the said offences”;........
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

dee med to be an officer in charge of police station\textsuperscript{25}. It means that the Act is an embodiment of entry 80 of list I, which enables Parliament to make law for extension of the operation of a police force to another state. The combined effect of section 5 (1) and section 6 of the DSPE Act is that the Central Government is empowered to extend the activities of the Delhi Special Police Establishment to any other state with the consent of concerned state.

**DSPE is a police force functioning in the Union Territory of Delhi**

In the *Management of Advance Insurance Co. Ltd. v. Shri Gurudasmal and Others,* \textsuperscript{26} the appellant filed an appeal in the Supreme Court against the judgment and order of the Delhi High Court, Himachal Pradesh Bench at Simla passed in Civil Writ no. 365 of 1968. The contention of the appellant was that Delhi Special Police Establishment is not constitutional and it had no jurisdiction to investigate the case in another state as it neither belonged to a state nor to the Union Territory of Delhi. The Supreme Court held that Delhi Police Establishment means a police

\textsuperscript{25} Delhi Special Police Establishment Act, 1946, section 2 (2) reads: “Subject to any orders which the Central Government makes in this behalf, members of the said Police Establishment shall have throughout any Union Territory in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers duties, privileges and liabilities which police Officers that Union Territory have in connection with the investigation of offences committed therein. Section 2(3) reads: “Any member of the said Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in any Union Territory any of the powers of the officer in-charge of a police Station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders aforesaid, be deemed to be an officer in-charge of a police station discharging the functions of such an officer within the limits of his station”.

Further section 5 (2) reads: “When by an order under sub-section (1) the powers and jurisdiction of members of the said Police Establishment are extended to any such area, a member thereof may, subject to any order which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force. Section 5 (3) reads: “Where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer-in-charge of a police Station in that area and when so exercising such powers, shall be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station”.

\textsuperscript{26} 1970 (1) SCC 633
force constituted and functioning in Union Territory of Delhi. Previously it functioned in the Chief Commissioner’s Province of Delhi, then in the part C states of Delhi and now it functions in the Union Territory of Delhi.

It was argued by the appellant that after the Constitution (Seventh Amendment) Act, 1956 which removed the description “part C states” from the Constitution and introduced the expression “union territories” the present entry 80 of the union list (corresponding to entry 39 of the federal legislative list of the Government of India Act, 1935) cannot be read as enabling the power to be exercised in respect of police force belonging to the union territories such as Delhi. The entry 80 of the Constitution speaks of a “police force belonging to any state” and not of a police force belonging to the union territory. The adaptation of the Delhi Special Police Establishment Act by the Adaptation of Laws (No.3) Order, 1956 by substituting “union territories” in place of “part C states” cut the Act adrift from the entry under which the power could alone be exercised. In reply, the provisions of the General Clauses Act, 1897 as adapted by Adaptation Order (No.1) which defined the word “state” as respect any period before the commencement of the Constitution (Seventh Amendment) Act, 1956 shall mean a part A state, a part B state or a part C state; and as respects any period after such commencement, shall mean a state specified in the first schedule to the Constitution and shall include a union territory were brought before the court for its notice. Thus, under section 3 (58) of the General Clauses Act, 1897 the word “state” shall mean a state specified in the first schedule to the Constitution and shall include a union territory also. Supreme Court held that the above definition of the state furnishes a complete answer to the difficulty which is raised by appellant and entry 80 must be read so as to include union territory. Therefore, members of a police force belonging to the union territory can have their powers and jurisdiction extended to another state provided to the government of that state.

27 Supra note 9.
28 Supra note 17
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

consents.\(^\text{29}\) It was also argued that the above definition cannot be read at all the places where the word “state” occurs in the Constitution. The numbers of such articles were brought before Supreme Court for its consideration, one of which to them is article 246(2).\(^\text{30}\) It is contended that in that clause at least the definition cannot be read as including union territories and therefore the General Clauses Act, 1897 as amended, cannot be read in entry 80. The Supreme Court denied argument and held that the argument is correct that the definition cannot be always being read but the answer is plain. The definition applies, unless there is anything repugnant in the subject or context. After the Seventh Amendment India is a union of states\(^\text{31}\) and the territories thereof are specified in the first schedule of Constitution. The union territories are mentioned separately. There is a distinction between states and union territories which cannot be ignored. When the definition is not being made applicable to the context or subject of the case then the word "states" refers to states, in the first schedule only. In I.M. Kanniyan v. Income Tax Officer, Puducherry and Another\(^\text{32}\) Supreme Court held that the definition of “state” in section 3 (58) of General Clauses Act, 1897 is repugnant to the subject and context of article 246 but there is nothing in the subject or context of entry 80 of the union list which can be said to exclude the application of the definition of section 3 (58) of General Clauses Act, 1897. Therefore, the definition of “state” in section 3 (58) in the General Clause Act, after the adaptation in 1956, applies and includes to union territories also, in entry 80 of the union list of Constitution of India.\(^\text{33}\) In last it was also argued on the behalf of appellant that the entry 80 of the union list speaks of a police force “belonging to any state” and this phrase was

\(^{29}\) Supra note 9.

\(^{30}\) Constitution of India, art. 246 (2) reads: “Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “State List. Article 246 (4) provides that Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List”.

\(^{31}\) Constitution of India, art. 1 (1) reads: “India, that is Bharat, shall be a Union of States”.

\(^{32}\) (1968) 2 SCR 103 at 108

\(^{33}\) Supra note 9.
also used in the Government of India Act, 1935 in entry 39 of the federal legislative list. It is argued that in Ordinance XXII of 1946 the phrase was “for the Chief Commissioner's Province of Delhi” and it was repeated in Act No.XXXV of 1946 as the phrase “for part C states”. Thus the word “for” took the place of the words “belonging to” in the entry. Then, the change has come to the present phrase “a special police force in Delhi”34. It was pointed out that the Special Police Establishment does not belong to the union territory of Delhi since the superintendence of it vests in the Central Government. It was stated that the force of the words “belonging to” is not the same as that of the word “in”. Therefore, it was claimed that the Act is not in accord with the entry.35 Various meanings of the expression “belong to” were suggested. On behalf of the appellants it was said that it meant “employed by” and not merely “located in”. In this sense, it was argued that the Special Police Establishment did not belong to any state or union territory. On the opposite side it was argued that the words “belonging to” convey no more than a territorial nexus. The police force belongs to a part of India and it does not have to belong to a provincial government or a state government or a government of a territory. The extensions of the powers to such a force are also in another part of India. It shows that the police of one area operate in other area.36

Now the scheme of the Constitution is that the union territories are centrally administered and if the words “belonging to” mean belonging to a part of India, the expression is equal to a police force constituted and functioning in the Union Territory of Delhi. Previously the same force functioned in the Chief Commissioner’s Province of Delhi and then in part C states of Delhi and now it functions in the Union Territory of the Delhi.37 The Supreme Court held that it is not necessary to discover another meaning under which the whole scheme would become void. Provisions of law must be read as far as is possible with a view to

34 Ibid.
35 Ibid.
36 Ibid.
37 Ibid.
their validity and not to render them invalid. The expression “belong to” only conveys the meaning that it is a police force constituted and functioning in one area which may be authorized to function in another area.  

**Extension of powers and jurisdiction of the members of DSPE to other areas**

The Central Government may notify the areas, where DSPE can exercise its jurisdiction for the investigation of any offence or class of offences specified in a notification under section 3 of the Act. Exercising the powers, under section 5, the Central Government, with concurrence of state governments has extended the jurisdiction of DSPE division to all states. Under section 5 (1), the jurisdiction has been extended to Jammu and Kashmir also with the concurrence of the state government. The DSPE Act was also extended to Union Territories of Dadra Nagar Haveli, Goa, Daman, Diu and Pondicherry on 27.12.1962 and 1.10.63 respectively. No member of DSPE can exercise powers and jurisdiction in any area of a state without the consent of concerned state government. When a state government authorizes an officer of DSPE to exercise its jurisdiction, there can be no legal objection for entire force operating in that area. The setting up of Delhi Special Police Establishment by the union government under DSPE Act does not by itself deprive the anti-corruption branch (Delhi Administration) of its

---


39 Delhi Special Police Establishment Act, 1946, section 5 (1) reads: “The Central Government may by order extend to any area including railway areas in a state not being a union territory, the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3”.

40 Vide Notification dated 18.2.1963.

41 Vide Notification no. 25/3/6 AVD. I dated 01.4.1961.

42 Delhi Special Police Establishment Act, 1946, section 6 reads: “Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a state, not being a Union Territory or railway area without the consent of the government of the state”.

jurisdiction to investigate the offence of bribery and corruption against Central Government employee in Delhi.\textsuperscript{44}

**Creation of Central Bureau of Investigation**

The CBI came into existence \textit{vide} a resolution\textsuperscript{45} issued by the Government of India, Ministry of Home Affairs. The resolution reads as follows\textsuperscript{46}:

“The Government of India have under consideration the establishment of a Central Bureau of Investigation for the investigation of crimes at present handled by the Delhi Special Police Establishment, including specially important cases under the Defence of India Act and Rules particularly of hoarding, black-marketing and profiteering in essential commodities, which may have repercussions and ramifications in several States; the collection of intelligence relating to certain types of crimes; participation in the work of the National Central Bureau connected with the International Criminal Police Organization; the maintenance of crime statistics and dissemination of information relating to crime and criminals; the study of specialized crime of particular interest to the government of India or crimes having all India or interstate ramifications or of particular importance from the social point of view; the conduct of police research, and the coordination of laws relating to crime. As a first step in that direction, the Government of India have decided to set up with effect from 1\textsuperscript{st} April, 1963 a Central Bureau of Investigation at Delhi with the following six divisions, namely”:

a. Investigation and anti-Corruption Division (Delhi Special Police Establishment).

b. The Chemical Division.


\textsuperscript{44} A.C. Sharma \textit{v. Delhi Administration}, AIR 1973 SC 913 : 1973 Cr. LJ 902 (SC)

\textsuperscript{45} No. 4/31/-T, Government of India, Ministry of Home Affairs New Delhi, the 1\textsuperscript{st} April, 1963.

\textsuperscript{46} As it is cited in Navendra Kumar \textit{v. Union of India and Another} [(2014 (133) AIC 743 (GAU; H.C.) para 33 at 752 & 753.}
d. Research Division.

e. Legal Division and General Division.

f. Administration Division.

The Charter of functions of the above said divisions has annexed with the resolution. The assistance of the Central Bureau of Investigation has also made available to the State Police Forces on request for investigating and assisting in the investigation of inter-State crime and other difficult criminal cases.

