

LAW COMMISSION OF INDIA

**ONE HUNDRED SIXTY FIRST
REPORT**

ON

**CENTRAL VIGILANCE
COMMISSION**

AND

ALLIED BODIES

1998

JUSTICE
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 Chairman, Law Commission of India



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August 13, 1998

Dear Dr.M.Thambi Durai,

I am forwarding herewith the One Hundred Sixty First Report on "Central Vigilance Commission."

2. The subject was taken up by the Commission in pursuance of the reference of the Government of India vide their letter dated 12.6.98 received on 16.6.98 to take up the study of the subject of 'Conferment of the Statutory Status on the Central Vigilance Commission' in pursuance of the Supreme Court Judgment dated 18.12.97 in Vineet Narain and Ors. v. Union of India and Anr. [W.P. (Criminal) Nos.340-343/93]' and give its report along with a suitable draft legislation.

3. The background of the problems which led the Hon'ble Supreme Court to issue directions in Vineet Narain's case (reported in 1997(7) SCALE 656) quoted in para 1.2 of the report disclose the disturbing state of affairs on account of failure of the Government agencies like the CBI and the revenue authorities to allegedly perform their duties and legal obligations of properly investigating matters arising out of the seizure of the so called "Jain Dairies" in raids conducted by the CBI. It was also brought out in the case that financial support to certain terrorist is extended through clandestine and illegal means, by use of tainted funds obtained through 'havala' transactions, a nexus between several important politicians, bureaucrats and criminals who are all recipients of money from unlawful sources given for unlawful considerations; lack of appropriate investigation, inertia to prosecute influential persons. Such state of affairs pose a serious threat to the integrity, security and economy of the nation.

4. In order to combat the evil, the Supreme Court gave directions in Vineet Narain's case (supra) as quoted under para 3.2 of the report. In this report, the Commission has examined the ramifications of the various directions of the Supreme Court in the said case and has recommended, inter-alia, to confer statutory status to the Central Vigilance Commission, contemplating it to be a multi-member body and has annexed a Bill entitled "Central Vigilance Commission Bill", 1998 to the report, bringing out its recommendations in the form of the Bill. Further two

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consequential amending Bills, namely, the Delhi Special Police Establishment (Amendment) Bill, 1998 and the Foreign Exchange Regulation (Amendment) Bill, 1998 are also annexed to give effect to the directions of the Hon'ble Supreme Court in Vineet Narain's case, supra.

With regards,

Yours sincerely,



(B.P.JEEVAN REDDY)

Dr.M.Thambi Durai,
Hon'ble Minister for Law, Justice
and Company Affairs,
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c/c

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CHAPTER-I

INTRODUCTION

1.1. Genesis of the report: In pursuance of the directions of the Hon'ble Supreme Court of India in Vineet Narain vs. Union of India dated December 18, 1997 in W.P.(Cr1) No.340-343 of 1993, also reported in 1997(7) SCALE 656, given to the Union of India and all concerned, the Government of India has assigned to the Law Commission of India the task "to examine the issue regarding conferment of the statutory status on the Central Vigilance Commission (CVC) and give its report along with draft legislation", vide their letter dated June 12, 1998 from the Ministry of Law, Justice & Company Affairs (Department of Legal Affairs) received by the Law Commission on 15/16.6.98. Accompanying the said reference the Government has also forwarded us the report of the Committee (referred to in the judgement of the Supreme Court as Independent Review Committee-'IRC') set up to examine the structure and functioning of the Central Bureau of Investigation and the Enforcement Directorate, submitted in November, 1997 and the draft Bill entitled "the Central Vigilance Commission Bill" prepared by the CVC, for the perusal of the Law Commission.

