Commonwealth Human Rights Initiative

The Central Vigilance Commission and the Central Bureau of Investigation:

A brief history of some developments

- By GP Joshi

1. Introduction

India is one of the most corrupt countries in the world. Transparency International has been telling us for long how high we figure in the Corruption Perceptions Index. In its latest report for 2010, the global watchdog ranked us eighty-seventh on a list of 178 countries.[1] There are others who tell us the same truth. Washington-based Global Financial Integrity (GFI) recently reported that over $125 billion worth of funds meant for the betterment of the poor were illegally siphoned out of the country by corrupt politicians and corporate officers between 2000 and 2008.[2] In fact, the average citizen in this country does not need others to tell him how rotten the entire system has become; he experiences the malaise every day in his life.

Though the country witnessed scams even in the early years after independence, such as the Jeep scandal (1948), the Mudgal case (1951), the Mundra deals (1957-58), the Malaviya-Sirajuddin scandal (1963) and the Pratap Singh Kairon case (1963), the blot has never been as big and as wide as it is today, with several high-profile scandals emerging one after the other. Think of one scam and numerous others will crowd your mind. A single word or expression is sufficient to bring vivid, though gloomy, memories to mind – Bofors, Fodder, CWG, Hawala, IPL, Koda, Provident Fund, Raja, Ramalinga, Recruitment, Security, Sugar, Sukhna, Telgi, Telecom, Urea, to name only a few. The scourge of corruption has engulfed all sectors of the public domain. The Army, Bureaucracy, Customs, Defence, Education, Health, Income Tax, Judiciary, Police, Parliament, Politics, Sport – no department or institution remains unsullied.

Ironically, India has a huge anti-corruption set-up. At the central level, there is an Administrative Vigilance Division in the Ministry of Personnel, Public Grievances and Pensions. Every ministry, department, bank, public sector undertaking and autonomous institution has vigilance officers. The list of central vigilance officers has 648 names. Further, there is the Central Vigilance

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Commission and an enforcement agency, the Central Bureau of Investigation. At the state level, each state has either a State Vigilance Commission or a Lok Ayukta which is in charge of vigilance matters of the state government. In addition, states have directorates of anti-corruption and vigilance officers in different departments.

There is a plethora of central and state laws to deal with the menace. Besides the Prevention of Corruption Act, 1988, the Delhi Special Police Establishment Act, 1946, the Central Vigilance Commission Act, 2003 and laws enacted to deal with specific problems such as money laundering, income tax and excise evasion and foreign exchange manipulation, there are Lok Ayukta or Vigilance Commission Acts in the states. There is also the Indian Penal Code, some of whose provisions are still relevant, despite a few having been repealed by the Prevention of Corruption Act.

There is a Latin proverb, which says: "The more corrupt the state, the more laws." In fact, going by our example, the more corrupt the state, the more anti-corruption agencies too.

The purpose of this paper is not to analyse the nature and extent of corruption prevalent in the country; nor to discuss the laws or describe the massive anti-corruption establishment that exists. Instead it chooses two of the most prominent anti-corruption agencies that exist at the central level – the Central Vigilance Commission (CVC) and the Central Bureau of Investigation (CBI) – and surveys the central government's handling of these agencies at different times – their acts of commission and omission which have affected the functioning of these two organisations. It does not claim to analyse their performance in specific cases or to discuss inadequacy of resources of these establishments.

The paper attempts to do this exercise in two parts. Part I deals with the Central Vigilance Commission and Part II with the Central Bureau of Investigation

2. Part I: The Central Vigilance Commission

2.1 The Santhanam Committee on Prevention of Corruption

The Central Vigilance Commission was established by the Government of India in 1964 on the recommendations of the Santhanam Committee on Prevention of Corruption. Before finalising its report, the Committee submitted its interim recommendations to the government in two parts. The first recommended the establishment of the Central Vigilance Commission. The second suggested conferring powers on the Commission, similar to those under Sections 4 and 5 of the Commission of Enquiry Act, 1952,[3] so that it could undertake an inquiry into transactions where public servants were suspected of having acted improperly or in a corrupt manner.

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The Committee envisaged a wide role for the CVC. It was not satisfied merely with the existing arrangements intended to investigate and punish corruption and misuse of authority by individual officers. "While this is indispensable, the Committee feels that the Central Vigilance organisation should be expanded so as to deal with complaints of failure of justice or oppression or abuse of authority suffered by the citizens though it may be difficult to attribute them to any particular official or officials."[4]

The Committee therefore recommended that the CVC should be vested with jurisdiction and power, inter alia, to "inquire into and investigate: (a) complaints against acts or omissions, decisions or recommendation, or administrative procedures or practices on the grounds that they are: (i) wrong or contrary to law; (ii) unreasonable, unjust, oppressive or improperly discriminatory; (iii) in accordance with a rule of law or a provision of any enactment or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory; or (iv) based wholly or partly on a mistake of law or fact."[5]

The Government of India did not accept this recommendation. The Resolution with which the CVC was set up[6] did not have this clause in its charter of functions. The reasoning for its exclusion was explained in these words: "The importance and urgency of providing a machinery for looking into grievances of citizens against the administration and for ensuring just and fair exercise of administrative power is fully recognised. But it is considered that the problem is big enough to require a separate agency or machinery and that apart from this the Central Vigilance Commission would be overburdened if this responsibility were to be placed upon it, and the Commission might as a result be less effective in dealing with the problem of corruption."[7]

The recommendation made by the Committee in the second part[8] that the CVC should be given through suitable legislation certain powers to enable it to undertake enquiries remained unimplemented till 2003 when the CVC Act was legislated. Though these powers are now available with the Commission,[9] they are not used by it[10].

2.2 The Resolution of 1964

The Resolution of 1964 had two significant provisions. One, it defined the charter of the CVC. Its main function was to undertake an enquiry or to cause an enquiry or investigation to be made into any complaint of "corruption, misconduct, lack of integrity, or other kinds of malpractices or misdemeanour on the part of a public servant including members of the All India Services even if such members are for the time being serving in connection with the affairs of a state government."[11] The other was to maintain that though the Commission will be an attached office of the Ministry of Home Affairs, "in the exercise of its powers and functions it will not be subordinate to any Ministry/Department and will have the same measure of independence and autonomy as the Union Public Service Commission."[12]

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2.3 The Hawala Case

From 1964 to 1993, for nearly three decades, the CVC rolled along without making any visible dent on the problem of corruption in the country. A very important milestone in its history occurred when the Supreme Court pronounced its judgement in what is popularly known as the Hawala Case.[13]

The gist of allegations made in the writ petitions filed on 4 October 1993 was that:

- financial support was given to terrorists by clandestine and illegal means using tainted funds obtained through hawala transactions;
- the CBI and other agencies failed to investigate these properly and prosecute those who were involved in committing the offences; and
- this was done deliberately to protect persons who were influential and powerful.