Thus, it is clear from above resolution that the Government of India by an executive order has constituted an organization named Central Bureau of Investigation having six divisions thereof. One of the divisions of that organization, which is mentioned in aforesaid resolution, is Investigation and Anti-Corruption Division (Delhi Special Police Establishment) and by way of this resolution, the Delhi Special Police Establishment, which was originally established under the DSPE Act, 1946, has been made an integral part of CBI. The resolution neither approved by the cabinet nor produced before President of India to receive the assent of him. It is only issued by the Secretary to the Government of India. It has no legislative sanction. It is also clear that the CBI is constituted for six specific purposes which are mentioned in the resolution/executive order. After being mentioned, its purposes, the expression “As a first step in that direction” are appeared in the resolution. It shows that the CBI was established as an adhoc measure to deal with certain exigencies.

Constitutionality of CBI

In Navendra Kumar v. Union of India and Another, 47 (I.A. Ansari and Dr. Mrs. Indira Shah, JJ) Gauhati High Court quashed the resolution, dated 01/04/1963, whereby CBI has been constituted and declared to it, unconstitutional. The petitioner challenged the constitutional validity of the formation of the CBI,

47 [(2014 (133) AIC 743 (GAU; H.C.))]
its powers to investigate, and function as a police force, and its powers to prosecute an offender. It was argued that CBI is not a statutory body. It has been constituted under an executive order/resolution of Ministry of Home Affairs, Government of India. Since police is a state subject within the scheme of Constitution of India and only state legislature is competent to legislate on the subject of police. It was further argued by petitioner/appellant that in the absence of any law laying the birth of CBI, the exercise of powers of police by it, such as registration of FIR, arrest of person, investigation of crimes, filing of charge-sheets and prosecution of the offenders would offend the fundamental rights guaranteed under Article 21 of the Constitution of India, which provides that no person shall be deprived of his life and liberty except according to the procedure established by law. The word ‘law’ within the meaning of Article 21 would mean legislation and not executive instruction or executive fiat. Replying to the contentions of the petitioner, learned ASG (Additional Solicitor General), appearing on behalf of the CBI, submitted\textsuperscript{48} that:

1. The CBI derives its power to investigate like a police, as contemplated by the Cr. PC. from the DSPE Act, 1946;
2. The CBI is only a change of name of the DSPE and the CBI is, therefore, not an organization independent of the DSPE;
3. The creation of CBI may also be taken to have been covered by entry 8 of list I (union list) of the seventh schedule to the Constitution of India\textsuperscript{49};
4. Under Article 73 of the Constitution of India, the executive powers of the union extends to matters with respect to which Parliament has the power to make laws and aforesaid resolution can be treated to have been

\textsuperscript{48} Id., para 17
\textsuperscript{49} Constitution of India, list I, entry 8 reads: “Central Bureau of Intelligence and Investigation”.

273
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

issued by virtue of Union of India’s executive powers under Article 73 of the Constitution of India\(^{50}\);

5. The Constitutional validity of DSPE Act,1946 has already been upheld by the Supreme Court in *Advance Insurance Co. v. Gurudasmat*\(^{51}\) and the history of formation of CBI has been highlighted in *State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others*\(^{52}\) and also in *M.C. Mehta (Taj Corridor Scam) v. Union of India and others*\(^{53}\);

6. Since the CBI has been functioning for the last several years under the DSPE Act, 1946 it may not be sound or proper exercise of discretion to unsettle the settled law and thereby create turmoil unnecessarily;

7. The Central Government can also be treated to have constituted the CBI by taking recourse to its powers as specified in entry 1 and 2 of the list III (concurrent list) of the seventh schedule to Constitution of India\(^{54}\).

Rejecting the above contentions, the court concluded that there is no dispute that the CBI came into existence with the resolution no. 4/31/-T, dated 1.4.1963. On careful reading of the resolution, it becomes clear that the resolution

---

\(^{50}\) Constitution of India, art., 73 reads: “Subject to the provisions of this Constitution, the executive power of the Union shall extend-

a. to the matters with respect to which Parliament has power to make laws; and

b. to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws”.

\(^{51}\) 1970 (1) SCC 633


\(^{53}\) 2007 (53) AIC 192 (SC): (2007) 1 SCC 110

\(^{54}\) Constitution of India, list III, entry I reads: “Criminal law, including all matters included in the Indian Penal Code at the Commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power. Further, List III, Entry II reads: Criminal procedure, including all matters included in the Code Criminal Procedure at the commencement of this Constitution”.

274
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

does not refer any provision of the Delhi Special Police Establishment Act, 1946\textsuperscript{55} as the source of its power to create the CBI. The Act empowers to Central Government to constitute special police force called ‘Delhi Special Police Establishment’ for union territories in Delhi\textsuperscript{56}. Thus the name of the establishment, created by DSPE Act, 1946 is Delhi Special Police Establishment and not CBI. If a statute gives a specific name to an organization, it is not permissible to confer a new name on the organization by executive instructions. Since, it is found that resolution, which created the CBI, is not an act of delegated legislation; therefore, it cannot become a part of the DSPE Act, 1946. There is, noting either in the DSPE Act, 1946 or in resolution to show that the CBI is a creation of a delegated piece of legislation. In order to exercise powers under delegated legislation, it is necessary that the statute itself empowers the executive\textsuperscript{57} to issue notification/resolution to meet the exigencies of time; whereas no such powers is vested in the Central Government by the DSPE Act, 1946. However, there is nothing on record that the resolution was produced before President of India and received his assent and, therefore, the resolution cannot be termed as the decision of the Government of India. Entry 8, list I empowers the Parliament to enact a law on the subject of “Central Bureau of Intelligence and Investigation”. According to Constituent Assembly debates, the word “investigation” appearing within entry 8 list I, was intended to cover general enquiry for the purpose of finding out what is going on within the states and, it is not preparatory to the filing of charge-sheet.

\textsuperscript{55} Supra note 15.

\textsuperscript{56} Delhi Special Police Establishment Act, 1946, section 2 (1) reads: : “Notwithstanding anything in the Police Act; 1861, the Central Government may constitute a Special Police Force to be called the Delhi Special Police Establishment for the investigation in any Union Territory of offences notified under section 3”.

\textsuperscript{57} Under various provisions of DSPE Act, 1946 the executive power of the Central Government can be traced as follows:

a. Under section 2 of the Act, the Central Government may constitute special police force called DSPE for Union Territory of Delhi.

b. Under section 3 of the Act, the Central Government may notify the offences, which may be investigated by the DSPE.

c. Under section 5 of the Act, the Central Government may notify the areas, where DSPE can exercise its jurisdiction.
against the offender, which only a police officer under Cr.P.C. can do. The meaning and importance of the word “investigation” appeared in entry 8, list I was explained by Ambedkar as under:

“The idea is this that at union office there should be a sort of bureau which will collect information with regards any kind of crime that is being committed by people throughout the territory of India and also make an investigation as to whether the information that has been supplied to them is correct or not and thereby be able to inform the provincial governments as to what is going on in the different parts of India so that they might themselves be in position to exercise their police powers in a much better manner than they might be able to do otherwise in the absence of such information”.

Therefore, the source of power to create CBI as an investigation agency cannot be traced within entry 8 list I. The issue, with regard to the constitutional validity of CBI was neither raised nor argued nor has even the same been discussed and decided by the Supreme Court. This issue was never involved, even as ancillary, in any reported decisions of any other High Court or Supreme Court. Thus, even the concept of obiter dictum cannot be applicable here. It is also pointed out by High Court that the executive powers of the state are to fill up the gaps and not to act as an independent law making agency. If a legal right of a person is sought to be curtailed it has to be done only by statutory rules and not by an executive instruction. In fact, the resolution, dated 1.4.1963, cannot be regarded as an executive action or decision of the union cabinet within the meaning of article 73, even, while it is never assented by the President of India. Therefore, it only can be regarded as the departmental instructions, which cannot be termed as “law” within the meaning of Article13 (3) of the Constitution of India. The impugned resolution/instruction can also not be regarded to fall within the expression “procedure established by law” under article 21 of the Constitution.

58 Ram Jawaya Kapur v. State of Punjab, AIR 1955 SC 549
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

of India. Thus, the actions of the CBI, in registering a case, arresting a person as an offender, conducting search and seizure, prosecuting accused etc. offend article 21 of the Constitution and therefore liable to be struck down as unconstitutional.

Power to make preliminary inquiry into allegations of corruption

The concept of preliminary enquiry is contained in chapter IX of the Crime Manual of the CBI. However, this crime manual is not a statute and has not been enacted by legislator. It is a set of administrative orders issued for internal guidance of the CBI officer. In P. Sirjuddin v. State of Madras, the Supreme Court also expressed the need for a preliminary enquiry, in the offences relating to corruption, before proceeding against public servant. Although, in terms of section 154 of the Cr. P.C. when information is received relating to commission of a cognizable offence the first information report should be lodged, mandatorily. But, even under the Criminal Procedure Code, to carry out a preliminary inquiry is not unknown; and when an anonymous complaint is received, it is not imperative for investigating officer to initiate, immediately, the investigative process. In number of situations, it is permissible for good reasons to carry out a preliminary enquiry to find out the truth of allegations. Similarly, in the case of CBI v. Tappan Kumar Singh the Supreme Court has validated to conduct a preliminary enquiry prior to registering an FIR on the ground that if at the time of; when first information is received, it does not disclose the commission of a cognizable offence. In Lalita Kumari v. Government of U.P. & Others, the Constitution Bench of Supreme

59 Para 9.1 of the Manual says that when, a complaint is received or information is available which may, after verification, as enjoined in the Manual, indicate serious misconduct on the part of public servant but is not adequate to justify registration of a regular case under the provisions of section 154 of the Code, a preliminary enquiry (PE) may be registered after obtaining approval of the competent authority. Para 9.10 of the Manual states that PE relating to allegations of bribery and corruption should be limited to the scrutiny of records and interrogation of bare minimum persons which may be necessary to judge whether there is any substance in the allegations which are being enquired into and whether the case is worth pursuing further or not.

60 (1970) 1 SCC 595
61 (2003) 6 SCC 175
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

Court held unequivocally, that section 154 of the Cr. P.C. postulates the mandatory registration of FIRs on receipt of all cognizable offences. If information discloses commission of a cognizable offence, no preliminary inquiry is permissible. The scope of preliminary inquiry is not to verify the veracity of information but it is only as to ascertain whether the information reveals to commission of any cognizable offence or not. In which cases preliminary inquiry should be conducted, it will depend on the fact and circumstances of each case. The categories of cases in which the preliminary inquiry may be conducted are as under:

1. Matrimonial disputes/family disputes.
2. Commercial offences.
3. Medical negligence cases.
4. Corruption cases.
5. Cases, where there is abnormal delay.