1.2 Background of the problem: In order to gather the background facts which led the Hon'ble Supreme Court to issue directions to the Union of India, it would be pertinent to refer an extract from the order dated 30th January, 1996 (quoted under paragraphs 10 of the decision in Vineet Narain case) (supra), as follows:-

"The gist of the allegations in the writ petition are that Government agencies, like the CBI and the revenue authorities have failed to perform their duties and legal obligations inasmuch as they have failed to properly investigate matters arising out of the seizure of the so called "Jain Dairies" in certain raids conducted by the CBI. It is alleged that the apprehending of certain terrorists led to the discovery of financial support to them by clandestine and illegal means, by use of tainted funds obtained through 'havala' transactions; that this also disclosed a nexus between several important politicians, bureaucrats and criminals, who are all recipients of money from unlawful sources given for unlawful considerations; that the CBI and other Government agencies have failed to fully investigate into the matter and take it to the logical end point of the trail and to prosecute all persons who have committed any crime; that this is being done with a view to protect the persons involved, who are very

influential and powerful in the present set up; that the matter discloses a definite nexus between crime and corruption in public life at high places in the country which poses a serious threat to the integrity, security and economy of the nation; that probity in public life, to prevent erosion of the rule of law and the preservation of democracy in the country, requires that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against each and every person involved, irrespective of the height at which he is placed in the power set up. The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all Government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law: "Be you ever so high, the law is above you". Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the Government agencies. In

this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law."

1.2.1 The facts of the said case disclosed to the Supreme Court a disturbing state of affairs. The court found that inertia on the part of investigating agencies was the common rule whenever the alleged offender was powerful person. Indeed, the very constitution and working of the investigating agencies, the court found, was at the root of their inability to perform whenever powerful persons are involved. In the words of the Supreme Court

"3. This experience revealed to us the need for the insulation of these agencies from any extraneous influence to ensure the continuance of the good work they have commenced. It is this need which has impelled us to examine the structure of these agencies and to consider the necessary steps which would provide permanent insulation to the agencies against extraneous influence to enable them to discharge their duties in the manner required for proper implementation of the rule of law. Permanent

measures are necessary to avoid the need of every matter being brought to the court for taking ad hoc measures to achieve the desired results. This is the occasion for us to deal with the structure, constitution and the permanent measures necessary for having a fair and impartial agency. The faith and commitment to the rule of law exhibited by all concerned in these proceedings is the surest guarantee of the survival of democracy of which rule of law is the bedrock. The basic postulate of the concept of equality: 'Be you ever so high, the law is above you', has governed all steps taken by us in these proceedings."

"15. Inertia was the common rule whenever the alleged offender was a powerful person. Thus, it became necessary to take measures to ensure permanency in the remedial effect to prevent reversion to inertia of the agencies in such matters.

16. Everyone against whom there is reasonable suspicion of committing a crime has to be treated equally and similarly under the law and probity in public life is of great significance. The constitution and working of the investigating agencies revealed the lacuna of its inability to perform whenever powerful persons were involved. For

this reason, a close examination of the constitution of these agencies and their control assumes significance. No doubt, the overall control of the agencies and responsibility of their functioning has to be in the executive, but then a scheme giving the needed insulation from extraneous influences even of the controlling executive, is imperative. It is this exercise which became necessary in these proceedings for the future. This is the surviving scope of these writ petitions."

1.2.2 Dismal picture presented by the Vohra Committee:- The Supreme Court referred to and relied upon the report of the Committee known as Vohra Committee which was constituted by the Government of India by their order dated July 9, 1993 as follows:-

"17. As a result of the debate in these proceedings and the experience gained thereby the Union of India came to realise that an in-depth study of the selection of personnel of these agencies, particularly the CBI and the Enforcement Directorate of the Revenue Department, and their functioning is necessary. The Government of India, sharing this perception, by an Order No. S/7937/SS(ISP)/93 dated 9th July, 1993 constituted a Committee headed by the then Home Secretary Shri N.N. Vohra to take stock of

all available information about the activities of crime syndicates/mafia organizations which had developed links with, and were being protected by government functionaries and political personalities. It was stated that on the basis of recommendations of the Committee the Government shall determine the need, if any, to establish a special organisation/agency to regularly collect information and pursue cases against such elements. The Committee was headed by the then Home Secretary Shri N.N. Vohra and had as its Members-Secretary (Revenue), Director, Intelligence Bureau, Director, CBI, Joint Secretary (PP), Ministry of Home Affairs. The Committee gave its recommendations dated 5.10.1993. It has made scathing comments and has painted a dismal picture of the existing scene. It has said that the network of the mafia is virtually running a parallel government pushing the State apparatus into irrelevance. The committee recommended the creation of a nodal agency under the Ministry of Home Affairs for the collation and compilation of all information received from intelligence Bureau (IB), Central Bureau of Investigation (CBI) and Research and Analysis Wing (R&AW) and the various agencies under the Department of Revenue. The report is significant for the dismal picture of the existing scenario which discloses a