2.3.1 Supreme Court's Judgement in the Hawala Case

Interim Orders

The Court felt that the allegations revealed a grave situation, posing a serious threat "even to the unity and integrity of the nation." The Court adopted the procedure of continuing mandamus that allowed it to issue interim orders periodically. The sum and substance of such orders/observations issued by the Court was that:

- no one stood above the law so as to get impunity from investigation;
- the CBI and other agencies had not carried out their public duty to investigate the offences; and
- the CBI and other agencies should complete the investigations expeditiously and not report the progress of investigations to even the person occupying the highest office in the political executive.

The Court found that the inertia of the investigating agencies was the common rule whenever the alleged offender was a powerful person. It was therefore necessary to take permanent measures to "prevent reversion to inertia of the agencies in such matters."

The Judgement

Various measures were suggested by the Court in its final judgement delivered on 18 December 1997. The Court declared the Single Directive[14] null and void and gave directions to establish institutional and other arrangements aimed at insulating the CBI and the Directorate of Enforcement of the Ministry of Finance from outside influences. The Court's directives consisted of four parts. Part I was about the Central Bureau of Investigation and the Central Vigilance Commission. Part II contained directions about the Enforcement Directorate of the Ministry of Finance. Part III dealt with the Constitution and functioning of the Nodal Agency and Part IV gave directions on strengthening and improving the functioning of the Prosecution Agency.

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Part I

Some important directions in Part I were as follows:

- The Central Vigilance Commission (CVC) shall be given a statutory status.
- **The CVC shall be entrusted with the responsibility of exercising superintendence over the CBI's functioning.**[15]
- Selection for the post of Central Vigilance Commissioner shall 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.
- Appointment to the post of Director, CBI shall 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 the Union Home Secretary and Secretary (Personnel) as members.
- The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation.
- The central government shall take all measures necessary to ensure that the CBI functions efficiently and is **viewed as a non-partisan agency**.
- A document on CBI's functioning should be published within three months to provide the general public with feedback on investigations and information for redress of genuine grievances.
- The time limit of three months for grant of sanction for prosecution must be strictly adhered to.

Part II

Directions issued by the Court on the selection and tenure of the Head of the Enforcement Directorate of the Ministry of Finance in Part II were essentially similar to those contained in Part I on the Director, CBI.

Part III

In Part III, the Court directed that **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, shall be constituted for coordinated action in cases with a politico-bureaucrat-criminal nexus.** The Nodal Agency must meet at least once every month.

Part IV

Some important directions contained in Part IV were as follows:

- A panel of competent and experienced lawyers of impeccable integrity shall be prepared with the advice of the Attorney General to aid the CBI/ Enforcement Directorate during investigation and prosecution of important cases.
- Every case ending in discharge or acquittal must be reviewed by a lawyer on the panel. On the basis of his opinion, responsibility should be fixed for dereliction of duty, if any, and strict action should be taken against the concerned officer.
- Steps shall be taken immediately for the constitution of an able and impartial agency to perform functions similar to those of the Directorate of Prosecution in the United Kingdom.

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2.4 The Government's Response: Attempts to Nullify the Judgement:

The government of the day, in a cabinet meeting held on 8 April 1998, decided to ask the Law Commission of India for a report. The Law Commission submitted its report[16] to the Government on 13 August 1998 and also sent the draft of the CVC Bill.

The Union cabinet discussed the subject in a meeting on 20 August 1998. The note circulated at this meeting by the secretariat informed the cabinet that the Law Commission's report was still awaited. In the meantime, the draft of an ordinance prepared by the Secretaries was placed before the cabinet for approval. The cabinet decided that a committee of four ministers, including Mr Ram Jethmalani, then the Union Urban Development Minister, should settle the draft of the ordinance.

On 21 August 1998, Mr Jethmalani called Justice Jeevan Reddy, then Chairperson, Law Commission of India and learnt that the draft had been forwarded to the government along with the report a week earlier, i.e. on 13 August 1998.

The facts[17] suggest that the draft prepared by the Law Commission of India was with the government when the cabinet met on 20 August 1998 to discuss the subject and that the Law Commission's draft was deliberately withheld. Instead, a draft prepared by the Secretaries more suited to the interests of their service was pushed up to the cabinet for approval. On 25 August 1998, less than five days after the cabinet meeting, the government hurriedly promulgated the Central Vigilance Commission Ordinance, 1998 in accordance with the draft prepared by the bureaucrats.

2.4.1 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 Central Vigilance Commission Ordinance, 1998 was in clear violation of the judgement delivered by the Supreme Court of India in the Hawala case.

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

- The judgement had declared the Single Directive null and void. The Law Commission, therefore, made no mention of the Single Directive in their draft. The Ordinance, however, brought this infamous Directive back.
- The judgement entrusted the responsibility of exercising superintendence over the CBI's functioning to the CVC.[18] According to the judgement, the CBI shall report to the CVC about:
  - cases taken up by it for investigation;
  - progress of investigation;
  - cases in which charge sheets are filed; and their progress.[19]

The judgement also authorised the CVC to review the progress of all cases against public servants pending for want of sanction for prosecution.[20]

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The Law Commission's Draft Bill sought to implement the Court's judgement in full. It empowered the CVC "to exercise general superintendence over the functioning of the CBI and to review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused."[21] It further authorised the CVC "to call for reports from the CBI about the cases taken up by it for investigation and with respect to the progress of investigations and the progress of cases in courts."[22]

The Law Commission, in fact, sent another Draft Bill[23] to the Government, which sought to amend the Delhi Special Police Establishment Act of 1946. Section 2 of the Amendment Bill sought to amend Section 4 of the principal act, transferring the responsibility of exercising superintendence over the organisation from the central government to the CVC.

The Ordinance did not even recognise the existence of the organisation called the CBI. It referred throughout to the Special Police Establishment (SPE) and laid down that the CVC would exercise superintendence over this organisation only in respect of cases under the Prevention of Corruption Act, 1988.

