

The CVC Bill

Undermining the Spirit of Law

By G.P. Joshi

Times of India, 26/12/00

Ever since the hawala case judgment was delivered by the Supreme Court on December 18, 1997, consistent attempts have been made to see that the judgment is not implemented fully and is defeated in its basic purpose. The Central Vigilance Commission Bill, 1999 recommended by the Joint Committee of Parliament is another attempt in the same direction.

The Supreme Court's judgment had declared the single directive null and void. The single directive was a set of executive instructions issued by the central government, prohibiting the CBI from undertaking any inquiry or investigation against any officer of the rank of joint secretary and above in the central government, including those in public sector undertakings and nationalized banks without the prior sanction of the head of the department.

The court found it bad in law on two grounds. It required a police agency to seek permission from the executive to initiate investigations into a criminal offence, which is contrary to the law. Second, it violated the canon of equality in the application of the law. The committee's bill seeks to infract these basic principles of legal jurisprudence by resurrecting the single directive, even though the original bill referred to the committee did not have any clause about the single directive.

The exemption extended to the senior officers from even being inquired into by the CBI without the government's permission is now being accorded legal sanctity. Earlier (before it was declared null and void by the Supreme Court), it was based only on executive instructions.

The committee has tried to justify this restoration of single directive on the ground that "no protection is available to the persons at the decision-making level". Protection against prosecution without the sanction of the government is already available to all public servants under Section 197 of the Criminal Procedure Code and Section 19 of the Prevention of Corruption Act, 1988.

The committee wants to provide protection even at the initial stage of conducting any inquiry or investigation into an allegation of corruption against senior officers. The implications of providing this type of impunity have been spelt out in the dissenting note of a member of the committee, Kuldip Nayar, who is in the Rajya Sabha. According to him, the pliable public servants "who carry out the errands of the political masters will go scot-free" and "corrupt officers will rule the roost due to their proximity to the seats of power."

The committee's bill has greater potential for mischief than what was attempted earlier through the Central Vigilance Ordinance of 1998. The ordinance had at least prescribed

that approval prior to undertaking any inquiry or investigation against officers of the rank of joint secretary and above would have to be obtained by the CBI from the CVC. The committee's bill lays down that this approval would have to be obtained from the central government.

The Supreme Court had directed that the Central Vigilance Commission should be entrusted with the responsibility of exercising superintendence over the functioning of the CBI. The bill prescribes that the commission shall exercise superintendence over the functioning of only the Delhi Special Police Establishment insofar as it related to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 only. This means that there will be a system of dual control over the CBI-one exercised by the CVC in respect of corruption cases only and the other by the central government in respect of its other work. Thus, the committee's bill defeats the basic purpose of the Supreme Court's judgment of insulating the CBI fully from illegitimate and undesirable influences exerted by politicians and bureaucrats.

The scope for the CVC to exercise superintendence over the functioning of the CBI even in respect of its work on corruption has been further curtailed by restricting the definition of the word 'public servant' to mean only civil servants of certain categories. As per clause 8 (1)(a) of the committee's bill, the CVC's superintendence would only be in respect of offences alleged to have been committed by members of the all-India services in connection with the affairs of the Union and group 'A' officers of the central government and such level of officers of the corporations, companies, societies and other local authorities owned or controlled by the central government.

In other words, superintendence over the work of the CBI in respect of corruption offences committed by other categories of public servants as defined in Section 2 of the Prevention of Corruption Act by other categories of public servants as defined in Section 2 of the Prevention of Corruption Act of 1988, including politicians, would remain out of the purview of the CVC's charter of responsibilities. This is another method by which the purpose of the Supreme Court's judgment in the hawala case is sought to be defeated.

The supreme court's judgment contained other important directions, like the constitution of a nodal agency to monitor and coordinate action to be taken in cases related to the "politico-bureaucrat-criminal nexus"; improving the functioning of the prosecution machinery, including the setting up of a prosecution agency similar to the one in the UK; providing to the general public "feedback on investigations an information for redress of genuine grievances" etc. The three ordinances and the two bills drafted by the government did not have any provisions relating to these issues. The committee's bill is also silent on these issues. The public, in fact has no idea at all about action taken by the government, if any, to implement these important directions of the court or even about the government's intentions to do so.

Therefore, we are back to square one. The judgment of the highest court of the country in one of the most important criminal cases decided by it since Independence remains

unimplemented even after the expiry of three years since it was delivered. We can only conclude that systematic and deliberate efforts have been made to subvert or thwart the judgment.