powerful nexus between the bureaucracy and politicians with the mafia gangs, smugglers and the underworld. The report of the Vohra Committee is the opinion of some top bureaucrats and it confirmed our worst suspicions focusing the need of improving the procedure for constitution and monitoring the functioning of intelligence agencies. There is, thus, no doubt that this exercise cannot be delayed further."

1.2.3 Report of the Independent Review Committee (IRC)

relied upon:

The Supreme Court also referred to and strongly relied upon the report of yet another committee called the Independent Review Committee (IRC) constituted by the government under its order dated September 8, 1997 comprising Shri B.G.Deshmukh, former Cabinet Secretary, Shri N.N.Vohra Principal Secretary to the Prime Minister and Shri S.V.Giri, Central Vigilance Commissioner. The court observed:-

"27. The IRC is a body constituted by the Central Government itself as a result of its perception that the Constitution and functioning of the CBI, CVC and Directorate of Enforcement require a close scrutiny in the background of the recent unsatisfactory functioning of these agencies with a view to improve their functioning. The view taken by the IRC is a

reaffirmation of this belief shared by everyone. The preface to the report indicates the reason for the constitution of the IRC and says that " In the past several years, there has been progressive increase in allegations of corruption involving public servants. Understandably, cases of this nature have attracted heightened media and public attention. A general impression appears to have gained ground that the concerned Central Investigating agencies are subject to extraneous pressures and have been indulging in dilatory tactics in not bringing the guilty to book. The decisions of higher courts to directly monitor investigations in certain cases have added to the aforesaid belief." There can thus be no doubt that there is need for the exercise we were called upon to perform and which has occasioned consideration of this crucial issued by this court in exercise of its powers conferred by the Constitution of India. The conclusions reached by the IRC and the recommendations it has made for improving the functioning and thereby the image of these agencies is a further reaffirmation of this general belief. There can also be no doubt that the conclusions reached by the IRC and its recommendations are the minimum which require immediate acceptance and implementation in a bid to arrest any further decay of the polity. It follows that the exercise to be

performed now by this Court is really to consider whether any modifications/additions are required to be made to the recommendations of the IRC for achieving the object for which the Central Government itself constituted the IRC. We are informed by the learned Attorney General that further action on the report of the IRC could not be taken so far because of certain practical difficulties faced by the Central Government but there is no negative reaction to the report given by the Central Government."

1.3 Present situation of the outcome of 'hawala' cases

alarming:- As per the statement of the Minister given in Parliament, reported in the Hindustan Times dated 25th July, 1998 that out of 34 hawala cases, 29 cases have been dropped by the courts. Observations of the Supreme Court in this context are appropriate:-

"53. There is another aspect of rule of law which is of equal significance. Unless a proper investigation is made and it is followed by an equally proper prosecution, the effort made would not bear fruition. The recent experience in the field of prosecution is also discouraging. To emphasise this point, some reference has to be made to a large number of prosecutions launched as a result of monitoring by the court in this matter which have resulted in discharge of the accused at the

threshold. It took several years for the CBI to commence investigation and that too as a result of the monitoring by this Court. It is not as if the CBI, on conclusion of the investigation, formed the opinion that no case was made out for prosecution so that the earlier inaction may have been justified. The CBI did file numerous chargesheets which indicated that in its view a prima facie case for prosecution had been made out. This alone is sufficient to indicate that the earlier inaction was unjustified. However, discharge of the accused on filing of the chargesheet indicates, irrespective of the ultimate outcome of the matters pending in the higher courts, that the trial court at least was not satisfied that a prima facie case was made out by the investigation. These facts are sufficient to indicate that either the investigation or the prosecution or both were lacking. A similar result of discharge of the accused in such a large number of cases where chargesheets had been filed by the CBI is not consistent with any other inference. The need for a strong and competent prosecution machinery and not merely a fair and competent investigation by the CBI can hardly be overemphasised. This is the occasion for us to take the view that a suitable machinery for prosecution of the cases filed in court by the CBI is also essential to ensure discharge of