The judgement had not suggested any composition of the CVC. It mentioned only the Chief Vigilance Commissioner. The Law Commission's Draft Bill prescribed a five-member body with one Chief Vigilance Commissioner and four Vigilance Commissioners.[24] The Ordinance went one step further. According to its prescription, the 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.[25]**

The judgement had directed that the selection of the Central Vigilance Commissioner should be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of **"outstanding civil servants and others with impeccable integrity."**[26]

The Law Commission's Draft Bill prescribed that the Committee should select the Chief Vigilance Commissioner and Vigilance Commissioners "out of a panel of outstanding and meritorious civil servants, with impeccable integrity, serving or retired, who are holding or have held the post of Secretary to the Government of India or an equivalent post in any statutory corporation."[27] The Draft Bill laid down qualifications for their appointment. The Chief Vigilance Commissioner and the Vigilance Commissioners must be persons known for their "ability, integrity, independence and efficiency."[28] While the former must have experience and expertise in administrative matters, the latter must have these in the fields of "administration, finance, investigation and law."[29]

The Ordinance again committed a flagrant violation of the Supreme Court's judgement. **It conveniently omitted the category of "others" and confined the selection to a panel of civil servants only** – those "who are or have been in an All India Service or in any civil service of the Union or in a civil post

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under the Union having knowledge and experience in matters relating to vigilance, policymaking and administration including police administration."[30] **The Ordinance did not even insist on having officers who were "outstanding" or have "impeccable integrity". Being a civil servant with a certain level of experience was adequate.**

Two provisions of the Ordinance, i.e. confining the selection of members to civil servants only and to induct the Secretary, Department of Personnel into the Commission as an ex-officio member immediately provoked controversy and media criticism.

The controversy over the Ordinance flared up further when Justice B. P. Jeevan Reddy, Chairman, Law Commission of India criticised the manner in which the CVC Ordinance had been handled by the government. He regretted in public that the government did not give due consideration to the Law Commission's report and draft on the subject.[31]

The matter came to the Supreme Court's notice when Shri Anil Dewan, the amicus curiae in Writ Petition (Civil) No. 38/97, filed written objections to certain provisions of the Ordinance. Mr. Soli J. Sorabjee, then the Attorney General assured the Court on 22 September 1998 that the government would re-examine the matter and fine tune the Ordinance.

2.4.2 The Central Vigilance Commission (Amendment) Ordinance, 1998

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

- The number of Vigilance Commissioners was reduced from four to three.
- The entry making the Secretary to the Government of India in charge of the Ministry of Personnel an ex-officio member was deleted.
- Selection of the Chairperson and members of the Commission would be done from civil servants and those "who have held office or are 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."
- The Commission would no longer be authorised or required to grant approval to conduct investigations into allegations of corruption under the Prevention of Corruption Act, 1988 against certain categories of persons.

The Amendment thus reduced the number of Vigilance Commissioners, removed the ex-officio member from the Commission, widened the selection of members of the Commission to include persons from public sector undertakings and dropped the Single Directive clause.

It was clearly mentioned by the Court in the Hawala case that the directions issued by them were meant to implement the rule of law and would have "the force of law under Article 141 and, by virtue of Article 144, it is the duty

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of all authorities, civil and judicial, in the territory of India to act in aid of this Court."[32]

The government, however, promulgated an ordinance, which was bad in law and deliberately flouted the Court's judgement. The principal Ordinance was promulgated on 25 August 1998 and amended only on 27 October 1998. An ordinance has the force of law under Articles 13 and 123 of the Constitution of India. The country thus had to endure the ignominy of living under a law which came into existence in defiance of the highest legal authority of the land and which was meant more to serve the interests of senior bureaucrats than of the public for slightly more than two months. It once again required an intervention by the Court to undo the harm which the principal ordinance had caused, forcing the government to promulgate another ordinance to amend it.

2.4.3 The Central Vigilance Commission Bill, 1998

As an ordinance ceases to operate six weeks after parliament convenes, the government decided to replace the Central Vigilance Commission Ordinance, 1998 and the Central Vigilance Commission (Amendment) Ordinance, 1998 by regular legislation. It drafted the Central Vigilance Commission Bill, 1998 (Bill No. 149 of 1998) and introduced it in the Lok Sabha on 12 December 1998.

The Bill was referred to the Parliamentary Standing Committee on Home Affairs for examination. The Committee presented its report to parliament on 25 February 1999. The Bill was passed in the Lok Sabha on 15 March 1999, but lapsed because it could not be ratified by the Rajya Sabha.

The government had to promulgate an Ordinance called the Central Vigilance Ordinance, 1999 on 8 January 1999 when parliament was not in session. As this Ordinance would expire on 5 April 1999, the government issued a Resolution on 4 April 1999, to extend the existence of the CVC as a non-statutory body.

2.4.4 The Central Vigilance Commission Bill, 1999

To provide a statutory basis to the CVC, the Central Vigilance Commission Bill, 1999 was introduced in the Lok Sabha again on 20 December 1999. It was referred to a Joint Committee of both Houses of Parliament. The Committee presented its report to the two Houses of Parliament on 22 November 2000. The Bill was finally passed and received the President's assent to become the Central Vigilance Commission Act of 2003 (the CVC Act).

2.4.5 The Central Vigilance Commission Act, 2003: Points of Departure from the Supreme Court's Verdict

The CVC Act departed from the Supreme Court's judgement on several points. Only a few main areas of difference are discussed here under the following three heads:

- The Single Directive
- Superintendence over the CBI
- Procedure for the Appointment of the Central Vigilance Commissioner.

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2.4.5 (1) The Single Directive

The Term

The Single Directive is a term commonly associated with the functioning of the CBI. Some of the executive instructions issued periodically since 1969 by central government ministries/departments to the Central Bureau of Investigation regarding the modalities of initiating an inquiry or registering a case against certain categories of civil servants were consolidated by the government in the form of a Single Directive. Directive 4.7 (3), issued sometime in 1986, prohibited 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 nationalised banks without the prior sanction of the head of the ministry or department. Without such sanction, no inquiry, not even one the CBI calls PE (Preliminary Enquiry) can be conducted. The Directive is applicable to "any person who is or has been a decision-making level officer"[33]

The Government's Justification

The Directive came up for hearing during the Hawala case proceedings. Various arguments were adduced before the court to justify the existence of the Single Directive. The Court was informed that its main objective was to protect the decision-making level officers from the threat and ignominy of malicious and vexatious inquires/investigations, so that they could take their decisions without fear of being victimised. The Attorney General of India stated that the officers at the decision-making level needed this protection if they had to function efficiently, honestly and without fear.[34]

The government tried to establish its legal validity by citing two earlier judgements of the Apex Court – *State of Bihar and Another vs. J. A. C Saldhana and Others*, 1980 (1) SSC 554 and *K. Veeraswami vs. Union of India and Others,* 1991 (3) SCC 655. In the former case, the Court had decided that the superintendence exercised by the state government over the police force under Section 3 of the Police Act of 1861 included the power to direct further investigation under Section 173 (8) of the Criminal Procedure Code (CrPC). It was argued that since the central government exercised superintendence over the CBI, it should, by the same analogy, have the authority to decide cases in which investigation should be done by the investigating agency. The Court did not accept this argument on the ground that power of superintendence in the *Saldana* case "was exercised for directing further investigation to complete an unsatisfactory investigation of a cognizable offence to promote the cause of justice and not to subvert it by preventing investigation."[35] In the other case, the Court held that though the Prevention of Corruption Act was applicable to Supreme and High Court Judges, no criminal case could be registered against them without obtaining the assent of the Chief Justice of India. This decision, according to the government, provided it with the authority to insist on the requirement of prior permission before instituting any inquiry against "decision-making level" officers. The Court again did not accept this argument. It felt that judges of the Supreme and High Courts were "constitutional functionaries" and their independence had to be maintained; they could not be compared to the officers covered by the Single Directive. The decision in the case had "no application to the wide