The aforesaid circumstances are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

Power of Constitutional Court to monitor the investigation carried on by CBI

In Manohar Lal Sharma v. Principal Secretary, the CBI had registered preliminary enquiries against unknown public servants for offences under the P.C. Act relating to allocation of coal block for the period from 1993 to 2005 and 2006 to 2009. The inquiries and investigation was being monitored by the Supreme Court, the question was before the court that, whether the approval of Central Government is necessary under section 6-A of the DSPE Act in a matter where

63 AIR 2014 SC 666: (2014) 2 SCC 532: 2014 (1) SCJ 441
64 Delhi Special Police Establishment Act, 1946, section 6-A (1) reads: “The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to-

a. the employees of the Central Government of the level of Joint Secretary and above; and
inquiry or investigation is monitored by the constitutional court. The Court held that section 6-A of the DSPE Act has no application to a constitutional court monitored investigation.\textsuperscript{65} The investigation or inquiry monitored by the court does not mean that the court supervises such investigations. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in court directed or court monitored cases is to ensure the proper, free and fair investigation of the case without any external interference. The whole idea is to retain public confidence in impartial investigation into the alleged crime. There is no doubt that the objective behind enactment of section 6-A is to give protection to certain officers (Joint Secretary and above) of Central Government from frivolous and vexatious complaints. But its objective would also be achieved where investigation are monitored by the constitutional court. The constitutional courts are the sentinels of justice and have been vested with extraordinary powers of judicial review to ensure that the rights of citizens are duly protected.\textsuperscript{66} The power under article 142 (1) to do complete justice is entirely of different level and of a different quality.\textsuperscript{67} Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of the court. While delivering the judgment, Justice Madan B. Lakur expressed his separate opinion but reached at same conclusion. His route was different. According to him a constitutional court monitored investigation is nothing but the adoption of a

\begin{itemize}
  \item[b.] such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Government”;
  \item Also see, Para 10.6 of the CBI (Crime) Manual, inter alia, provides that if a case is required to be registered under the PC Act against an officer of the rank of Joint Secretary and above, prior permission of the Government should be taken before inquiry/ investigation as required under section 6-A of the DSPE Act, 1946 except in a case under section 7 of the PC Act, 1988 where registration of FIR is followed by immediate arrest of the accused.
\end{itemize}

\textsuperscript{65} \textit{Manohar Lal Sharma v. Principal Secretary, AIR 2014 SC 666: (2014) 2 SCC 532: 2014 (1) SCJ 441}

\textsuperscript{66} \textit{Babubhai Jamnadas Patel v. State of Gujrat [2009) 9 SCC 610]}

\textsuperscript{67} \textit{Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujrat and Others : [1991]} 4 SCC 406}
procedure of a “continuing mandamus” which traces its origin, like public interest litigation, to Article 32 of the Constitution and is our contribution to jurisprudence. Any statutory emasculation intended or unintended of the powers exercisable under article 32 of the Constitution is impermissible. The jurisdiction of the court of issue a writ of continuous mandamus is only to see that proper investigation is carried out.\(^68\) The power of judicial review cannot be restricted by statutory provisions. It also does not amount to infringement of either the doctrine of separation of power or the federal structure. The restriction imposed by an Act on the powers of the union cannot be read as restriction on the powers of the constitutional court.

It is noted here that section 6-A was introduced under section 26 of the Central Vigilance Commission Act, 2003\(^69\) by amending the DSPE Act, 1946. It was required to obtain the previous approval of the Central Government for conducting any inquiry or investigation against certain level (Joint Secretary and above) of officers of Central Government for any offence alleged to have been committed under the PC Act, 1988\(^70\). In *Dr. S. Subramanian Swamy v. Director, CBI*\(^71\), the constitutional validity of it was challenged before Supreme Court. The Supreme Court held\(^72\) that section 6-A of the DSPE Act, 1946 is unconstitutional and violates Article 14 of the Constitution of India. The apex court observed that “it seems to us that classification which is made in section 6-A on the basis of status in the government service is not permissible under Article 14 as it defeats the purpose of finding *prima facie* truth into the allegations of graft, which amounts to an offence under the PC Act, 1988. There can be no sound differentia between corrupt public servants which has to be based on their status. Definitely, irrespective of their status or position corrupt public servants are

\(^{68}\) *M.C. Mehta v. Union of India* (2008) 1 SSC 407  
\(^{69}\) Act No. 45 of 2003.  
\(^{70}\) *Supra* note 64.  
\(^{71}\) 2014 (4) SCJ 468  
\(^{72}\) *Dr. S. Subramanian Swamy v. Director, CBI*, 2014 (4) SCJ 468
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

corrupters of public powers. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made. The criminal justice system of a country mandates that any investigation into the crime should be fair, in accordance with the law and should not be tainted by any extraneous consideration. It is equally important that influential persons are not able to misdirect or high jack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law. These are important facts of rule of law. Any violation of rule of law, necessarily, amounts to negation of equality under Article 14 of the Constitution and, therefore, section 6-A absolutely fails in that context of Article 14 of the Constitution. The aim and object of investigation is ultimately to search for truth and any law that impedes that object may not stand the test of Article 14 of Constitution.

Power of superintendence over CBI

It is provided under DSPE Act, 1946 that Central Government may constitute Special Police Force called DSPE for Union Territory of Delhi.\(^73\) The DSPE is now called or popularly known as CBI. The Central Government may notify the offences, which may be investigated by the DSPE.\(^74\) It shall be done by notification in the Official Gazette. The superintendence of Delhi Special Police Establishment, except in cases of corruption,\(^75\) shall vest in the Central Government.\(^76\) The power of superintended for investigation into cases of the P.C.

---

\(^73\) *Supra* note 55.

\(^74\) Delhi Special Police Establishment Act, 1946, section 3 reads: “The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment”.

\(^75\) Delhi Special Police Establishment Act, 1946, section 4 (1) reads: “The Superintendence of the Delhi Special Police Establishment insofar as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), shall vest in the Commission”.

\(^76\) Delhi Special Police Establishment Act, 1946, section 4(2) reads: “Save as otherwise provided in subsection (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government”.

281
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

Act, 1988 has been shifted from government to Central Vigilance Commission. The administration of Delhi Special Police Establishment is vested in an officer, called Director of CBI, appointed by Central Government. The director has all the powers, like of Inspector-General of Police in a state in respect of DSPE.\(^{77}\)

There can be no doubt that the overall administration of the CBI vests in the Central government which also includes, by virtue of section 3, the power to specify the offences or class of offences which are investigated by it. Once the CBI is empowered to investigate an offence generally by its specification under section 3, the process of investigation including its initiation is to be governed by statutory provisions which provides for initiation and manner of investigation of the offences. This is not an area which can be included within the meaning of superintendence in section 4 (1). Thus, once the jurisdiction is conferred upon the CBI to investigate an offence by virtue of notification under section 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be stopped or curtailed by any executive instruction issued under section 4 (1). It is settled principle of law that statutory jurisdiction cannot be subject to executive control.

In Vineet Narain v. Union of India and Another\(^{78}\), the single directive 4.7 (3)\(^{79}\) issued by the Government of India, which contain certain instructions to the

---

\(^{77}\) Delhi Special Police Establishment Act, 1946, section 4 (3) reads: “The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercised by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf”.

\(^{78}\) (1988) 1 SCC 226

\(^{79}\) 4.7 (3) (i) In regard to any person who is or has been decision making level officer (Joint Secretary or equivalent or above in the Central Government or such officers as are or have been on deputation to a public sector undertaking; officers of Reserve Bank of India of the level equivalent to joint secretary or above in the Central Government, Executive Directors and above of the SEBI and Chairman & Managing Director and Executive Directors and such of the Bank officers who are one level below the Board of Nationalized Bank), there should be prior sanction of the Secretary of the Ministry/Department concerned before SPE takes up any enquiry (PE or RC), including ordering search in respect of them. Without such sanction, no enquiry shall be initiated by the SPE.
CBI regarding modalities of initiating an inquiry or registering a case against certain categories of civil servants was challenged before Supreme Court through its writ jurisdiction under Article 32 of the Constitution of India. The court held that the single directive had been issued without any legislative sanction and it amounted to interdicting the investigations. The court observed that in the absence of any statutory requirement of prior permission or sanction for investigation, it cannot be imposed as a condition precedent for initiation of the investigation once jurisdiction is conferred on the CBI to investigate the offence by virtue of the notification under section 3 of the DSPE Act. Further, the law does not classify offenders differently for treatment there under, including investigation of offences and prosecution for offences, according to their status in life. Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law which is equal in its application to everyone. Among other things, the court also considered a report given by an Independent Review Committee (IRC) constituted by government of India dated 8-9-1997 and noted its observation as:

“In the past several years, there has been progressive increase in allegation of corruption involving cases of public servants. Understandably, cases of this nature have attracted heightened media and public attention. A general impression appears to have gained ground that the central investigating agencies concerned are subject to extraneous pressures and have been indulging in dilatory tactics in not bringing the guilty to book. The decisions of higher courts to directly monitor investigations in certain cases have added to the aforesaid belief”.

Furthermore, the necessity of previous sanction for prosecution is provided in section 19 of the PC Act, 1988 without which the court cannot take cognizance of offence under the Act. But there is no such previous sanction is required for investigation into offence either in the PC Act or DSPE Act or in any other statutory provision. Therefore, the single directive cannot be upheld as valid on
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

the ground of its being permissible in exercise of power of superintendence of the Central Government under section 4 (1) of the Act. It is noted here that originally the superintendence of CBI was vested in Central Government. In pursuance of the judgment of Vineet Narain case, the section 4 was amended. Now, section 4 (1) of DSPE Act provides that the superintendence of CBI, in cases of corruption shall be vested in CVC. There is no doubt that the overall administration of CBI is vested in Central Government. Presently, the CVC is required to exercise the superintendence over the functioning of the DSPE in matters relating to the investigation of offences allegedly committed under the Prevention of Corruption Act, 1988. In Khemchand v. Superintendent of Police\textsuperscript{80}, the Supreme Court said, that the word ‘superintendence’ would imply administrative control enabling the authority enjoying such power to give directions to the subordinate to discharge its administrative duties and functions in the manner indicated in the order. But while investigating the offence the police officer should exercise the power as vested in him under the statute and the Cr. P.C. and to that extent, he enjoys statutory powers.

In glorious history of CBI, for quite some time its record was excellent. It enjoyed the confidence of the courts as well as people of whole country. It is a great misfortune for our country that today it is not better if not worse than any other police organization. In Bofors Investigation case, when it was revealed that Mr. Quattrocchi had received a large amount of money in a foreign bank because he had assured the Swedish Company that the deal will go through a designated date and it did. An ex-Director of CBI immediately informed to then director of CBI that Quattrocchi’s name has appeared and there is reason to believe that he is conspirator and immediate steps should be taken to arrest him. This was not done. The written request and advice of the earlier CBI Director is on record and

\textsuperscript{80} M. Cr. C. No. 1497/93 decided on 20.7.1994.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

available. There are number of instances,\textsuperscript{81} in existence where CBI is acted very poorly on the part of its integrity.