its full responsibility by the CBI. Unless a competent prosecution follows a fair and competent investigation, the exercise in the ultimate analysis would be futile. Investigation and prosecution are inter related and improvement of investigation without improving the prosecution machinery is of no practical significance. We would, therefore, consider the aspect of prosecution also in the formulation of the guidelines."

This is a serious matter since even if stringent measures are invoked to prosecute such sort of cases, and yet the outcome is dismissal of the cases, it brings the prosecution machinery to ridicule. It also provokes another line of thought that unless accountability for lapses appropriate to the wrong doing on the part of the prosecution is fixed and expeditiously carried out, no amount of measures can come to rescue.

1.4. Prevalence of various scams in the country: Various decisions of Supreme Court have emphasised the dismal state of affairs and the prevalence of various scams in the country. For example in the case of housing entitled Shiv Sagar Tiwari v. Union of India, (1997) 1 SCC 444, 471, it was observed:-

"88. It seems no scam can be avoided howsoever rigid rules may be framed or guidelines laid down. Scams are creatures of moribund mind and low moral character. With various types of scams all around, it is too much to expect that we can provide any formula by which scam can be prevented...." (emphasis laid by underlining)

No further assertion is needed to emphasise the alarming state of affairs resulting from the nexus between some of the important politicians, bureaucrats and the criminals.

CHAPTER II

MAINTENANCE OF STANDARDS IN PUBLIC LIFE AND THE ADVERSE IMPACT OF LACK OF PROBITY

2.1 Maintenance of Standards in Public Life:- The hallmark of maintenance of standards in public life has been stressed even in other countries for survival of rule of law and democracy.

The Supreme Court quoted in Vineet Narayan's case (supra) the general recommendations of the Committee headed by Lord Nolan on "Standards in Public Life" as follows:-

"57. It is a similar perception in England which has led to the constitution of a Committee headed by Lord Nolan on 'Standards in Public Life'. In Volume 1 of Lord Nolan's Report (1995), the general recommendations made are:

General recommendations:

4. Some of our conclusions have general application across the entire service:

Principles of public life:

5. The general principles of conduct which underpin public life need to be restated. We have done this. The seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership are set out in full on page 14.

Codes of conduct:

6. All public bodies should draw up codes of conduct incorporating these principles.

Independent scrutiny:

7. Internal systems for maintaining standards should be supported by independent scrutiny.

Education:

8. More needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including induction training."

58. The Seven Principles of Public Life are stated in the report by Lord Nolan, thus:

The Seven Principles of Public Life

"Selflessness:

Holders of public office should take decisions solely in terms of the public interest. They should not do

so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity:

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity:

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability:

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness:

Holders of public office should be as open as possible about all the decisions and actions that

they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty:

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership:

Holders of public office should promote and support these principles by leadership and example."

The Supreme Court has also relied upon these principles of public life (evolved by the Nolan Committee) in the aforesaid Vineet Narayan's case:

"59. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must

be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law."

2.2 Adverse impact of lack of probity in public life: It is quite essential to maintain these standards in public life failure of which breeds all-pervasive corruption undermining rule of law, violation of right to equality, lack of faith in courts and threats to democracy. Besides such failure poses a serious threat to the integrity, security and economy of the nation. (Vineet Narayan's case (supra para 10). Adverse impact of lack of probity in public life as pointed out by the Supreme Court in Vineet Narayan's case (supra) reads:-

"60. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate

corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption had led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries: R V Secretary of State for Foreign and Commonwealth Affairs, (1995) 1 WLR 386.