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proposition advanced by the learned Attorney General to support the Single Directive."[36]

The Court's Verdict

The Supreme Court's judgement declared the Single Directive as null and void. The Court found it bad in law. It required a police agency to seek permission from the executive to initiate investigation into a criminal offence, which is contrary to law. It also violated the canon of equality in the application of law. "The law does not classify offenders differently for treatment…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."[37] **The CVC Act infracted these basic principles of legal jurisprudence by resurrecting the Single Directive. What was earlier a part of executive instruction was now given a statutory wrap.**

The CVC Act, 2003 goes beyond what was attempted earlier through the CVC Ordinance of 1998. While the Ordinance prescribed that approval prior to undertaking any inquiry or investigation against officers of the level of joint secretary and above would have to be obtained by the CBI from the CVC, the Act lays down that this approval has to be obtained from the central government. This is contrary to the provision of Section 8 (a) of the Act itself that states that the CVC shall exercise superintendence over the functioning of the Delhi Special Police Establishment Act in so far as it relates to investigation of offences under the Prevention of Corruption Act, 1988.

Report of the Joint Committee of Parliament

Single Directive was included in the Act by the Joint Committee of Parliament headed by Shri Sharad Pawar. The original Bill which was referred to the Committee did not have this clause. The Joint Committee tried to justify this restoration of the Single Directive on the ground that "no protection is available to the persons at the decision-making level".[38] This is the same argument, which was rejected earlier by the Apex Court. This did not appear to disturb the Joint Committee, which recommended that protection in the form of the Single Directive "should be restored in the same format which was there earlier and…that the power of giving prior approval for taking action against a senior officer of the decision-making level should be vested with the central government by making appropriate provision in the Act."[39] This was done in the CVC Act, which amended the Delhi Special Police Establishment Act of 1946[40] and inserted new provisions, including Section 6 (A) which incorporated the provisions of the Single Directive.

Impunity

The implications of providing this type of impunity were spelt out in the dissenting note of a member of the Committee, Shri Kuldip Nayar, Member, Rajya Sabha. **According to him, 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".[41]**

Protection against prosecution is already available to all public servants under Section 197 of the CrPC and Section 19 of the Prevention of Corruption Act,

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1988. The Parliamentary Committee decided to provide protection even at the initial stage of conducting an inquiry or investigation into allegations of corruption against senior officers. **The senior officers would thus have double protection – from investigation as well as prosecution.**

The law, in fact, provides a third protection. Even if prosecution is instituted, the government can always withdraw the case with the permission of the court under Section 321 of the CrPC. The government has occasionally used this provision too.

Other Legal Provisions

According to the CrPC, the police are legally bound to register an FIR on receiving information about the commissioning of a cognisable case, irrespective of the status of the person accused of committing that offence. The law also requires them to carry out the necessary inquiry/investigation and no permission is required to do so. The Single Directive violates this basic principle of law and goes against various judgements of the Supreme and High Courts, which state that the investigation of criminal cases is the sole and exclusive preserve of the police and no outside authority can direct the police when to initiate or how to proceed with an investigation**. In the Hawala case, the Apex Court had clearly observed that "the process of investigation, including its initiation, is…not an area which can be included within the meaning of 'superintendence' in section 4(1)"[42] of the Delhi Special Police Establishment Act, 1946.**

Present Legal Status

The constitutional validity of Section 6-A of the Delhi Special Police Establishment Act, 1946 was challenged before the Apex Court through writ petitions[43] filed by Janata Party leader Subramanian Swamy and the People's Union for Civil Liberties. Amicus Curiae, Mr Anil Dewan, contended that the impugned provision was wholly subversive of an independent investigation of culpable bureaucrats. It struck at the core of the rule of law as explained in the Hawala case and the principle of independent, unhampered, unbiased and efficient investigation. He further contended that it was wholly irrational and arbitrary to protect highly placed public servants from inquiry or investigation in the light of the conditions prevailing in the country and the corruption at high places. Section 6-A of the Act was thus wholly arbitrary and unreasonable and should be struck down as being in violation of Article 14 of the Constitution of India. Mr Prashant Bhusan, counsel for the Centre for Public Interest Litigation contended that Sub-Section (c) of Section 26 of the CVC Act should be struck down as it violated the fundamental rights of citizens and was derogative of the rule of law.

After hearing the arguments, the matter was referred by the Court to a larger Bench on 4 February 2005, where, five years on, it is still pending.

2.4.5 (2) Superintendence Over the CBI

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 CVC Act, on the other hand, prescribes that the Commission shall exercise superintendence over the functioning of only the

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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.[44]

Though the CBI traces its origin to the Special Police Establishment (SPE) set up under the Delhi Special Police Establishment Act, 1946, over a period of time it has changed into a new organisation with a vastly expanded role. It is now much more than the SPE and its work extends far beyond what is covered by the Prevention of Corruption Act, 1988. The CVC Act creates an aberrant situation by prescribing that the CVC shall superintend the work of only the SPE relating to the Prevention of Corruption Act. This means that the functioning of the CBI in respect of its work other than what is covered by the Prevention of Corruption Act is supervised by the government. **There is thus 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.**

Even in respect to its corruption work, the CVC's jurisdiction is limited. It's superintendence is only to be in respect of offences alleged to have been committed by members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government and officers of the equivalent level in corporations, companies, societies and other local authorities owned or controlled by the Central Government….[45] **In other words, superintendence over the CBI's work in respect of corruption offences committed by other categories of public servants as defined in Section 2 of the Prevention of Corruption Act, 1988 remains out of the purview of its charter of responsibilities.**

The CVC's charter requires it 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".[46] **This superintendence is also curtailed by the proviso to Section 8 (1)(h), according to which it has to be "consistent with the directions relating to vigilance matters issued by the Government" and it does not "confer power upon the Commission to issue directions relating to any policy matters".[47] This proviso erodes the authority of the CVC to exercise effective superintendence over the vigilance administration in the government.** The Ministry's Parliamentary Standing Committee supported the concern expressed by the CVC in its annual report: "The Commission's experience over the years is that if the credibility of vigilance administration has to rise, such administration has to be independent of Government. Similarly, in many areas, it is the policy and loopholes therein which give rise to corruption, and if the Commission cannot take the initiative and be proactive, vigilance administration will have to be less than optimally effective."[48] The CVC has recommended the deletion of the proviso to Section 8 (1)(h) of the 2003 Act and the insertion of a new section to "expand the mandate" consistent with "making it a full-fledged preventive agency having authority to coordinate activities of the other agencies in so far as prevention of corruption is concerned and to generate and disseminate knowledge on corruption".[49]

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The Government of India's Resolution No. 24/7/64-AVD dated 11 February 1964 by 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".