Concluding remarks

It is concluded that CBI has to play very crucial role by conducting fair and impartial investigation into cases of corruption. Investigation of anti-corruption cases is one of the primary activities of CBI. Due to ministerial intervention, CBI is not able to do his job with utmost professionalism. CBI has no functional and real life operational autonomy. In practice, the independence and autonomy of CBI has attenuated. As far as departmental action is concerned, the CBI has no role and the CVC exercises full power but can only make non-binding recommendations for departmental action which is to be ultimately taken by concerned department. In states where there is no CBI, the state police, which is frequently called anti-corruption bureau does the job. State’s anti-corruption bureaus are wholly incapable to do their job. Presently, the supervisory power upon CBI has to be exercised by three entities viz; CVC, Lokpal and Ministry of Home Affairs, Government of India.

\textsuperscript{81} \textit{Centre for PIL v. Union of India}, para 28 is reproduced here that: “While CBI had to explain this averment made in para 18 of the writ petition, if really it wanted to convey to the court as to the non-availability of part II file to comment on the above allegation one would have expected CBI to come forward with a simple explanation that it is unable to respond to the above allegation in view of the fact that the said file was not traceable instead of averring in the affidavit that no such file is in existence. The use of the words “no such file” clearly indicates that what CBI intended to convey to the court in the first affidavit was to tell the court that such file never existed and it is only when the reply to the said affidavit was filed by the writ petitioners with a view to get over the earlier statement, the second affidavit was filed by Mr. Raghuvanshi interpreting the world “existence” to mean “not traceable”. In the circumstances mentioned hereinabove, we are unable to accept this explanation of CBI and are constrained to observe that the statement made in the first affidavit as to existence of Part II file can aptly be described as suggestion false and suppressio veri. That apart, the explanation given in the second affidavit of CBI also discloses a sad state of affairs prevailing in the organization. In the affidavit, CBI has stated before the court that part II file with which the court was concerned, was destroyed unauthorisedly with an ulterior motive by none other than an official of CBI in collusion with a senior officer of the same organization which fact, if true, reflects very poorly on the integrity of CBI...”
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

Central Vigilance Commission (CVC)

Introduction

The very crucial problem of corruption in the Indian administration distorts the decision making process and gives rise to all kinds of vices. Incorruptibility and integrity is very essential requirement for public confidence in the administration of government departments.\(^{82}\) Corruption assumes many forms. In *S.A. Kiri v. Union of India*\(^ {83}\), the Supreme Court has said that no employee of a nationalized bank or any other public sector corporation should engage himself, in collecting donations for any trust or other organization 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.

Historical background

To strengthen the existing mechanism for checking corruption amongst government servants, the Central Vigilance Commission (CVC) was created in February, 1964 by a resolution of the Government of India. The commission was established as a result of the recommendations of the committee on Prevention of Corruption popularly known as Santhanam Committee which was appointed in 1962. The committee had recommended that the commission should concern with two major problems, continuously being faced in public administration.\(^ {84}\)

1. Prevention of corruption and maintenance of integrity amongst the government servants; i.e. cases of corruption.

---


\(^{83}\) AIR 1985 SC 893

\(^{84}\) M.P. Jain & S.N. Jain, *supra* note 82
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

2. To ensure, just and fair exercise of administrative powers vested in various authorities by statutory rules or by other executive orders; i.e. cases of maladministration.

Thus, the committee had recommended that above two main problems should be kept within the purview of Central Vigilance Commission. In regards to the cases of corruption, the Government had accepted the recommendation of the committee but the recommendation, with regards to maladministration was not accepted. In this regard, the argument has given that the problem of maladministration was very big and it requires separate machinery by itself. If the commission is burdened with the additional responsibility for maladministration along with corruption, it would dilute its effectiveness in dealing with cases of corruption.\textsuperscript{85} The status and functions of the Central Vigilance Commission was described as; the Central Vigilance Commission will have in the sphere of vigilance, a status and a role broadly corresponding to those of the Union Public Service Commission. It will have extensive functions designed to ensure that the complaints of corruption or lack of integrity on the part of public servants are given prompt and effective attention, and that the offenders are brought to book without fear or favour. In the constitutional and legal sense, its functions would be advisory but in reality, they would be advisory in the same sense as those of the Union Public Service Commission. The combined effect of, the independence of the Commission, the nature of its functions, and the fact that its report would be placed before parliament, would be to make the commission a powerful force for eradication of corruption in the public services.\textsuperscript{86}

It was not the first time that the commission was created for the vigilance in the matter of corruption on the part of government servants. Before, creation of CVC, there was several organizations to deal with the matter of the corruption in

\textsuperscript{85} Ibid.

Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG
governance. Firstly, as early as 1963, by an executive resolution, the government established the Central Bureau of Investigation. Before 1963, there was 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, the Special Police Establishment was made a wing of CBI. For the purpose of investigation the CBI derives its power from the Delhi Police Establishment Act, 1946. The CBI functions under the administrative control of the Department of Personnel. Secondly, there existed the chief vigilance officer in each ministry/department having a number of vigilance officers under him. Thirdly, there was the Chief Technical Examiner's Organization which was created in 1957 under the Ministry of Works, Housing and Supplies for the purpose of conducting a concurrent technical audit of works of the Central Public Works Department with a view to securing economy in expenditure and better technical and financial control. Fourthly, there were existed commissioners for departmental enquiries. They were attached to the Ministry of Home Affairs for the purpose of conducting enquiries in the disciplinary proceedings against government servants. All of this is continued to exist with some modifications after the creation of the Central Vigilance Commission. After creation, of the CVC, some structural changes were made in the existing pattern of vigilance. Such as the Chief Technical Examiner's Organization was transferred to the administrative control of CVC and the task of investigation complaints relating to civil works of the government has been given to this Organization by the CVC. The Commissioners for the departmental enquiries were transferred to the control of CVC and the chief vigilance officer in each ministry or department came to be appointed in consultation with the commission. The CVC has also been given the powers to assess the work of these officers and assessment is recorded in their character rolls. With regards to CBI including S.P.E., not any change has been made. Thus, the status quo was maintained and CBI was not placed under the control of CVC. Though, the CVC
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

has been given certain functions in relation to recommendations made by the CBI in cases investigated by it. The commission's main concern is with matters of corruption, misconduct, lack of integrity or any other kinds of malpractices on the part of government servants. Its role is limited. It is only advisory. The main tasks of the commission are coordination, supervision and advice rather than investigation the complaints itself. It has no adjudicatory functions such as in disciplinary proceedings against government servants. It is not even the competent authority for giving sanction of criminal prosecutions for offences committed by public servants while discharging their official duties. It has no machinery to investigate or enquire into complaints of corruption except to a limited extent.

Vigilance is an integral part of all government institutions. Anti-corruption measures are the responsibility of the Central Government. The CVC as an integrity institution was set up by the Government of India in 1964. However, it was not a statutory body at that time. According to recommendations of the Santhanam Committee, CVC, in its functioning, was supposed to be independent to the executive. The sole purpose behind setting up of the CVC was to improve the vigilance administration of the country. In September, 1997, the government of India established the Independent Review Committee to monitor the functioning of CVC and to examine the working of CBI and the Enforcement Directorate. Independent Review Committee vide its report of December, 1997 suggested that the CVC should be given a statutory status. It also recommended that the selection of Central Vigilance Commissioner should be made by a High Powered Committee comprising of the Prime Minister, the Home Minister and the Leader of the Opposition in the Lok Sabha and the appointment of Central Vigilance Commissioner shall be made by the President of India on the specific recommendations made by the HPC. The CVC shall be responsible for the

87 M.P. Jain & S.N. Jain, supra note 82 para 3 & 4 at 960
88 Ibid.
89 Centre for PIL & Anr. v. Union of India & Anr. AIR 2011 SC 1267
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

efficient functioning of CBI. CBI shall report to CVC about cases taken up for investigations. The appointment of CBI Director shall be made by a committee headed by the Central Vigilance Commissioner. The Central Vigilance Commissioner shall have a minimum fixed tenure and that a committee headed by the Central Vigilance Commissioner shall prepare a panel for appointment of Director of Enforcement. Several states have opted to control corruption through the vigilance commission. The vigilance commission has much weaker status than the Ombudsman. The Vigilance Commission is an agency of the executive and not of the legislature. Vigilance Commission is not allowed to take the matter of corruption beyond the will of executive because it has not statutory status. It has no separate investigatory mechanism and therefore it does not investigate complaints itself, but depends upon other government investigation agencies. The vigilance commission has no adjudicatory functions and is not a competent authority for sanctioning criminal prosecutions for offences committed by public officials while discharging their official duties. In *Sunil Kumar v. State of West Bengal*, the Supreme Court has well illustrated the type of problems which can arise in practice because of its non statutory basis. An enquiry officer was appointed to enquire into certain charges against the appellant who was a member of the Indian Administrative Service. After enquiry, the enquiry officer submitted his report, giving his findings on various charges leveled against the appellant. The report was then sent to the vigilance commissioner for his advice. Thereafter, the disciplinary authority which was the state government came to its own conclusions. The appellant was reduced from the higher to the lower salary in the same grade. He challenged the order on the ground that consultation with the vigilance commissioner who had no statutory status was unjustified. He also took the plea that the report of the vigilance commissioner was not furnished to him though the ultimate findings of the government were based on that report. The Supreme Court held that the disciplinary authority committed no serious or

---

90 *Id*, para 22
91 AIR 1980 SC 1170 : (1980) 3SCC 304
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

material irregularity in consulting the vigilance commissioner. The conclusion of the disciplinary authority was not based on the advice of vigilance commissioner, but was arrived at independently, on the basis of charges and the relevant material placed before the enquiry officer in support of the charges and the defence of the appellant. The final conclusions of the disciplinary authority were so much at variance with the opinion of the vigilance commissioner that it was impossible to say that the disciplinary authority's mind was in any manner influenced by the advice of the vigilance commissioner. The Supreme Court observed: “if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the vigilance commissioner and obtained his views on the very same material”.

Thus, the finding of the court was that there is no merit in the appellant's argument that a copy of the report of the vigilance commissioner ought to have been supplied to him. This finding of the court, on the question of supply of the vigilance commissioner’s report to the petitioner does not seem satisfactory. Howsoever, the court may devalue the importance of consultation with the vigilance commissioner. The truth of the matter is that his opinion was taken into account by the disciplinary authority. Natural justice requires that the decision making authority must apply its own mind to the material before it. In fact, denying to it would be regarded as amounting to violation of natural justice. If the vigilance commissioner's report has not to be taken into account by the disciplinary authority or it play no role in influencing his mind then the consultation with him serves no purpose and the institution of the vigilance commissioner becomes useless. In the instant case the initial findings of the disciplinary authority were in consonance with the report of the vigilance commissioner. The disciplinary authority had adopted the opinion of vigilance commissioner. This shows that his opinion did have an impact on the mind of the disciplinary authority. It was only as a result of consultation with the Public
Service Commission that the disciplinary authority (government) changed its views. Public Service Commission has constitutional status, but vigilance commissioner has administrative status only. This position is not satisfactory. It is necessary to reconcile the demands of natural justice with any institutional functioning.