61. Of course, the necessity of desirable procedures evolved by court rules to ensure that such a litigation is properly conducted and confined only to matters of public interest is obvious. This is the effort made in these proceedings for the enforcement of fundamental rights guaranteed in the Constitution in exercise of powers conferred on this Court for doing complete justice in a cause. It cannot be doubted that there is a serious human rights aspect involved in such a proceeding because the prevailing corruption in public life, if permitted to continue unchecked, has ultimately the deleterious effect of eroding the Indian polity."

2.3. Ill effects of corruption:- The ill-effects of corruption have been amply described in the Encyclopedia of Democracy by Seymour Martin Lipset, Vol.I, p.310 in the

Chapter 'Corruption' as quoted in Secretary, Jaipur Development Authority vs. Daulat Mal Jain, (1997) 1 SCC 35, para 15 as follows:-

"15. In the Encyclopedia of Democracy by Seymour Martin Lipset, Vol.1, p.310, in the Chapter 'Corruption', it is stated that corruption is an abuse of public resources for private gain. The occasions for political corruption increase when control on the activity of public administrators are fragile and the division of power between political actors and the public bureaucrats, as well as between the Government and the middleman, is unclear. It is difficult to discover and punish cases of corruption. Research has shown that political corruption tends to be more widespread in authoritarian or totalitarian regimes and when public opinion and the press are unable to denounce corruption. Corruption develops because of confusion about the borders between State and society and between traditional and modern values. It can be expected to grow during phases of transition. Corruption should disappear in modern stable democratic societies. Instead, it is growing. Since State intervention in economic and social life has increased the occasions for political corruption, new technologies have increased the cost of electoral campaigns and the professionalisation of political

careers has increased the number of those who have to make a living from politics rather than living for politics. Corruption has not disappeared. Corruption has dangerous consequences for politics. Although political corruption is more widespread in non-democratic regimes, it is particularly dangerous for democracy because it undermines two of the major principles on which democracies are based; the equality of citizens' rights and the transparency of the political decision-making process. Bribes open the way for access to the State for those who are willing to pay and can afford the price. The situation may leave non-corrupt citizens with the belief that one 'counts' only if one has the right personal contacts with those who hold power. Because of its illegal nature, corruption increases the range of public decisions that are made in secrecy. It was suggested that internal controls on public bureaucracies through administrative controls and accounting procedures as well as ombudsman systems for public complaints, are remedies to control political corruption. The rule of code of conduct for political executives, public servants and private entrepreneurs, emphasising merit and regulated system of appointment in State bureaucracy and stimulating price in public service, would generate remedies for political corruption."

CHAPTER- III

SCOPE OF DIRECTIONS OF SUPREME COURT IN VINEET NARAYAN'S CASE
(SUPRA)

3.1 Terms of reference of Independent Review Committee
(IRC):

While appreciating the parameters of the directions given by the Hon'ble Supreme Court in Vineet Narayan's case (supra) to combat with the evil studied in the preceding chapter, it becomes necessary to quote the terms of references of the IRC as set out in the Vineet Narayan's case (supra) as follows:-

"18. The same perception of the Government of India led it to constitute another Committee by Order No. 226/2/97-AVD-II dated 8th September, 1997 comprising of Shri B.G. Deshmukh, former Cabinet Secretary, Shri N.N. Vohra, Principal Secretary to the Prime Minister and Shri S.V. Giri, Central Vigilance Commissioner, called the Independent Review Committee (IRC). The order reads as under:

"WHEREAS the Government of India is of the opinion that it is necessary to set up a Committee for going into the matters mentioned hereinafter;

2. NOW, THEREFORE, a Committee of the following is hereby set up:

- (i) Shri B.G. Deshmukh, former Cabinet Secretary
 - (ii) Shri N.N. Vohra, Principal Secretary to the Prime Minister
 - (iii) Shri S.V. Giri Central Vigilance Commissioner
- Shri N.N. Vohra shall act as Convener.

3. The terms of reference of the Committee are as under:

(i) To monitor the functioning of the nodal agency established by the Ministry of Home Affairs in pursuance of the recommendations of the Vohra Committee Report.