Another area of concern highlighted by the CVC is that **though it is vested with the authority to advise the government and public sector undertakings, there are no sanctions even for "wilful non-compliance".** The Secretary CVC, while deposing before the Ministry's Parliamentary Standing Committee expressed dissatisfaction with the system in these words: "When we give our advice, it is upon the disciplinary authority to accept it or not to accept it. Increasingly, it is seeming (sic) as if they are not accepting the advice. It only enters into the Annual Report as a paragraph and is placed on the Table of the House."[50] Impressed with the genuineness of concerns expressed in the CVC's reports and depositions, **the Parliamentary Committee strongly recommended that the CVC's concerns should be addressed immediately to "ensure independence, impartiality and credibility of the apex anti-corruption body".**[51]

2.4.5 (3) Appointment Procedure

As already mentioned, the Supreme Court decreed that the selection for the post of the Central Vigilance Commissioner should be made from a "panel of outstanding civil servants and others with impeccable integrity". The CVC Act, on the other hand, does not insist on such qualifications. It restricts the selection to civil servants, past and present and those who have held or are holding office in corporations and companies owned or controlled by the central government with experience in policy-making, administration, finance, law, vigilance and investigation.[52] **The Act omits the category of "others", restricts selection mainly to civil servants and does not insist that the selected persons should be either "outstanding" or have "impeccable integrity."**

3. Part II: The Central Bureau of Investigation

Several points relating to the CBI and its work have been covered in Part I. This Part will therefore discuss some of the other points considered important after very briefly sketching the history of the organization.

3.1 Brief History

The CBI owes its origin to the SPE established by the government in 1941 to deal with corruption involving wartime purchases and supplies. The SPE was set up through an executive order by the Department of War, with its headquarters in Lahore. After the war ended, the need for a central agency to investigate cases of corruption involving central government employees continued to be felt. In 1946, the Government of India enacted the Delhi Special Police Establishment Act to give the organisation a statutory cover. The organisation was brought under the Home Department and its

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headquarters shifted to Delhi. In 1948, the post of the IGP was created to head the organisation.

The SPE provided the nucleus on which the CBI was established on 1 April 1963 through a Resolution[53] of the Ministry of Home Affairs, Government of India. The need to establish this organisation was felt not only to investigate crimes handled at that time by the Delhi Special Police Establishment (DSPE), including crimes with interstate ramifications, but also to collect crime intelligence, liaise with INTERPOL, maintain crime statistics and disseminate crime and criminal information, conduct police research, and coordinate laws relating to crime. Initially, it consisted of the following six divisions:
Anti-Corruption Division(DSPE)
Technical Division
Crime Records and Statistics Division
Research Division
Legal and General Division and
Administration Division.

Over a period of time, the CBI's charter was changed. While some of its functions were transferred to new organisations, such as the Bureau of Police Research and Development and the National Crime Records Bureau, its criminal investigation work increased significantly. A committee headed by the Cabinet Secretary reviewed the CBI's functioning and recommended the reorganisation of its criminal investigation work. This was done in 1987 when it was decided that the Anti-Corruption Division would take up the investigation of corruption cases and Special Crimes Division would investigate major conventional crimes, such as murder, kidnapping, rape, rioting, arms smuggling, hijacking, illegal immigration, etc and economic offences, such as banking and other financial frauds, customs offences, counterfeiting of currency, narcotics and drug peddling, black marketing, etc. In 1994, investigation of economic offences was transferred to a separate Economic Offences Division.

Thus what was initially an anti-corruption agency developed over a period into a specialised agency with a comprehensive charter to investigate a wide variety of crimes. Presently, the CBI comprises:
Anti-Corruption Division
Economic Offences Division
Special Crimes Division
Legal Division
Technical Division
Policy and Coordination Division
Administration Division and
Central Forensic Science Laboratory.

The CBI functions under the Ministry of Personnel, Public Grievances and Pensions, Government of India. Its headquarters is in Delhi, but it has branches across the country.

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3.2 Legal Status

As already mentioned, the CBI derives its legal powers from the Delhi Special Police Establishment Act of 1946. This Act was passed "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."[54]

The Act of 1946 is a small piece of legislation, consisting of seven sections in all, including the last one about "repeal". The Act is not confined merely to union territories, as the central government is authorised to extend it to other states and railway areas.[55] With the consent of the state governments, the Act has been extended to all states. The Act authorises the investigating agency to investigate only those offences, which are notified by the central government.[56] Almost all major offences have been specified by various notifications issued periodically by the government. The Act authorises the officers to enjoy all powers, duties, privileges and liabilities that police officers of the area enjoy.[57] The organisation cannot exercise its powers and jurisdiction in any area in a state without the consent of the state government.[58] The CBI thus does not have any original jurisdiction to do crime investigation work in a state. If the state government does not invite the CBI, the only way it can work there is when the Supreme Court or High Court asks it to do so. The courts get this power by virtue of their obligation and duty under the Constitution to protect citizens' fundamental rights. Finally, there is the provision that vests the superintendence of this important investigating agency in the central government,[59] though now it partly vests in the CVC too.

The CBI is the premier investigating agency of the country. It figures in the Union List of the Seventh Schedule of the Constitution of India. It is listed at Serial No. 8 of the List as "Central Bureau of Intelligence and Investigation". Considering the importance that the framers of the Constitution attached to this organisation, it is rather strange – indeed ironic – that its working is still governed by a highly antiquated piece of legislation enacted during British rule for a somewhat limited purpose. India is no longer the country that it was in 1946 and the CBI is no longer what the Delhi Special Police Establishment was in those days. The size of the organisation has expanded; the pattern and incidence of crime which it is required to investigate have altered; the political environment in which it functions has been transformed; the expectations of the citizens from this agency have grown; and what is more, the norms and standards of police investigation work all over the world have seen a sea change.

The legislation governing an important organisation like the CBI must reflect these developments. It must recognise the paramount obligation of the organisation to function according to the requirements of the Constitution. It must mandate it to function so as to protect and promote the rule of law. Legislation must define the word 'superintendence' and establish institutional and other arrangements to insulate the organisation from undesirable and illegitimate outside control, pressures and influences. It must ensure that

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the central government's control over the agency is exercised to ensure that its performance is in strict accordance with law. The Act must make it a statutory responsibility of the government to establish a professionally efficient, effective and impartial system of investigation. It should set objectives, define performance standards and establish monitoring instruments; delineate CBI's powers as well as its functions; outline the nature, philosophy and practices expected of the agency; and prescribe mechanisms to ensure its accountability. There should be no provision that can provide impunity.