In *Nagaraj Shivarao Kargaji v. Syndicate Bank*\(^{92}\), consultation with Chief Vigilance Commissioner and acceptance of advice of Chief Vigilance Commissioner was mandatory by a directive issued by Ministry of Finance, Department of Economics Affairs (Banking Division) in exercise of power under section 8 of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 in respect of penalty to be imposed on delinquent bank employee. 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 Commissioner 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. In *Satendra Chandra Jain v. Punjab National Bank*\(^{93}\), once again the Supreme Court held that recommendation of chief vigilance commissioner regarding question of punishment is not binding on disciplinary authority.

On 18\(^{th}\) December, 1997 the judgment in the case of *Vineet Narain v. Union of India*\(^{94}\) came to be delivered. The constitution bench of the Supreme Court exercising its authority under Article 32 read with Article 142\(^{95}\) of Constitution of India, in order to implement an important constitutional principle

\(^{92}\) (1991) 3SCC 219 : AIR 1991 SC 1507, para 18 & 19
\(^{94}\) (1998) 1 SCC 226 : (AIR 1998 SC 889)
\(^{95}\) Constitution of India, art. 142 reads: “The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe”. 
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

of the rule of law ordered that the CVC shall be given a statutory status. It was also ordered that all the recommendations of the Independent Review Committee, which was established in September, 1997 by the Government of India, should be given a statutory status. The judgment in Vineet Narran’s case\(^96\) was followed by the Central Vigilance Commission Ordinance, 1999\(^97\) under which the Central Vigilance Commission has made a multimeter body headed by a Central Vigilance Commissioner. The 1999 ordinance conferred statutory status on CVC. The directions given by the Supreme Court in Vineet Narain case were incorporated in aforesaid ordinance. It is suffice to state that the 1999 ordinance was promulgated to improve the vigilance administration and to create a culture of integrity in governance\(^98\). The aforesaid ordinance was replaced by the Central Vigilance Commission Act, 2003\(^99\) which came into force on 11\(^{th}\) September, 2003.

A brief analysis of the Central Vigilance Commission Act, 2003

The Act has been enacted to provide for the constitution of a Central Vigilance Commission as an institution 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 for matter connected there with or incidental thereto.\(^100\) Thus the CVC is an integrity institution which is created under the Act. It is to supervise the vigilance administration. The Act provides a mechanism by which the CVC retains control over CBI. The object and purpose of the Act is to have an integrity institution like CVC which is in charge of vigilance administration and which constitutes an anti corruption mechanism. In its functions, the CVC is

\(^{96}\) Ibid.
\(^{97}\) Ordinance No. IV of 1999.
\(^{98}\) Centre for PIL v. Union of India, AIR 2011 SC 1267
\(^{100}\) Preamble of the Central Vigilance Commission Act, 2003.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

similar to Election Commission, Comptroller and Auditor General, Parliamentary Committees etc.

Constitution of Central Vigilance Commission

Section 3 of the CVC Act, 2003 dealt with the constitution of Central Vigilance Commission. It is provided that a body known as Central Vigilance Commission shall be constituted to exercise the powers and function assigned to it under this Act and the Central Vigilance Commission which was constituted under section 3 (1) of CVC Ordinance, 1999\textsuperscript{101}, and now ceased to operate, shall be deemed to be constituted under this Act\textsuperscript{102}. The Commission shall consist of a Central Vigilance Commissioner as Chairperson and not more than two Vigilance Commissioners as members\textsuperscript{103}. The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons who have been or are in All-India Services or in any civil service of the union or in a civil post under the union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration\textsuperscript{104}; or who have held office or holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations\textsuperscript{105}. It is further provided that minimum one person necessarily shall be appointed from categories, as stated above in clause (a) and one person from clause (b)\textsuperscript{106}. The words “who have been or are” appeared in section 3 (3) (a) refer to the person holding office of a civil servant or who has held such office. These words came up for consideration by

\textsuperscript{101} Ordinance No. V of 1999.
\textsuperscript{102} The Central Vigilance Commission Act, 2003, s. 3 (1).
\textsuperscript{103} Id., s. 3 (2).
\textsuperscript{104} Id., s. 3 (3) (a).
\textsuperscript{105} Id., s. 3 (3) (b).
\textsuperscript{106} Id., s. 3 (3) proviso.
Supreme Court in the case of *N. Kannadasan v. Ajoy Khose and Others*. The Supreme Court held that the said words indicate the eligibility criteria and further they indicate that such past or present eligible persons should be without any blemish whatsoever and that they should not be appointed merely because they are eligible to be consider for the post. The constitution of CVC as a statutory body under section 3 of the Act shows that CVC is an integrity Institution. A Secretary to the commission shall also be appointed by Central Government. The headquarters of the commission shall be at New Delhi.

**Appointment of Central Vigilance Commissioner and Vigilance Commissioners**

The Central Vigilance Commissioner and Vigilance Commissioners shall be appointed by the President of India. It indicates the importance of the post. Every appointment shall be made by President, after obtaining the recommendation of a committee consisting of-

a. The Prime Minister- Chairperson;

b. The Minister of Home Affairs- Member;

c. The Leader of Opposition in the House of the People- Member.

Further, it is provided that the appointment of Central Vigilance Commissioner or any Vigilance Commissioners shall not be invalid merely by reason of any vacancy in the committee.

In *Centre for PIL v. Union of India*, for the sake of brevity the Committee has been referred by Supreme Court as High Powered Committee. In this case the Supreme Court held that the High Powered Committee (HPC)

---

107 [(2009) 7 SCC1]; *Centre for PIL v. Union of India*, AIR 2011 SC 1267.
108 The Central Vigilance Commission Act, 2003, s. 3 (4).
109 *Id.*, s. 3 (6).
110 The Central Vigilance Commission Act, 2003, s. 4 (1).
111 *Id.*, s. 4 (2).
112 AIR 2011 SC 1267 para 30
performs a statutory duty in making the recommendation for appointment of Central Vigilance Commissioner. Thus, while making the recommendations, the service conditions of the candidate being a public servant or civil servant in the past is not a sole criteria. The HPC must take into account the question of institutional competency for consideration. If the selection adversely affects institutional competency and functioning then it shall be the duty of the HPC not to recommend such a candidate. The institutional integrity is also the primary consideration which the HPC is required to take into account for consideration while making recommendation under section 4 for the appointment of Central Vigilance Commissioner. Further it has to take into consideration the values, independence and impartiality of the institution. It has to take an informed decision keeping in mind the vital aspects indicated by the purpose and policy of the Act.

Terms and conditions of service of Central Vigilance Commissioner

The Central Vigilance Commissioner shall hold office for a term of four years or till he attains the age of sixty five years, whichever is earlier. He shall not be eligible for reappointment in the commission. Every Vigilance Commissioner shall also hold office for a term of four years or till he attains the age of sixty five years, whichever is earlier. Further, it is provided that on ceasing to hold office, every Vigilance Commissioner shall be eligible for appointment as the Central Vigilance Commissioner in the same manner as specified in section 4 (1) of Act. But the term of the Vigilance Commissioner who is being appointed as the Central Vigilance Commissioner shall not be more than four years in aggregate as the Vigilance Commissioner and the Central Vigilance Commissioner. Originally it was provided that he will hold office for

113 The Central Vigilance Commission Act, 2003, s. 5 (1).
114 Ibid.
115 Id., s. 5 (2).
116 Id., s. 5 (2) proviso (1).
117 Id., proviso (2).
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

a period of six years or until he attains the age of sixty five years whichever is earlier. However, through a resolution of the government, his term reduced from six to three years with the proviso to extend his term in public interest for not more than two years. In the present Act four years term is not extendable.

Before entering upon his office, the Central Vigilance Commissioner and other Vigilance Commissioners shall make and subscribe an oath or affirmation before the President of India or any other person who is appointed by him for that purpose. The form of oath or affirmation has been set out in the schedule to the Act. It is clear from reading the prescribed form of oath or affirmation that the Central Vigilance Commissioner or Vigilance Commissioner, who is being appointed to the office, will uphold the sovereignty and integrity of India and he will perform the duties of his office without any fear or favour, affection or ill will and will uphold the constitution and laws. The Central Vigilance Commissioner or Vigilance Commissioners may resign from his office by writing under his hand addressing to President of India. The Central Vigilance Commissioner or Vigilance Commissioners may be removed from his office by the President in the manner as provided under section 6 of the Act. There is a bar on his re-employment in the government or on his accepting any political or public office. On ceasing to hold office, the members of the Central Vigilance Commission (CVC) shall not be eligible for any diplomatic assignment. He shall be ineligible for the appointment as administrator of any union territory. He shall also be ineligible any such other appointment which is required by law to be made by the President of India. Further, it is provided that the members of the CVC shall be ineligible for employment to any office of profit under the Government of

118 The Central Vigilance Commission Act, 2003, s. 5 (3).
119 Id., s. 5 (4).
120 Id., s. 5 (5).
121 Id., s. 5 (6), clause (a).
122 Ibid.
123 Ibid.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

India or any other government of state. These provisions are necessary to uphold the impartiality of the member of the CVC. The salary and allowances payable to the members of CVC and other conditions of services are similar to the members of Union Public Service Commission. It is also provided that the salary, allowances and pension payable to members of CVC and other conditions of service shall not be varied to his disadvantage after his appointment. The expenses of the commission, including the salary, allowances and pensions payable to members and other staff of CVC shall be charged on the Consolidated Fund of India. The purpose and object of these provisions is to ensure the financial independence of CVC so that the CVC can fight against corruption effectively.

Removal of the members of the CVC

The Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by an order of the President of India on the ground of proved misbehaviors or incapacity after the Supreme Court, on a reference made to it by the President, has on enquiry, reported that the concern member of the CVC ought to be removed. The President is empowered to suspend, and if deemed necessary, to prohibit also from attending the office during inquiry, to any member of CVC in respect of whom a reference has been made to the Supreme Court under section 6 (1) of the Act. The President may, also remove from his office to any member of CVC on the following grounds, if he:

1. is adjudged insolvent, or
2. has been convicted of an offence which involves moral turpitude; or

---

124 Id., s. 5 (6), clause (b).
125 Id., s. 5 (7).
126 Id., s. 5 (7), proviso (3).
127 The Central Vigilance Commission Act, 2003, s. 13.
128 The Central Vigilance Commission Act, 2003, s. 6 (1).
129 Id., s. 6 (2).
130 Id., s. 6 (3).
3. engage in any other paid employment outside of his office or
4. is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind of body's or
5. has acquired such financial or other interest which is likely to affect prejudicially has functions as the member of CVC.

These above provisions, related to the appointment and removal for the members of the CVC has incorporated in the Act for the purpose of; to ensure the independence, impartiality, institutional integrity and insulation from external influence of executive in functioning of the Central Vigilance Commission. It also indicates that such protections are given to the members of CVC in order to enable the institution of CVC to work in a free and fair environment.