(ii) To examine the present structure and working of the Central Bureau of Investigation (CBI), the Enforcement Directorate and related agencies to suggest the changes, if any, needed to ensure:

(a) that offences alleged to have been committed by any person, particularly those in positions of high authority, are registered, investigated and prosecuted fairly and expeditiously, ensuring

against, inter alia, external pressure, arbitrary withdrawals or transfers of personnel etc., and ensuring adequate protection to the concerned functionaries to effectively discharge their duties and responsibilities;

(b) that there are sufficient checks and balances to ensure that the powers of investigation and prosecution are not misused;

(c) that there are no arbitrary restrictions to the initiation of investigations or launching of prosecutions.

4. The Committee should give its report with regard to the items mentioned in paragraph 3(ii) above within a period of 3 months."

3.2 Directions of the Supreme Court in Vineet Narayan's case (supra): The directions of the Supreme Court in the aforesaid Vineet Narayan's case are contained under paragraphs 62, 64 in four parts as set out below:-

"62. As a result of the aforesaid discussion, we hereby direct as under:-

"I. CENTRAL BUREAU OF INVESTIGATION (CBI) AND CENTRAL VIGILANCE COMMISSION (CVC).

1. The Central Vigilance Commission (CVC) shall be given statutory status.

2. Selection for the post of Central Vigilance Commissioner shall 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, to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the committee. This shall be done immediately.

3. The CVC shall be responsible for the efficient functioning of the CBI. While government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for overseeing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to the CVC about cases taken up by it for investigation; progress of investigations; cases in which chargesheets are filed and their progress. The CVC shall 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.

4. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a non-partisan agency.

5. The CVC shall have a separate section in its annual report on the CBI's functioning after the supervisory function is transferred to it.

6. Recommendations for appointment of the Director, CBI shall be made a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of IPS officers on the basis of their seniority, integrity, experience in investigation and anti-corruption work. The final selection shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee. If none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.

7. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation. This would ensure that an officer

suitable in all respects is not ignored merely because he has less than two years to superannuate from the date of his appointment.

8. The transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment, should have the approval of the Selection Committee.

9. The Director, CBI shall have full freedom for allocation of work within the agency as also for constituting teams for investigations. Any change made by the Director, CBI in the Head of an investigative team should be for cogent reasons and for improvement in investigation, the reasons being recorded.

10. Selection/extension of tenure of officers upto the level of Joint Director (JD) shall be decided by a Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary (Personnel) with the Director, CBI providing the necessary inputs. The extension of tenure or premature repatriation of officers upto the level of Joint Director shall be with the final approval of this Board. Only cases pertaining to the appointment or extension of tenure of officers of the rank of

Joint Director or above shall be referred to the Appointments Committee of the Cabinet (ACC) for decision."

11. Proposals for improvement of infrastructure, methods of investigation, etc. should be decided urgently. In order to strengthen CBI's in-house expertise, professionals from the revenue, banking and security sectors should be inducted into the CBI.

12. The CBI Manual based on statutory provisions of the Cr. P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the concerned officials.

13. The Director, CBI shall be responsible for ensuring the filing of chargesheets in courts within the stipulated time limits, and the matter should be kept under constant review by the Director, CBI.

14. A document on the CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.

15. Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

16. The Director, CBI should conduct regular appraisal of personnel to prevent corruption and/or inefficiency in the agency.

II. ENFORCEMENT DIRECTORATE

"1. A Selection Committee headed by the Central Vigilance Commissioner and including the Home Secretary, Secretary (Personnel) and Revenue Secretary, shall prepare a panel for appointment of the Director, Enforcement Directorate. The

appointment to the post of Director shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee.

2. The Director, Enforcement Directorate like the Director, CBI shall have a minimum tenure of two years. In his case also, premature transfer for any extraordinary reason should be approved by the aforesaid Selection Committee headed by the Central Vigilance Commissioner.

3. In view of the importance of the post of Director, Enforcement Directorate, it shall be upgraded to that of an Additional Secretary/Special Secretary to the Government.

4. Officers of the Enforcement Directorate handling sensitive assignments shall be provided adequate security to enable them to discharge their functions fearlessly.

5. Extensions of tenure upto the level of Joint Director in the Enforcement Directorate should be decided by the said Committee headed by the Central Vigilance Commissioner.

