

**The Story of the
Central Vigilance Commission Bill, 2003**

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The genesis of this story lies in the judgement delivered by the Supreme Court of India in what is commonly known as the Havala Case¹. The story briefly touches upon the highlights of the judgement and describes how different efforts have been made from the very beginning to thwart the implementation of the judgement.

Judgement - Some Highlights

The Court found that the CBI and other investigating agencies did not investigate cases properly whenever the alleged offenders were powerful persons. The Court therefore gave directions to establish institutional and other arrangements aimed at insulating the CBI from outside influences. A few important directions were as follows:

- The responsibility of exercising superintendence over the CBI's functioning should be transferred from the Central Government to the Central Vigilance Commission (CVC), which should be given a statutory status.²
- The Single Directive³ was declared null and void.
- Selection for the post of Central Vigilance Commissioner should be made by a Committee consisting of the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity, to be furnished by the Cabinet Secretary.
- Appointments to the post of Director CBI should be made by the Appointments Committee of the Cabinet on the basis of recommendations made by a Committee headed by the Central Vigilance Commissioner, with Union Home Secretary and Secretary (Personnel) as members.
- The Director CBI should have a minimum tenure of two years, regardless of the date of his superannuation.
- A Nodal Agency headed by the Union Home Secretary with Member (Investigation), Central Board of Direct Taxes, Director General, Revenue Intelligence, Director, Enforcement and Director CBI as members, should be constituted for coordinated action in cases having politician-bureaucrat-criminal nexus. The Nodal Agency must meet at least once every month.

The judgement consisting of above and other directions was delivered by the Supreme Court on **December 18, 1997**.

Government's Response

In a cabinet meeting held on April 8, 1998, the Government discussed the subject and decided to ask the Law Commission of India for a report. The Law Commission submitted its report⁴ to the Government on **August 13, 1998** and along with it also sent the draft of the CVC Bill.

¹ The Supreme Court's judgement in Writ Petition (Criminal) Nos. 340-343 of 1993

² The superintendence of the CBI, according to Section 4 of the Delhi Special Police Establishment Act, 1946 vests in the Central Government. The Court directed that this superintendence should be exercised by the CVC.

³ **Through this Directive, the Government had debarred the CBI from undertaking any inquiry against any officer of the rank of Joint Secretary or above in the Central Government, including those in the public sector undertakings, Reserve Bank of India, SEBI and nationalised banks, without the prior sanction of the concerned Ministry/Department.**

⁴ *Report on CVC and Allied Bodies* - 161st report of the Law Commission of India, 1998.

The Union Cabinet met to discuss the subject on **August 20, 1998**. The note circulated in this meeting by the secretariat informed the Cabinet that the Law Commission's report was still awaited. In the meantime, a draft prepared by the Secretaries was placed before the Cabinet for approval.

The facts later revealed that the draft prepared by the Law Commission of India was with the Government when the Cabinet met on August 20, 1998 to discuss the subject. This draft was deliberately withheld and instead a draft prepared by the Secretaries more suited to the interests of their service was pushed up to the Cabinet for approval.

On **August 25, 1998**, the Government hurriedly promulgated **The Central Vigilance Commission Ordinance, 1998** as per the draft prepared by the Secretaries.

The Supreme Court's Judgement, The Central Vigilance Commission Ordinance, 1998 and the Law Commission's draft of the Central Vigilance Commission Bill, 1998 – A Comparative Profile

The main differences between the Judgement, the Law Commission's draft of The Central Vigilance Commission Bill, 1998 and the Ordinance of August 25, 1998 were as follows:

1. The Judgement had declared the Single Directive null and void. The Law Commission's Bill, therefore, made no mention of the Single Directive. The Ordinance, however, brought this infamous Directive back.
2. The Judgement entrusted the responsibility of exercising superintendence over the CBI's functioning to the CVC.⁵ According to the Judgement, the CBI shall report to the CVC about:
 - a) cases taken up by it for investigation;
 - b) progress of investigation;
 - c) cases in which charge sheets are filed; and
 - d) their progress.⁶

The Judgement also authorised the CVC to review the progress of all cases of public servants pending for want of sanction of prosecution.⁷

The Law Commission's draft Bill sought to implement the judgement of the Court in full. The Ordinance merely laid down that the **CVC would exercise superintendence over the Special Police Establishment⁸ only in respect of cases under the Prevention of Corruption Act, 1988 alone.**

3. The Judgement had not suggested any composition of the CVC. The Law Commission's draft Bill prescribed a five member body - one Chief Vigilance Commissioner and four Vigilance Commissioners.⁹ The Ordinance went one step further. According to its prescription, the

⁵ The functioning of the CBI is regulated by the Delhi Police Establishment Act, 1946. Section 4 of this Act vests the superintendence over the CBI in the Central Government

⁶ Judgement of the Supreme Court of India in Writ Petition (Criminal) Nos. 340-343 of 1993, p87.