**The powers and functions of the CVC**

Section 8 of the CVC Act, 2003 deals with the functions and powers of the CVC which are as follows:

(1) The CVC is empowered to exercise its powers of superintendence over the functioning of the DSPE, popularly known as CBI in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988\(^{131}\) or an offence with which a public servant may be charged at the same trial under the Code of Criminal Procedure, 1973\(^{132}\).

(2) The CVC is empowered to give directions to the DSPE or CBI, for the purpose of discharging the responsibility of investigation entrusted to it under section 4 (1) of DSPE Act, 1946\(^{133}\) but it is not authorized to exercise the powers of superintendence over CBI in such a manner so as to require the CBI to investigate or dispose of any case in a particular manner\(^{134}\). The supervisory

\(^{131}\) The Central Vigilance Commission Act, 2003, s. 8 (1) cl. (a).
\(^{132}\) Ibid.
\(^{133}\) Id., s. 8 (1) cl. (b).
\(^{134}\) Ibid.
powers of CVC, is meant to observe and only give directions for the execution of task. It is intended to ensure that proper progress into investigation of case can take place without directing or channeling the mode or manner of investigation.

(3) The CVC shall enquire or cause an enquiry or investigation into matters referred by Central Government wherein it is alleged that a public servant being an employee of the Central Government has committed an offence under the Prevention of Corruption Act, 1988 or an offence with which he may be charged at the same trial under the Code of Criminal Procedure, 1973\textsuperscript{135}.

(4) The Commission shall inquire or cause an inquiry or investigation into any complaint made against any officials specified in section 8(2) of the Act, and it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 or an offence with which he may be charged at the same trial under Code of Criminal Procedure, 1973\textsuperscript{136}. The officials specified in section 8 (2) are as follows\textsuperscript{137}:

i. Members of All-India Services in connection with the affairs of the Union of India and all group A officers of the Central Government.

ii. Such level of officers as specified by notification in Official Gazette, of the corporation’s establishment by Central Government, or government companies, societies, and other local authorities, owned or controlled by the Central Government.

iii. All members of group B, group C, and group D services of the Central Government.

iv. Such level of officials or staff as specified by notification in Official Gazette, of the corporations, government companies, societies, and

\textsuperscript{135} Id., s. 8 (1) cl. (c).
\textsuperscript{136} Id., s. 8 (1) cl. (d).
\textsuperscript{137} The Central Vigilance Commission Act, 2003, s. 8 (2), cl., (a) (b) and (c).
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

other local authorities which established or owned or controlled by Central Government.

(5) The Commission shall review the progress of investigations conducted by the CBI into offences alleged to have been committed under the Prevention of Corruption Act, 1988\textsuperscript{138}.

(6) The Commission shall also review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988\textsuperscript{139}.

(7) The CVC is made empowered to tender advice to the Central Government, corporations, companies, societies or local authorities established or owned or controlled by the Central Government on such matters which has referred to it by the Central Government or aforesaid bodies\textsuperscript{140}. (8) The Commission shall also exercise the powers of superintendence over the vigilance administration of the various ministers of the Central Government or corporations, companies, societies or local authorities owned controlled by that government\textsuperscript{141}.

Action on preliminary inquiry in relation to public servants

On preliminary inquiry, if it is found that a \textit{prima facie} case of violation of conduct rules relating to prevention of corruption under the Prevention of Corruption Act, 1988 has been made out against any group C or group D official of Central Government, then the Commission after giving an opportunity of being

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{138}] The Central Vigilance Commission Act, 2003, s. 8 (1) cl. (e).
\item[\textsuperscript{139}] \textit{Id.}, s. 8 (1) cl. (f).
\item[\textsuperscript{140}] \textit{Id.}, s. 8 (1) cl. (g).
\item[\textsuperscript{141}] \textit{Id.}, s. 8 (1) cl. (h).
\end{itemize}
\end{footnotesize}
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

heard to the public servant shall proceed with one or more of the following actions:\(^{142}\):

i. cause an investigation by CBI or any other agency.

ii. initiate of the disciplinary proceedings or any other appropriate action against concerned public servant by competent authority.

iii. closure of the proceedings against public servant and to proceed against the complainant under section 46 of the Lokpal & Lokayuktas Act, 2013\(^{143}\).

Every preliminary inquiry shall be completed within the period of ninety days and for reasons to be recorded in writing a further period of ninety days from the date of receipt of the complaint.\(^{144}\)

**Action on investigation in relation to public servants**

After preliminary, if Commission decides to proceed for investigation, it shall direct to DSPE or any other investigating agency to carry out investigation into the case as expeditiously as possible and submit its report to the Commission\(^{145}\). The investigation shall be completed within the period of six months extendable for further period of six months for the reasons to be recorded in writing from the date of its order.\(^{146}\) The investigation agency in respect of cases referred to it for investigation by the Commission shall submit the investigation report containing its findings to the Commission.\(^{147}\) The Commission shall consider every report and may decide as to\(^{148}\):

---

\(^{142}\) The Central Vigilance Commission Act, 2003, s. 8A (1).

\(^{143}\) Act No. I of 2014; The Lokpal and Lokayuktas Act, 2013, s. 46 (1) reads: “Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction , be punished with imprisonment for a term which may extend to one year and with the fine which may extend to one lakh rupees”.

\(^{144}\) The Central Vigilance Commission Act, 2003, s. 8A (2).

\(^{145}\) The Central Vigilance Commission Act, 2003, s. 8B (1).

\(^{146}\) *Ibid.*

\(^{147}\) *Id.*, s. 8B (2).
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

i. file charge sheet or closure report before Special court against public servant or;

ii. initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.

Thus, the CVC as an institution has to perform an important function of vigilance in administration. It is a statutory body. The proceedings of the commission shall be conducted at its headquarters.149 As far as possible, all business of the commission is to be done unanimously.150 If the members of CVC differ in opinion on any matter, the same shall be decided by the opinion of the majority.151 No act or proceeding of commission shall be invalid by reason of any vacancy or any defect in the constitution of commission or any irregularity in procedure of commission which does not affect the merits of the case.152 The commission has all the powers of civil court.153 The expenses of the commission shall be charged on the consolidated fund of India.154 It is the duty of commission to present annually, a report to the President of India as to work has done by the commission within six months. The President shall cause to be laid the report before each House of Parliament.155 The CVC is empowered to exercise superintendence over the functioning of CBI insofar as it relates to investigation of offences alleged to have been committed under PC Act, 1988 and is empowered to give directions to CBI. It is authorized to review the progress of investigations conducted by CBI into offences alleged to have been committed under the PC Act, 1988. CVC is also empowered to exercise superintendence over the vigilance administration of the various ministries of the Central Government, PSUs, government companies etc. The powers and functions discharged by CVC is the

148 Id., s. 8B (3).
149 The Central Vigilance Commission Act, 2003, s. 9 (1).
150 Id., s. 9 (3).
151 Id., s. 9 (4).
152 Id., s. 9 (6).
153 The Central Vigilance Commission Act, 2003, s. 11.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

sole reason for giving to institution, the administrative autonomy, independence and insulation from external influences. It is the independence and impartiality of the institution like CVC which has to be maintained and preserved in larger interest of the rule of law.

Concluding remarks

The CVC has established as integrity institution to address the corruption and promote probity in governance. CVC is an advisory body. The CVC’s advice is not binding on the appointing authorities. The problem arises when CVC wants sanction against corrupt higher bureaucracy but is not granted. If it is granted, it takes a lot of time. Adequate autonomy to CVC on the lines of Union Public Service Commission and CAG has not given. There is no any provision under CVC Act, 2003 for government departments to explain the reasons to the Parliament for non-acceptance of CVC advice. There is no proper mechanism has put in place for effective coordination between Lokpal and CVC. With the setting up of Lokpal, the multiple agencies such as Lokpal, CVC, and CBI, has to deal with complaint of corruption. The functions and powers of Lokpal and CVC are overlapping. The institutions of CVC, CBI and Lokpal are not fully integrated with each other.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

The Comptroller and Auditor General of India (CAG)

History of the CAG

Originally, since 1958 the Comptroller & Auditor General of India (CAG) was known as the “Accountant General to the Government of India”. Later, in 1860 it designated as the “Auditor General of India” and in 1866 as the “Comptroller General of Accounts”. In 1884, it was called as the “Comptroller and Auditor General in India”. Later, under the Government of India Act, 1935, it was called the “Auditor General of India”. He was entrusted with the responsibility for the accounting and audit of the Government of India and eleven provincial governments. He was to perform his duties and functions through the Indian Audit and Account Department. There were fifteen Auditor General till 14th August, 1947. The Indian Independence Act, 1947 created two dominions of India and Pakistan from 15th August, 1947. When India, “woke to life and freedom at the stroke of the midnight hour” on the 14th August, 1947, Sir Bertie Monro Staig was the Auditor General of India. Sir Bertie Monro Staig, who had assumed the office on 11th April, 1945 continued as Auditor General after taking oath of allegiance to the Indian Dominion. He was the last British Auditor General and first Auditor General of Independent India. Shri V. Narahari Rao, who was the Secretary to Government of India, Finance Department, became the first Indian Auditor General of the free dominion of India on 15th August, 1948. The Constitution of India promulgated on 26th January, 1950 provided for the Comptroller and Auditor General of India, who was entrusted with the accounting and auditing functions of the union government and states governments, including the centrally administered areas and union territories. He was empowered to perform such powers in relation to the accounts of the union and of the states, as

were conferred on or exercisable by the Auditor General of India immediately before the commencement of the Constitution of India. Under the Government of India Act, 1935 the Auditor General of India was appointed by His Majesty and could be removed from office in like manner and on like grounds as a judge of the Federal Court. His conditions of service were prescribed by His Majesty in Council. On vacating the office, he was debarred from holding any other post under the Crown in India. Neither the salary nor his rights in respect of leave of absence, pension or age of retirement could be varied to his disadvantage after his appointment. The salary, allowances and pension payable to or in respect of an Auditor General, was a charged item on the revenues of the federation. After independence, India became a union of states comprising nine part A states, nine part B states, nine part C states and one part D states. The CAG became responsible for the accounting and audit of the transactions of part B states, except Jammu & Kashmir. In case of part A states, he became responsible for the same with effect from the 1st April, 1950 (13th April, 1950 for PEPSU only). The Jammu & Kashmir was brought under CAG’s jurisdiction from 1st May, 1958.

After independence, the office of the CAG is originated from article 148 to 151 of the Constitution of India. It is in continuation of the powers exercised by the Auditor General of India immediately before 1947. It is the supreme Audit Institution (SAI) of the country.

The fifth chapter of part five to the Constitution of India deals with the Comptroller and Auditor General of India. It comprises of four Articles i.e.148-151. It is provided that there shall be a Comptroller and Auditor-General of India. He shall be appointed by the President of India. He shall only be removed from his office in like manner and on the like grounds as a judge of

---

157 The Constitution of India, art. 148 (1) reads: “There shall be a Comptroller and Auditor General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from his office in like manner and on the like grounds as a judge of the Supreme Court”.