6. There shall be no premature media publicity by the CBI/Enforcement Directorate.

7. Adjudication/commencement of prosecution shall be made by the Enforcement Directorate within a period of one year.

8. The Director, Enforcement Directorate shall monitor and ensure speedy completion of investigations/adjudications and launching of prosecutions. Revenue Secretary must review their progress regularly.

9. For speedy conduct of investigations abroad, the procedure to approve filing of applications for Letters Rogatory shall be streamlined and, if necessary, Revenue Secretary authorised to grant the approval.

10. A comprehensive circular shall be published by the Directorate to inform the public about the procedures/systems of its functioning for the sake of transparency.

11. In-house legal advice mechanism shall be strengthened by appointment of competent legal advisers in the CBI/Directorate of Enforcement.

12. The Annual Report of the Department of Revenue shall contain a detailed account on the working of the Enforcement Directorate.

III NODAL AGENCY

1. A Nodal Agency headed by the Home Secretary with Member (Investigation), Central Board of Director Taxes, Director General, Revenue Intelligence, Director, Enforcement and Director, CBI as members, shall be constituted for coordinated action in cases having politico-bureaucrat-criminal nexus.

2. The Nodal Agency shall meet at least once every month.

3. Working and efficacy of the Nodal Agency should be watched for about one year so as to improve it upon the basis of the experience gained within this period.

IV. PROSECUTION AGENCY

1. A panel of competent lawyers of experience and impeccable reputation shall be prepared with the advice of the Attorney General. Their services shall be utilised as Prosecuting Counsel in cases of

significance. Even during the course of investigation of an offence, the advice of a lawyer chosen from the panel should be taken by the CBI/Enforcement Directorate.

2. Every prosecution which results in the discharge or acquittal of the accused must be reviewed by a lawyer on the panel and, on the basis of the opinion given, responsibility should be fixed for dereliction of duty, if any, of the concerned officer. In such cases, strict action should be taken against the officer found guilty of dereliction of duty.

3. The preparation of the panel of lawyers with the approval of the Attorney General shall be completed within three months.

4. Steps shall be taken immediately for the constitution of an able and impartial agency comprising persons of unimpeachable integrity to perform functions akin to those of the Director of Prosecutions in U.K. On the constitution of such a body, the task of supervising prosecutions launched by the CBI/Enforcement Directorate shall be entrusted to it.

5. Till the constitution of the aforesaid body, Special Counsel shall be appointed for the conduct of important trials on the recommendation of the Attorney General or any other law officer designated by him.

In order to attain independence in the functioning of the investigating officers in States, the Supreme Court also made the following observations:-

"64. In view of the problem in the States being even more acute, as elaborately discussed in the Report of the National Police Commission (1979), there is urgent need for the State Governments also to set up credible mechanism for selection of the Police Chief in the States. The Central Government must pursue the matter with the State Governments and ensure that a similar mechanism, as indicated above, is set up in each State for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from

demoralising the police force, it has also the adverse effect of politicising the personnel. It is, therefore, essential that prompt measures are taken by the Central Government within the ambit of their constitutional powers in the federation to impress upon the State Governments that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission's Report (1979) was alarming and it has become much worse by now. The desperation of the Union Home Minister in his letters to the State Governments, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the constitutional scheme found necessary to remedy the situation is too stringent in these circumstances."

3.3. Summary of IRC recommendations:

I. CVC

1. CVC to be conferred statutory status; appointment of Central Vigilance Commissioner to be made under the hand and seal of the President (para 4.2).

2. Constitution of a Committee for selection of CVC (para 4.3).
3. CVC to overview CBI's functioning (para 5).
5. CVC to have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it (para 6).
6. Constitution of a Selection Committee (headed by CVC) for identifying a panel of names for selection of Director CBI; final selection to be made by ACC from such panel (para 8.2).
9. Transfer of incumbent Director CBI would need endorsement of the Selection Committee (para 8.5).
11. Selection/extension of tenure of officers upto the level of Joint Director (JD) to be decided by a Board under Central Vigilance Commissioner; JD and above would need the approval of ACC (para 8.7).