⁷ *Ibid*, pp87-88

⁸ Though the CBI, which was established by a Resolution of the Government of India in 1963, traces its origin to the SPE set up under the Delhi Special Police Establishment Act, 1946, it has over a period of time changed into a new organisation with a vastly expanded role. It is much more than the SPE and its work extends far beyond what is covered by the Prevention of Corruption Act, 1988.

⁹ Section 3 (2) of the Central Vigilance Commission Bill, 1998 drafted by the Law Commission of India.

Commission should have a Central Vigilance Commissioner as its chairperson, not more than three Vigilance Commissioners as members and in addition **another member who occupies the chair just by virtue of being the Secretary to the Government of India in charge of the Ministry of Personnel.**¹⁰

4. The Judgement had directed that selection for the post of Central Vigilance Commissioner should be made by a Committee consisting of the Prime Minister, Home Minister and the Leader of the Opposition from a panel of “**outstanding civil servants and others with impeccable integrity.**”¹¹ The Ordinance conveniently omitted the category of “others” and confined the selection to a panel of civil servants alone. The Ordinance did not even insist on having officers who were “outstanding” or have “impeccable integrity.” **Being a civil servant with certain experience alone was enough.**

The matter was brought to the notice of the Supreme Court when Shri Anil Diwan, the *amicus curiae* in Writ Petition (Civil) No. 38/97, filed written objections to certain provisions of the Ordinance. Mr. Soli J. Sorabjee, the Attorney General assured the Court on September 22, 1998 that the Government would reexamine the matter and fine tune the Ordinance.

The Central Vigilance Commission (Amendment) Ordinance, 1998

On **October 27, 1998**, another Ordinance was promulgated, called the Central Vigilance Commission (Amendment) Ordinance, 1998 (No.18 of 1998). The following main amendments were made in the principal Ordinance:

- I. The number of Vigilance Commissioners was reduced from four to three.
- II. The entry about the Secretary to the Government of India in-charge of the Ministry of Personnel being the ex-officio member was deleted.
- III. The Single Directive clause was dropped.

The Central Vigilance Commission Bill, 1998

On **December 12, 1998**, The Government introduced in the Lok Sabha the Central Vigilance Commission Bill, 1998 (Bill No. 149 of 1998) to replace the Central Vigilance Commission Ordinance, 1998 and the Central Vigilance Commission (Amendment) Ordinance, 1998. Before this Bill after examination by the Parliamentary Standing Committee on Home Affairs could become the law, the 12th Lok Sabha was dissolved on April 26, 1999 and the Bill consequently lapsed.

The Central Vigilance Ordinance, 1999

Since the CVC Bill, 1998 could not be passed by the Parliament, the Government had to promulgate an Ordinance called the Central Vigilance Ordinance, 1999 on **January 8, 1999** when the Parliament was not in session. This Ordinance was more or less a verbatim copy of the CVC Bill, 1998.

¹⁰ Section 3 (2) of the Central Vigilance Commission Ordinance, 1998 (No. 15 of 1998) promulgated on August 25, 1998.

¹¹ Judgement of the Supreme Court of India in Writ Petition (Criminal) Nos. 340-343 of 1993, p87

The Central Vigilance Commission Bill, 1999

To give statutory basis to the CVC, the Central Vigilance Commission Bill, 1999 was again introduced in the Lok Sabha on **December 20, 1999**. It was referred to a Joint Committee of both Houses of Parliament (The Committee). Shri Sharad Pawar was appointed as the Chairman of the Committee on December 28, 1999.

The Joint Parliamentary Committee's Report on the Central Vigilance Commission's Bill, 1999

The Committee presented its report to both Houses of Parliament on **November 22, 2000**. The Committee's report also included a draft Bill. This Bill was passed by the Lok Sabha at its sitting held on the **26th February, 2003** and is presently pending with the Rajya Sabha.

Right since the Havala case judgement was passed by the Supreme Court about five years ago, consistent attempts have been made **to see that the judgement is not implemented fully and is defeated in its basic purpose. The Central Vigilance Commission Bill as recommended by the Joint Parliamentary Committee and passed by the Lok Sabha is another attempt in the same direction.**

The Central Vigilance Commission Bill, 2003

A few major points where it departs from the judgement of the Supreme Court are as follows:

1. The judgement had declared the Single Directive null and void. The **Bill resurrects the Single Directive¹²**, thus again debarring the CBI to even inquire or investigate any offence alleged to have been committed under the Prevention of Corruption Act, 1988 by officers of the level of joint secretary and above in the central government and in the public sector undertakings without the prior approval of the central government.