158 Ibid.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

Supreme Court\textsuperscript{159}. Every person who is being appointed the Comptroller and Auditor-General of India, before entering upon his office he shall make and subscribe an oath or affirmation before the President of India\textsuperscript{160}. Article 149 of the Constitution spells out the duties and powers of the CAG\textsuperscript{161}. Article 150 specifies the forms of accounts of the Union and of the states\textsuperscript{162}. The audit reports of the CAG, relating to the account of the Union shall be submitted to the President who shall cause them to be laid before each house of Parliament\textsuperscript{163} and the audit reports of the CAG relating to the accounts of a state shall be submitted to the governor of the state, who shall cause them to be laid before the Legislature of the State.\textsuperscript{164} The salary and other conditions of service of the CAG shall be determined by Parliament by law\textsuperscript{165}. It is further provided that neither the salary of CAG nor his rights in respect of leave of absence pension of age of retirement shall be varied to his disadvantage after his appointment.\textsuperscript{166} The administrative powers of CAG and the condition of service of persons serving in Indian Audit and Account Department shall be determined by the rules made by President after

\begin{flushright}
\textsuperscript{159} Ibid; The Constitution of India art.124 (4) reads: “A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity”.\textsuperscript{160} The Constitution of India, art. 148 (2) reads: “Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule”.\textsuperscript{161} The Constitution of India, art. 149 reads: “The Comptroller and Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were confirmed on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of Dominion of India and of the Provinces respectively”.\textsuperscript{162} The Constitution of India, art. 150 reads: “The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor-General of India, prescribe”.\textsuperscript{163} The Constitution of India, art. 151 (1)\textsuperscript{164} Id., art. 151 (2).\textsuperscript{165} The Constitution of India, art. 148 (3).\textsuperscript{166} Id., proviso.
\end{flushright}
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

consultation with the CAG. The Comptroller and Auditor-General of India shall not be eligible for further office either under Government of India or any state after he has ceased to hold his office. The administrative expenses of the office of the CAG, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

The Constitution of India mandates that the CAG has to perform such duties and exercise such powers in relation to the accounts of the Union and of the states as were conferred on or exercisable by the Auditor-General of India immediately before the commencement to the Constitution of India, in relation to the accounts of the dominion of India and of the Provinces, respectively. In this regard, the Parliament has enacted the Comptroller and Auditor General’s (Duties, Powers and Conditions of Service) Act, 1971. It is popularly known as the CAG (DPC) Act, 1971 and came into effect, from 15th December, 1971. The Act defines the powers, duties and conditions of service of the CAG and other matters connected therewith. The Act gives authority to CAG to audit all expenditure from and receipts into the Consolidated Fund of India and the states. Section 23 of the Act empowers the CAG to determine the scope and extent of the audit. The CAG Act lays down the principles to determine whether on entity falls within the purview of CAG’s audit or not. The Act empowers to the CAG to make regulations to give effect to the provisions of the Act in regard to the scope and extent of audit. In 2006, by an office memorandum, the Ministry of Finance was

---

167 The Constitution of India, art. 148 (5) reads: “Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General”.

168 Id., art. 148 (4).

169 Id., art. 148 (6).

170 Supra note, 161.

171 Act No. 56 of 1971.

Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

also clarified the role of the CAG for conducting performance audit\(^{173}\). In pursuance of above provisions, the CAG has duty to conduct the performance audit in addition to financial and compliance audits. By definition the performance audit includes audit of “economy, efficiency and effectiveness” in the receipt and application of public funds.\(^ {174}\) Thus, it is clear that the interpretation of its own role in respect of the audit is within the purview of the CAG, which is a constitutional authority.

**Appointment of CAG**

As noted above that the Comptroller and Auditor General of India shall be appointed by the President of India and he shall only be removed from his office in like manner and on the like grounds as a judge of the Supreme Court\(^ {175}\). It is pertinent to note here that neither the Constitution nor the CAG Act, 1971 prescribe any method or manner for the appointment of CAG. In a request for information under the Right to Information Act, 2005\(^ {176}\) made by virtue of an application dated 21-02-2013, wherein the information was sought that whether there is any approved system or procedure for selection of the Comptroller and Auditor-General of India\(^ {177}\). Whether the system or procedure is formally laid down and well documented. The answer to these questions was in affirmative. The answers provided by the first appellate authority were that by virtue of the powers vested in the President of India under article 148 (1) of the Constitution, the President, through warrant under his hand and seal, appoints the Comptroller and Auditor General of India. After the issuance of the Presidential warrant, the Budget Division of the Department of Economic Affairs issues the Gazette Notification for the appointment of the CAG. It was further stated that the system

\(^{173}\) Ibid.
\(^{174}\) Ibid.
\(^{175}\) Supra note 157.
\(^{176}\) Act No. 22 of 2005.
\(^{177}\) WP(C) 4653/2013 & 4619/2003 in the High Court of Delhi, decided on 13.08.20013; N. Gopalswami & Ors v. Union of India and Mnohar Lal Sharma Advocate v. The Principal Secretary, Prime Minister Office and Others, para5at 6 &7: Also available on: www.indiankanoon.com.in
of appointment is established in terms of past conventions and practices\textsuperscript{178}. It entails that, on a note moved by the Ministry of Finance, the government makes recommendations to the President of India for the appointment of the CAG\textsuperscript{179}. The first appellate authority also stated that the authorities in the government which are involved in the system of selection of the CAG are the Ministry of Finance, Cabinet Secretariat, the Prime Minister and the President of India. The position of the CAG is open to both, the civil servants as well as others, and there is no specified eligibility criteria/zone of consideration\textsuperscript{180}. Under the aforesaid established procedure and practice, the Cabinet Secretariat, headed by Cabinet Secretary, the senior most civil servant having knowledge about the competence and integrity of the civil servants in government, sends the list of shortlisted names which have been approved by the Finance Minister to the Prime Minister for his consideration. The Prime Minister considers the shortlisted names and recommends one name from the list of shortlisted names to President of India for his approval. After the name is approved by the President, the CAG is appointed under the warrant and seal of the President of India. The manner in which the President has to function in appointing the CAG that he has to act on the aid and advice of the council of the ministers.

In the course of the Constituent Assembly debates, a amendments was proposed by one of the member Prof. K.T. Shah that “the Auditor-General should be appointed from among persons qualified as registered accountants or holding any other equivalent qualifications recognized as such, and having not less than ten years practice as such auditors” but it was rejected by the Constituent Assembly. Shri T.T. Krishnarmachari, opposing the proposed amendment, expressed the view that the CAG is not an accountant per se and he had a number

\textsuperscript{178} Ibid.
\textsuperscript{179} Ibid.
\textsuperscript{180} Ibid.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

of duties to perform and therefore he would have necessarily a comprehensive knowledge of the entire administration.¹⁸¹

In N. Gopalswami & Ors v. Union of India and Mnohar Lal Sharma Advocate v. The Principal Secretary, Prime Minister Office and Others¹⁸², the appointment of the respondent no. 2 was challenged on the two grounds. Firstly, the appointment of respondent no-2 violates the principle of institutional integrity as contemplated in the CVC case¹⁸³ and the Punjab PSC case.¹⁸⁴ Secondly, the appointment of respondent no. 2 as the CAG has been done in arbitrary manner which lacked transparency. The petitioner also seek a writ direction or order commanding the union of India to frame a transparent selection procedure based on definite criteria and to constitute a broad based non-partisan selection committee, which, after calling for applications and nominations, would recommend to the President of India the most suitable person for appointment as the CAG. The Delhi High Court held that the appointment did not violate the principle of institutional integrity and is not arbitrary. There neither on integrity nor on competence was any material to show that the respondent no. 2 was not eligible for appointment as the CAG. There was no any disciplinary proceeding or criminal case pending against him. It was showed that the respondent had possessed thirty seven years of unblemished record. There was no adverse noting against him. The appointment of the respondent as CAG was based on a practice which had been followed and had became a convention over several decades and it had stood to the test of time.

In respect of appointment of CAG, the argument is made for a selection committee in line of National Human Rights Commission (NHRC), Central

¹⁸¹ R.K. Chandrasekharan, supra note 156 at 44
¹⁸² WP (C) 4653/2013 & WP (C) 4619/2013 in the High Court of Delhi, decided on 13.08.20013; by both these civil writ petitions, the common issues and questions were raised and therefore disposed of together in court.
¹⁸³ Centre for PIL & Others v. Union of India : (2011) 4 SCC 1
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

Information Commission (CIC) and Central Vigilance Commission\textsuperscript{185}. The National Commission to Review the Working of Constitution found this argument “persuasive” but has rejected it. The Commission observed that it would be counterproductive to undermine the constitutional and moral authority of the Prime Minister by stipulating a mechanism that would supplant his decision making and said that no change is needed in the existing provisions. At the same time the Commission has recommended that a healthy convention should be developed to consult the speaker of the Lok Sabha before the government decides on the appointment of the CAG so that the views of the Public Account Committee (PAC) are also taken into account. If a healthy convention is considered desirable, why should it not be institutionalized?\textsuperscript{186} Keeping in mind the constitutional responsibilities entrusted to the CAG, the CAG should clearly have\textsuperscript{187}:

1. The professional knowledge and expertise.

2. The willingness to point out a finger at irregularity, impropriety, imprudence, inefficiency, waste, and loss of public fund, at whatever level this occurs.

3. The ability to weigh the legal and constitutional aspects of some of the issues that come before him.

4. A capacity for understanding complex technical, contractual, commercial, managerial or economic matters and forming careful judgments particularly when dealing with large government schemes.

5. Management abilities for running the vast department under him; and


\textsuperscript{186} Ibid.

\textsuperscript{187} Ibid.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

6. Underlying all these, a passionate concern for rectitude and propriety (fire in the belly), and impeccable and fierce personal integrity, accompanied by much tact and wisdom.

It will certainly be very difficult to find a person who combines all those elements but the person selected should meet at least a significant part of the above requirements.\(^\text{188}\) It is argued that the CAG is much more than an accountant. It was argued first in the Constituent Assembly debate by T.T. Krishnamachari. In view of a scholar it is a serious error.\(^\text{189}\) This constitutional institution should not be allowed to obscure the point that it is also a specialized and professional institution and cannot easily be filled by a generalist\(^\text{190}\). Let us not forget the title of the post. It is an “Auditor General”\(^\text{191}\). The CAG is at the top of the pyramid in the Indian Audit and Accounts Department (IAAD). Immediately, below the CAG, there are three deputy CAGs. In the yearly years it was assumed that the CAG would be an IAAS (Indian Audit and Accounts Service) officer. Up to 1966, the first three CAGs came from IAAS. In August 1966, the fourth CAG was come from Indian Civil Service (ICS). In March 1972, the fifth CAG was again come from IAAS. After 1978, the successive CAGs have been come continuously from IAS. Thus, it is clear that since a long period the IAAD has been working under the CAGs coming from IAS cadre. It is like a systematic exclusion of IAAS from the top post of CAG. It has a demoralizing effect on the IAAS. That feeling can be right or wrong but is in existence and it is bound to have some effect on the commitment, zeal and courage with which the audit function is performed.