The Parliamentary Standing Committee of the Ministry of Personnel, Public Grievances, Law and Justice has repeatedly recommended the enactment of a new law to govern the CBI's working in its various reports, such as its fifth, fourteenth and nineteenth reports on the Ministry's Demand for Grants. The Department-Related Parliamentary Standing Committee of the Ministry in its Twenty-fourth Report on the Working of the CBI regretted to note that a "separate Act for CBI in tune with the requirement of the time, rather than deriving its powers from the Delhi Special Police Establishment Act, 1946", had not been enacted by the Government. "The Committee regrets to note that no proactive steps have so far been taken in this regard in spite of strong recommendations made by this Committee. The Committee strongly opines that unless CBI is suitably empowered statutorily it cannot investigate cases and take it (sic) to logical conclusion."[60]

The Government of India has been stubbornly resisting the demand for a separate enactment for CBI. In its Thirty-seventh Report, the Department-Related Standing Committee on Action Taken Replies of the government felt that sufficient thought had not been given to the recommendations made by the Committee to strengthen the CBI in terms of legal mandate. "The Committee notes that the Ministry, in its reply, has admitted that the functions and operations of the CBI have been enlarged. **The Committee fails to understand how such a premier organization can function efficiently and to its full potential, when it is lacking in terms of legal backing."**[61]

The Central Vigilance Commission has also recommended the need for the "enactment of a CBI Act along the lines suggested by the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice".[62]

The government's reluctance to enact separate legislation for such an important organisation is inexplicable. The only way one can explain it is that it does not want the CBI to be professionally efficient, transparently fair and impartial in its functioning, working according to the tenets of the rule of law and not according to what the government wants it to do.

3.3 Investigation

As the premier investigation agency of the country, the CBI is generally preferred over state police agencies for investigation into high-profile complicated cases, particularly those involving influential people. Why does this happen? Does the CBI get this prominence by default because there is no other similar organisation?

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Partly, this is owing to a lack of faith on the part of the public in their local police forces. The state police forces have been so severely politicised that generally, the public are unwilling to trust their ability to function impartially and objectively as agencies of the law. The public therefore want their cases to be investigated by an organisation that is somewhat remote from the scene and cannot be easily manipulated by local politicians.

To some extent this can also be attributed to a view that the CBI would perform a better job of the investigation. This raises a question: Is the CBI better skilled in crime investigation work than the state police forces?

The quality of investigations is determined by two factors: skill and impartiality. Let's take the skill first.

Skill

Most of the officers and staff in the CBI are on deputation from the state police forces – the same forces that are considered inferior to the CBI in investigation work. The organisation, in fact, depends very heavily on officers and others to serve in the CBI on deputation and is unwilling to reduce this dependence. This has not gone down well with the Department-Related Parliamentary Standing Committee of the Ministry, which insists that the CBI induct fewer officers on deputation and depend more on departmental cadre. "The Committee is of the opinion that by the time the deputationists gain sufficient expertise, their term of deputation is likely to be over and they return to their parent organization, which in turn affects the smooth functioning of CBI. Therefore, the Committee is of the firm view that less dependence should be placed on deputation."[63]

Whether one agrees with the Standing Committee's thinking or not, some significant differences between the CBI and state police forces in respect of investigation work must be noted. First, the CBI is a specialised agency, undertaking only crime investigation work, while the state police have to perform multifarious tasks. Second, the level at which crime investigation is carried out and supervised is higher in the CBI than in state police forces. Unlike the state police forces where investigations are mainly undertaken by Assistant Sub-Inspectors and Sub-Inspectors or at most by Inspectors, most investigations in the CBI are conducted by officers of the rank of at least Deputy Superintendent of Police and are supervised very closely by officers at senior levels. Third, several support services are available to the CBI at its doorsteps, such as forensic science, legal knowledge, chartered accountants, financial experts and specialists in different fields that are not normally available to the investigating officers in state police stations. Fourth, the CBI, unlike the state police forces, does not have to confront the public in adversarial roles and consequently receives better cooperation from them than what the state police forces normally get. The CBI thus does have some advantages over state police forces in doing their investigation work. However, it is not merely investigating skills that determine the outcome; it is also the element of impartiality and objectivity with which investigations are done that helps in building credibility and the image of the investigating agency.

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Impartiality: CBI's Politicisation

And it is here that the CBI's record is not very impressive, particularly when it deals with crimes committed by ruling party politicians, or by those who can, by their decisions or actions, influence the ruling party's fortunes. There have been several cases where the CBI has shown either reluctance to take up investigations against ruling party politicians, or when forced to do so, adopted dilatory tactics. The political parties in opposition at the Centre and the states have often made allegations that the CBI is used by the party in power to harass and intimidate political opponents and favour members or supporters of the ruling party. There is evidence to support such allegations.

In the Hawala case, the Supreme Court pulled up the CBI for showing "inertia" to investigate offences involving influential persons. Recently, on 26 September 2010, the Supreme Court slammed the CBI for dilly-dallying on the issue of prosecuting UP Chief Minister Mayawati in the disproportionate assets case. A bench of Justices B. Sudershan Reddy and S. S. Nijjar bluntly told the CBI counsel that if it was not keen on pursuing the case, then the "petition must go".[64] Mayawati's case is one of those where the CBI's interest in pursuing it is seen to wax and wane depending on how important her support is at a particular point of time for the party in power. For instance, the CBI filed an affidavit in the Supreme Court on 10 April 2010 restating its earlier charge that she was guilty of amassing wealth disproportionate to her known sources of income. However, it changed its stand on 23 April 2010, stating that it was considering Mayawati's plea to close the case. Mayawati's party supported the cut motion in Parliament on 27 April 2010.

Similar gyrations were performed by the CBI recently in other high-profile cases too, such as that of the disproportionate case against Mulayam Singh Yadav. The Supreme Court had directed the CBI in March 2007 to probe his assets. When Mulayam Singh's party was not part of the ruling coalition at the Centre, the CBI wanted to submit its report to the Court and requested the Apex Court in October 2007 to modify the earlier order of producing it to the central government. But in a complete turnaround from its earlier stance, it later sought the Supreme Court's approval to submit the findings of its inquiry to the government and not to the Court. This happened after the Samajwadi Party lent support to the government during the Confidence Motion in the Lok Sabha on 22 July 2008.

Then there is the fodder scam case against Lalu Prasad Yadav, former Chief Minister of Bihar. The CBI had filed a charge sheet in 2000 when the BJP-led National Democratic Alliance was in power at the Centre. But it did not file an appeal against the acquittal order in 2006, when the Congress-led United Progressive Alliance was ruling at the Centre and Lalu Prasad had become a cabinet minister. The CBI, in fact, opposed the Bihar government's decision to pursue the case in the Supreme Court.