The exemption extended to the senior officers from even being inquired into by the CBI without Government's permission **is now being accorded legal sanctity. Earlier , 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."¹³ Protection against prosecution without 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 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, Shri Kuldip Nayar, Member, 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."**¹⁴

¹² *The Central Vigilance Commission Bill as passed by the Lok Sabha on 26 February, 2003, Section 26*

¹³ Report of the *Joint Committee of Parliament on the Central Vigilance Commission Bill, 1999*, Lok Sabha Secretariat, New Delhi, 2000, para 41, p XVI

¹⁴ *Ibid*, pp xxi

The 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 Bill lays down that this approval would have to be obtained from the Central Government¹⁵.**

2. 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 in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 only. There is a proviso to this Section of the Bill that says that the Commission shall not exercise its power of superintendence in a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner. This is as it should be as the Supreme Court in the judgement had clearly mentioned that the power of superintendence would not include “within it the control of the initiation and the actual process of investigation, i.e direction.”¹⁶ **The Bill, however, very conveniently omits to make this proviso applicable to the government and therefore leaves a loophole for the government to illegitimately influence cases that are being investigated by the CBI under other laws.**
3. **The scope** for the CVC to exercise superintendence over the functioning of the CBI even in respect of its corruption work **has been further curtailed by restricting the definition of the word ‘public servant’ to mean only civil servants** of certain categories. The Bill prescribes that 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 equivalent 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 the other categories of public servants as defined in Section 2 of the Prevention of Corruption Act of 1988, including the politicians, would remain out of the purview of the CVC’s charter of responsibilities.** Thus the CBI’s work relating to such cases will be supervised by the Central Government and not by the CVC.

This also means that there will be a **system of dual control over the CBI**- one exercised by the CVC in respect of corruption cases registered against certain categories of public servants mentioned in the Act and the other by the Central Government in respect of its other cases.

Thus, **the Bill defeats the basic purpose of the Supreme Court’s judgement of insulating the CBI fully from illegitimate and undesirable influences exerted by politicians and bureaucrats.**

4. The Bill requires the CVC to “exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government”¹⁷. However, there is a proviso, which says that “nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the vigilance administration in a manner not consistent with the directions relating to vigilance

¹⁵ *The Central Vigilance Commission Bill as passed by the Lok Sabha on 26 February, 2003, Section 26*

¹⁶ Judgement of the Supreme Court of India in *Writ Petition (Criminal) Nos. 340-343 of 1993*, pp 66-67

¹⁷ *The Central Vigilance Commission Bill as passed by the Lok Sabha on 26 February, 2003, Section 8 (1) (b)*

matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters” **This proviso is bound to erode the authority of the CVC to exercise effective superintendence over the vigilance administration in the Government** The Resolution of the Government of India No. 24/7/64-AVD dated February 11, 1964 with which the CVC was set up required the Commission to “exercise general check and supervision over vigilance and anti-corruption work in the Ministries/Departments/Undertakings.” It authorised the CVC to “initiate at such intervals as it considers suitable review of procedures and practices of administration in so far as they relate to maintenance of integrity in administration.” **These powers have now been diluted through law.**

5. The Supreme Court decreed that selection for the post of Central Vigilance Commissioner should be made from a “panel of outstanding civil servants and others with impeccable integrity.”¹⁸ The Bill, on the other hand, does not insist on such qualifications. It is not necessary for the selected persons to be either “outstanding” or have “impeccable integrity.”
6. The controversy generated by the promulgation of the earlier Ordinances and the Bill has centered around the constitution and composition of the CVC and its superintendence over the investigating agencies of the Central Government. The Supreme Court’s judgement contained other important directions, like the constitution of a **Nodal Agency** to monitor and coordinate action to be taken in cases having “**politico-bureaucrat-criminal nexus;**”¹⁹ 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 and information for redress of genuine grievances²⁰ etc. The three Ordinances and the two Bills drafted by the Government did not have any provisions relating to these issues. **The 2003 Bill is also silent on these issues.**

Summing Up

The judgement of the apex Court in one of the most important criminal cases decided by it since Independence **remains unimplemented even after the expiry of five and a half years** since it was delivered. Even when the Bill finally becomes the law, a large and important part of the judgement would remain unimplemented. Further, the Bill would legalise a set of executive instructions, which were held by the Court as contrary to law.

The story of the Bill ends here, but it raises many questions about the manner in which the executive as well as the legislature are functioning in this country. Finding appropriate answers to these questions is essential for establishing good governance in this country.

¹⁸ The Judgement of the Supreme Court of India in *Writ Petition (Criminal) Nos. 340-343 of 1993*, p 87

¹⁹ *Ibid*, p 95

²⁰ *Ibid*, p 96.