**Role of the CAG**

There are three basic pillars of democracy viz; the legislature, executive and judiciary. They have the primary role and responsibility to manage the affairs

\(^{188}\) *Ibid.*
\(^{189}\) *Ibid.*
\(^{190}\) *Ibid.*
\(^{191}\) *Ibid.*
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

of the country. The role of other constitutional and statutory bodies cannot be ignored in ensuring the process of qualitative governance. The Election Commission of India (ECI), CAG, and CVC etc. have an important role to play in ensuring the quality of governance and administration. The CAGs role should be viewed in the context of our constitutional scheme under which the executive is accountable to Parliament.\textsuperscript{192} GAG is an essential instrument for enforcing the accountability mechanism as the CAGs reports on government’s stewardship of public finance are required to be placed before Parliament and state Legislatures. To enable him to discharge his responsibility, without any fear or favour, he has given an independent status under article 148 of the Constitution\textsuperscript{193}. In this regard, Dr. B.R. Ambedkar said in Constituent Assembly that\textsuperscript{194}:

“Personally, speaking for myself, I am of opinion that this dignitary or officer is probably the most important officer in the Constitution of India. He is the one man, who is going to see that the expenses voted by the Parliament are not exceeded or varied from what has been laid down by Parliament in what is called the Appropriation Act. If this functionary is to carry out the duties, and his duties, I submit, are far more important than the duties even of the judiciary. He should have been certainly as independent as the judiciary. But, comparing the articles about the Supreme Court and the Articles relating to the Auditor General, I cannot help saying that we have not given him the same independence, which we have given to the judiciary, although I personally feel that he ought to have for greater independence than the judiciary itself”.

\textsuperscript{193} Ibid.
\textsuperscript{194} R.K. Chandrasekharan, supra note 156 at 45.
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

Dr. Rajendra Prasad, the first President of India laid the foundations stone for the new office of the Comptroller and Auditor General of India on 21st July, 1954. He observed as under:\footnote{Id.; at 64.}

“In a democratic set-up involving allocation of hundreds of crores of rupees, the importance of this kind of scrutiny and check can never be over emphasized, particularly at the present moment when government is incurring large expenditure on so many welfare projects. Apart from these, the government has of late been taking up industrial undertakings in its hands which have to be worked on purely business lines. It is essential that every rupee that we spent on all these is properly accounted for. This important task, I am afraid, a task not always very pleasant, devolves upon the Comptroller and Auditor General and his office. In accordance with powers vested in him, he has to carry out these functions without fear or favour in larger interests of the nation”.

Till 1990s, the Election Commission of India, even being constitutional body was working only as a wing of executive. He was being more sympathetic and much friendly toward the ruling parties. He was unable to fulfill his defined constitutional role as the guardian of purity in the electoral process. In December, 1990 with arrival of T.N. Seshan, the ECI become an active, independent and very strong constitutional body to oversee the electoral process. Seshan gave teeth to this constitutional body. Now it is widely perceived that ECI has strong will power to bark and bite when occasion demand for it. Only because of this, it became possible to eliminate the muscle power from the electoral process in India. But now there is also a need to eliminate the money power from electoral process. Same is applicable for the institution of CAG. In early 2008, with arrival of Vinod Rai as a Head of CAG, the institution of CAG has received its place as a constitutional body. Predecessor of Vinod Rai as the Head of CAG perceived their role only as the government servant rather than the servant of constitution or
Central Agencies against Corruption: An Evaluation of the Functioning of CBI, CVC and CAG

Parliament or people of India. Vinod Rai as a Head of CAG “did a Seshan” to the institution of CAG.196 In USA, the General Accountability office (GAD) is a part of legislative branch. In the U.K., the CAG is an officer of the House of Commons. CAG of India is not an officer of Parliament but is a constitutional authority and discharges his constitutional duties through a large and nationwide Indian Audit Department (IAAD). The CAG’s reports on the 2G spectrum Allocation, Allocation of coal blocks, MDM Schemes, Commonwealth Games of 2010, and Antrix-Devas cozy have exposed serious misdeed of Central and State Government.

Till 1994, in India communication facilities were being provided only by The Department of Telecommunication (DoT) under the Ministry of Communications and Information Technology (MoC& IT). Due to development of information technology, India has emerged as fastest growing market in the world and therefore in 1994, private players were invited by way of investment for providing telecom services in India. In 1994, first National Telecom Policy was announced by the Government of India. The main objectives of this policy were to provide the world-class services at reasonable price and ensure the availability of basic telecom services to all villages197. It was very difficult to government to make available the required resources to achieve these targets and therefore the involvement of private sector was required. By this policy, government made several achievements but until some of objectives were to be met and many new changes in telecom sector at national and international level were also acknowledged and therefore a new telecom policy NTP-99 was announced by the

196 TSR Subramanian, supra note 172 at 19
197 Comptroller & Auditor General of India, Performance Audit Report on the issue of Licences and Allocation of 2G Spectrum by the Department of Telecommunications. For the year ended March 2010, this report had prepared for submission to the President under Articles 151 of the Constitution. The report contains the results of examination by Audit of the Issue of Licenses and Allocation of 2G Spectrum of Department of Telecommunications, Ministry of Communication and Information Technology. The audit covers the period from 2003-04 to 2009-10.
government w.e.f. 1st April, 1999\textsuperscript{198}. After sometime this sector has realized the widespread structural and institutional reform in India. On March 31, 2010 India’s telecom sector became second largest network in the world after China.

**Role of Telecom Regulatory Authority of India (TRAI)**

The TRAI was set up by the Government of India in March 1997. TRAI is mandated for making recommendations on the following matters\textsuperscript{199}:

i. Need and timing for introduction of new service provider.

ii. Terms and conditions of the licenses to be given to service providers.

iii. Efficient management of the available spectrum.

**Spectrum allocation**

Radio frequency spectrum is the entire range of wavelengths of electromagnetic radiation which is used as carrier of wireless transmission and thus a basic requirement for providing wireless services. It is a finite but non-consumable global natural resources and commands high economic value due to its heavy demand in the telecommunication sector. The word “spectrum” basically refers to the collection of various types of electromagnetic radiations of different wavelengths. Frequencies are allocated by the International Telecommunication Union (ITU) at “World Radio Communication Conference”. Allocations are made on a regional basis and are made for different services. Allocation of spectrum in ITU Radio Regulations exists from 9 KHz to 1000 GHz. In India, radio frequencies are confined between 9 KHz and 400 GHZ. Some important characteristics of the radio spectrum are as follows\textsuperscript{200}:

i. Radio frequency spectrum does not respect international geographical boundaries as it is spread over a large terrestrial area.

\textsuperscript{198} Ibid.

\textsuperscript{199} Ibid.

\textsuperscript{200} Ibid.
ii. Use of radio frequency spectrum is susceptible to overlapping interference and requires the application of complex engineering tools to ensure interference free operation of various wireless networks.

iii. Unlike the other natural resources, radio frequency spectrum is not consumed upon its usage. It is also liable to be wasted if it is not used optionally and efficiently.

Assignment of radio frequencies is governed by international treaties formulated under the aegis of the ITU. India falls in the ITU Region III. TRAI had to notify the rates at which the telecommunication services were to be provided within and outside India under the Act. The original Act of 1997 by which the TRAI was set up was amended in 2000. Under new amended Act it was provided that there shall be two separate bodies viz; Telecom Dispute Settlement and Appellate Tribunal for dispute settlement between licensees and licensor, two or more service providers and service provider and consumers. TRIA shall work as regulatory body. Thus, TRIA is an advisory body in the policy matters. CAG in its audit report has indicated the presumptive loss to exchequer of the Government of India, as 1, 76, 645 crore.

**Allocation of coal blocks**

The gap between the demand and domestic supply of coal was widening and consequently, imports were increasing in country. It was expected by Planning Commission that the production of coal from captive coal blocks allocated for captive mining would play a significant role in meeting the demand for coal in country but it had not happened and captive coal block had failed to do significantly. The issue of selection process for allocation of coal blocks for captive mining had been raised in the parliament and in the media also. Due to
above reasons this topic was selected for conducting performance audit by CAG. Audit observed that:\(^{201}\):

“The procedure followed for allocation of coal block lacked transparency and it failed to arrive at the optimal price at which allocation of blocks should have been made”.

There was a substantial difference between the price of coal supplied by CIL and the cost of coal produced through coal blocks allocated for captive mining and there was a windfall gains to the allocatees. There was lack of transparency and objectivity in the allocation procedure for captive coal blocks. In selection process, a system comprising incentives to encourage production performance and disincentives to discourage non performance was required for augmenting coal production from captive coal blocks in country but it was also not put in place. Coal is key contributor to the Indian energy scenario. It meets more than 50% of the total commercial energy needs of India. Out of the four major fuel resources viz; oil, natural gas, coal and uranium coal is largest domestic reserve of the country. This scenario is expected to remain the same in the foreseeable future unless alternative energy sources occupy centre stage. The State is deemed to have a proprietary interest in natural resources and must act as a guardian and trusty in relation to the public resources. Every decision of State or its instrumentalities must be sound and transparent. The State legally owns the natural resources on behalf of the citizens and the natural resources cannot be allocated to private hands without ensuring that the benefit of the low cost of the natural resources would be passed on to the citizens.

**Concluding remarks**

---

The CAG’s reports on the expenditure in the 2G spectrum Allocation, Allocation of coal blocks, Commonwealth Games of 2010, and Antrix-Devas cozy arrangement has became the subject of debate all over the country. It has done during era of Vinod Rai as Head of CAG. He should be credited for achievement of bringing a constitutional body to realize its public responsibility and perform in a free, fearless and impartial manner. On the part of government the charges have been made that CAG has overstepped his constitutional mandate. The government sources have leveled allegations that the CAG is dabbling in policy matters, which falls exclusively in province of executive. But any report of CAG does not give any credence to those allegations. The CAG neither suggested nor questioned any particular or specific policy to the executive. The constitutional mandate of CAG permits him to comment on the efficiency and financial impact of each policy decision, without questioning the legitimacy of the decision. It is constitutionally mandated and within the jurisdiction of the CAG to make such comments on policy decisions. It is the duty of the CAG to point out the financial implications of policy decisions on public funds. Now the question is that whether the public private partnership (PPP) projects come within the jurisdiction of CAG audit. The answer should be in affirmative because when public funds are involved, the CAG has a legitimate role. The apex court has clearly indicated that the CAG is not a munim of the government. It is a constitutional authority with a significant role as the watchdog of public finance.

202 TSR Subramanian, supra note 172 at 19.
203 Ibid.
204 Ibid.
205 Ibid.
206 Ibid.