Dropping charges against Captain Satish Sharma,[65] not proceeding against Mayawati in the Taj scam and allegedly helping Quattrocchi to go free with his allegedly ill-gotten wealth are only a few of the several other recent decisions by the CBI that have dented its credibility.

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The manner in which the CBI was manipulated and misused during the Emergency is now a part of history. Even later, its handling of many cases, such as Bofors, HDW Submarine, Airbus 320, Czech Pistol, Nusli Wadia, S. Gurumurthy, St Kitts, Chandraswamy, Lalloo Bhai Pathak, JMM, Mumbai Port Trust, Judeo cases, etc. have not won it public confidence. The CBI's role in these cases was considered controversial, if not suspect. The Delhi High Court's judgement in the Bofors case, where the judge, acquitting the Hinduja brothers, called the trial a waste of public money (2.5 billion rupees) and time (14 years) and a "disaster" for the accused persons, further dented its image. Mr V. P. Singh, the former Prime Minister, at that time observed that the CBI had never been successful in any high-profile corruption case and demanded a JPC probe into its lapses.

The spate of recent decisions taken by the CBI have only strengthened the general public perception that its work is influenced by political considerations and it allows itself to become a willing tool in the hands of the party in power. Crooked politicians and bureaucrats are well placed to take advantage of this public perception. Even where action taken against them is perfectly legitimate and is according to the law, they invariably pose as victims of political vendetta and witch-hunting.

The CBI, like all police forces in the country, is open to undesirable illegitimate influences from its political masters. Neither the Supreme Court's judgement in the Hawala case, nor the CVC Act, 2003, has provided it with the type of insulation it requires.

3.4 Sanction for Prosecution

The CBI suffers from inadequacies of human and other resources, which have been pointed out in its reports as well as those of the CVC and Parliamentary Standing Committees. As mentioned initially, this paper does not discuss these. However, it is necessary to draw attention towards one problem and that is the need for the CBI to obtain sanction for prosecution from the concerned government authorities.

The anti-corruption law[66] requires the CBI to obtain sanction from the concerned government before prosecuting public servants involved in corruption cases. In other cases, the provision of the CrPC[67] is applicable. In many cases, there is considerable delay in receiving the sanction and sometimes it never comes. This worried the Supreme Court too, which in the Hawala case judgement directed that the maximum limit of three months to grant sanction must be strictly followed. It was only in exceptional cases where consultation with the Attorney General became necessary that an additional one month might be allowed.

The Parliamentary Standing Committee of the Ministry went one step further and recommended that once the investigating agency came to the conclusion that prosecution was necessary and Director of Prosecution concurred, the necessary sanction must be given within 15 days. In case it is not given within that period, it should be treated as "deemed sanction" and the CBI should file a charge sheet in court.[68]

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The government is not satisfied by providing impunity merely to serving officers; it has tried to include even the retired public servants within the ambit of impunity provisions of law. In 2008, it tried to extend the scope of such provisions to former public servants by amending Section 19 of the Prevention of Corruption Act, 1988. This attempt was made to undo the judgement of the Supreme Court in *Badal v. State of Punjab* in 2006, in which it held that Section 19 of the Prevention of Corruption Act, 1988 did not protect former public servants. Luckily, the amendment was not ratified by the Rajya Sabha even though it had been cleared by the Lok Sabha.

The CBI website does not show the number of cases where sanction is denied; it merely gives statistics of cases where sanction is pending.

On 31 August 2010, as many as 342 requests for sanction under the Prevention of Corruption Act (PC Act) were pending with various authorities of the central and state governments. Of these, 182 requests had been pending for more than three months, out of which 30 cases had crossed the 12-month mark. One was awaiting clearance for 22 months, nine for 18 months, and 12 for over 15 months. Out of 32 cases that were pending sanction under the "non PC Act", 5 had been pending for more than 24 months.[69]

The CVC believes that the "need for prosecution sanction even in those offences which have no connection with the discharge of official duties and inordinate delays in sanction"[70] is one of the specific bottlenecks in the effective functioning of the CBI. **This bottleneck not only results in impeding CBI's functioning but also in providing impunity to the accused and thus defeats justice.**

4. Summing Up

The CVC and CBI, the two most prominent anti-corruption agencies at the Centre, have been in existence for a fairly long period. This survey of the central government's management of these two organisations shows that it has never wanted them to become professionally strong and effective.

As discussed above, the need to have an investigating agency at the Centre was felt as early as in 1948. However, the CBI was established only on 1 April 1963. Till date no law has been enacted to govern its functioning. It is still regulated by a law that is as anachronistic as the Police Act of 1861, which governs most police forces in the country. Just as the state governments have shown reluctance to accept the National Police Commission's recommendations to replace the colonial era legislation with a new Police Act that is framed in accordance with the requirements of a modern democratic Constitution, similarly the central government has been equally obstinate in refusing the need for new law to manage and strengthen the CBI. The reason for its unwillingness to change in both cases is the same – **the political executive must have complete control over police organisations so that it can misuse these for partisan purposes.** The fact that the CBI has often been misused is supported by considerable evidence.

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The story of the CVC is similar. It was established in 1964 through executive instructions and not law. It was only when the Supreme Court issued directions in 1997 to give it a statutory cover that action had to be initiated, though all possible attempts were made to thwart the implementation of that judgement. When the attempts failed, the government took six years to introduce the CVC Act of 2003. However, it ensured that the Act had sufficient shortcomings and inadequacies to reduce its effectiveness. This was seen recently when the central government appointed a man of its choice to head the CVC, despite blemishes on his record and strong objections by the opposition party and others. The appointment was challenged in the Apex Court through a petition seeking his removal from the key post on the ground that he is facing corruption charges. The Court issued notice to the government as well as to the Chief Vigilance Commissioner, asking why his appointment should not be quashed. The matter will now be heard on January 27, 2011.

The CVC Act brought the CBI under a system of dual control and CVC's super-intendence over the CBI was considerably diluted. It also revived the Single Directive. The illegality that was committed through executive instructions earlier is now committed with the backing of law.

Corruption, as someone has rightly said, is like "a ball of snow; once it's set a rolling it must increase". If the rolling of the ball has to be stopped, the Government of India must show greater sincerity and a stronger will to deal with the menace than it has done so far.

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Endnotes

[1] Source: http://www.transparencyindia.org/resource/press_release/.pdf.
[2] Blog of the Task Force on Financial Integrity & Economic Development; source: http://www.gfip.org and http://www.financialtaskforce.org.
[3] Powers of a civil court trying a civil suit, like summoning attendance of persons; requisitioning records and documents; receiving evidence on affidavits; issuing commissions for the examination of witnesses or documents, etc.
[4] DO Letter Number 1/4/63-CPC dated 22 February 1963 from Shri K. Santhanam, Chairman, Committee on Prevention of Corruption to Shri Lal Bahadur Shastri, the then Home Minister, Government of India; Paragraph 3.
[5] Paragraph 6 of the Scheme of the CVC forwarded by the Chairman to the Union Home Minister vide his DO Letter dated 22 February 1963.
[6] Resolution No. 24/7/64- A V D dated 11 February 1964.
[7] Statement laid by the Government of India on the tables of the Lok Sabha and Rajya Sabha about the scheme on 16 December 1963; Paragraph 3.
[8] Paragraph 6 (A) of the Scheme of the CVC forwarded by the Chairman to the Union Home Minister vide his DO Letter No. 1/4/63-CPC dated 17 August 1963.
[9] The CVC Act, 2003, Section 11.
[10] Based on personal communication with a Commissioner, Central Vigilance Commission.
[11] Resolution No. 24/7/64: A V D dated 11 February 1964; Paragraph 2 (ii) (b).
[12] Ibid., Paragraph 3.
[13] Writ Petitions (Criminal) Nos. 340-343 of 1993.
[14]Through this Directive, the government debarred the CBI from undertaking any enquiry against any officer of the rank of joint secretary or above in the central government, including those in public sector undertakings, the Reserve Bank of India, SEBI and nationalised banks, without the prior sanction of the concerned Ministry/Department.
[15] The superintendence of the CBI, according to Section 4 of the Delhi Special Police Establishment Act, vests in the central government. The Court directed that this superintendence should be exercised by the CVC.
[16]The Law Commission of India: 161st Report on CVC and Allied Bodies, 1998.
[17] These facts appear in a letter dated 23 August 1998 that Mr. Ram Jethmalani, then the Union Minister for Urban Affairs wrote to Mr Atal Behari Vajpayee, the Prime Minister. Extracts from this letter were quoted by Mr A. G. Noorani, an eminent lawyer, in his article entitled "CVC Law: Subversion of Cabinet" published in the *Statesman* dated 21 September 1998.
[18] Presently, 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.
[19] Judgement of the Supreme Court of India in Writ Petition (Criminal) Nos. 340-343 of 1993, p. 87.
[20] Ibid., pp. 87-88.
[21] Section 14 (2) e) of the Draft Bill.
[22] Section 14 (2) f) of the Draft Bill.
[23] Delhi Special Police Establishment (Amendment) Bill, 1998.
[24] Section 3 (2) of the Central Vigilance Commission Bill, 1998 drafted by the Law Commission of India.
[25] Section 3 (2) of the Central Vigilance Commission Ordinance, 1998 (No. 15 of 1998) promulgated on 25 August 1998.
[26] Judgement of the Supreme Court of India in Writ Petition (Criminal) Nos. 340-343 of 1993; p. 87.
[27] Section 3 (3) of the Central Vigilance Commission Bill, 1998 drafted by the Law Commission of India.
[28] Section 4 (1) @ (2) of the Central Vigilance Commission Bill, 1998 drafted by the Law Commission of India.
[29] Ibid.
[30] Section 3 (3) of the Central Vigilance Commission Ordinance, 1998 (No. 15 of 1998) promulgated on 25 August 1998.
[31] Row over CVC Ordinance heats up – Law panel to join bandwagon, *The Hindustan Times* dated 5 September 1998.
[32] The Supreme Court's judgement in Writ Petition (Criminal) Nos. 340-343 of 1993; p. 81.
[33] Directive No. 4.7 (3) (i).
[34] Judgement in Writ Petitions (Criminal) Nos. 340-343 of 1993.

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[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Report of the Joint Committee of Parliament on the Central Vigilance Commission Bill, 1999, April 2000; Paragraph 41.
[39] Ibid.
[40] The Central Vigilance Commission Act, 2003, Section 26.
[41] Report of the Joint Committee on the Central Vigilance Commission Bill, 1999, April 2000, Minutes of Dissent, p. xxi.
[42] Judgement in Writ Petitions (Criminal) Nos. 340-343 of 1993.
[43] Writ Petition (C) No. 38 of 1997 (with W.P. (C) No. 21 of 2004).
[44] The CVC Act, 2003, Section 8 (1)(a).
[45] The CVC Act, 2003, Section 8 (2) (a) (b) and CVC's Jurisdiction as spelt out in its website http://cvc.nic.in.
[46] CVC Act, 2003, Section 8 (1) (h).
[47] Ibid.
[48] The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Nineteenth Report on Demand for Grants (2007-08) of the Ministry of Personnel, Public Grievances and Pensions presented to the Lok Sabha and Rajya Sabha on 10 May 2007; Paragraph 50.0.
[49] CVC, Final Draft of the National Anti-Corruption Strategy, September 2010, p. 21.
[50] The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Nineteenth Report on Demand for Grants (2007-08) of the Ministry of Personnel, Public Grievances and Pensions presented to the Lok Sabha and Rajya Sabha on 10 May 2007; Paragraph 50.1.
[51] Ibid., Paragraph 50.6.
[52] CVC Act, 2003, Section 3 (3).
[53] Resolution No. 4/31/G1 dated 11 April 1963.
[54] The Delhi Special Police Establishment Act, 1946, Preamble.
[55] Ibid., Section 5 (1).
[56] Ibid., Section 3.
[57] Ibid., Sections 2 (2) & 5 (2) & (3).
[58] Ibid., Section 6.
[59] Ibid., Section 4.
[60] Department-Related Parliamentary Standing Committee of the Ministry in its Twenty-fourth Report on the Working of the CBI presented to both Houses of Parliament on 11 March 2008.
[61] Department-Related Parliamentary Standing Committee of the Ministry, Thirty-seventh Report presented to Parliament on 9 March 2010; Chapter IV, Paragraph 1.5.
[62] CVC's National Anti-Corruption Strategy, Final Draft, September 2010; p. 22.
[63] Department-Related Parliamentary Standing Committee of the Ministry, Thirty-seventh Report presented to Parliament on 9 March 2010; Chapter III, Paragraph 2.3.
[64] *Hindustan Times*: SC slams CBI for stalling probe in Maya's assets case, 27 September 2010.
[65] Captain Satish Sharma is a senior Congress leader against whom CBI had instituted cases pertaining to alleged irregularities in allotment of petrol pumps and gas agencies during his tenure as Petroleum Minister between 1993 and 1996. The cases were later closed.
[66] Prevention of Corruption Act, 1988, Section 13.
[67] CrPC, Section 197.
[68] The Ministry's Department-Related Parliamentary Standing Committee, Thirty-seventh Report presented to Parliament on 9 March 2010; Chapter IV, Paragraph 11.
[69] Source: http://www.cbi.gov.in/performance/pending_sanction.php.
[70] CVC's National Anti-Corruption Strategy, Final Draft, September 2010; p. 22.

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