II. ED

1. Selection Committee headed by Central Vigilance Commissioner to recommend panel for appointment of Director Enforcement by the ACC (para 2.2).

2. Director Enforcement to have minimum tenure of two years. For his premature transfer, the Selection Committee headed by Central Vigilance Commissioner to make suitable recommendations to the ACC (para 2.3).

5. Extension of tenures upto the level of Joint Directors in the Enforcement Directorate to be decided by a Committee headed by Central Vigilance Commissioner (para 2.6).

22. Committee headed by Central Vigilance Commissioner to decide complaints of arbitrary action by Directorate officials (para 5.3)."

It would equally be relevant to notice certain portions of the report of the IRC in so far as they pertain to the CVC.

".... The Committee recommends that selection to this important post (CVC) should be made from a panel suggested by a committee to be set up for this purpose. If government find it practical, there could be a common committee for the selection of suitable persons to be appointed to the Election Commission, UPSC, C&AG, the Central Vigilance Commissioner. The selection may be done 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 to be furnished by the Cabinet Secretary. The appointments would be made by the President on the basis of the recommendations made by the committee headed by the Prime Minister.

CVC's role in regard to the CBI's functioning:

As earlier observed it is necessary to ensure accountability of CBI's functioning specially considering the obtaining misgivings about its functioning. While government shall remain answerable for the CBI's functioning, it appears necessary to introduce a visible objectivity in the mechanism to be established for over-viewing CBI's working. In this context, the committee recommends that the Central Vigilance Commissioner should be entrusted with the responsibility of superintendence over CBI's functioning. If this is accepted by government, the CBI should report to the Central Vigilance Commissioner (as per format and other details to be formalised) about the cases taken up for investigation; progress of investigations; cases in which chargesheets were filed and subsequently withdrawn from the court against the recommendations of the Director CBI, etc. The Central Vigilance Commissioner would also review the progress of all cases moved by CBI for sanction of prosecution of public servants pending with the competent authorities, specially those in which sanction was delayed or refused. Through such

superintendence, the Central Vigilance Commissioner should be made responsible for the efficient functioning of CBI. In this context, it would be necessary to take an early view regarding the conferment of statutory status on the CVC....

The committee recommend that CBI should regularly bring out an annual report and, further, that the CVC's annual report should contain a separate section on the CBI's functioning. Debate in the Parliament and elsewhere will, the committee feels, generate suggestions for the continuing fine-tuning of the guidelines for CBI's functioning. Such a measure in our opinion, would ensure transparency in the CBI's functioning and enable the Parliament and the general public to know more about its activities....

The committee proposes that the recommendations for the appointment of Director, CBI should come from a committee headed by the Central Vigilance Commissioner with Home Secretary and Secretary (Personnel) as members. This selection committee should also hear the views of the incumbent Director for evolving the best choice. This committee should draw up a panel of IPS officers on the basis of their seniority, integrity, experience in investigation and anti-corruption work in the State and the Centre. The final selection should be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the selection committee. If none among the panel is found

suitable, the reasons thereof need to be suitably recorded and the committee should be asked to draw up a fresh panel....

We are of the view that selection of officers in the CBI upto the level of Joint Director should be entrusted to a similar Board comprising the Central Vigilance Commissioner, Home Secretary and the Secretary (Personnel) with Director, CBI providing the necessary inputs. Extension of tenure or premature repatriation of officers upto the level of Joint Director should also be left for final decision of this committee. The recommendations of the Director CBI should be given due weightage and the reasons for non-acceptance thereof would need to be recorded by the committee....

Recommendations with respect to Enforcement Directorate:

An objective and transparent procedure should be adopted for the selection of Director, ED. The emphasis should be on selecting the right person by prescribing objective selection criteria. Selection of a suitable candidate shall be made on the recommendations of a selection committee headed by the Central Vigilance Commissioner and including the Home Secretary, Secretary (Personnel) and the Revenue Secretary. The panel recommended by the selection committee would be placed before the Appointments Committee of the Cabinet (ACC) for the appointment of Director of

Enforcement.... A proposal for the premature transfer of the Director should be carefully considered by the selection committee (headed by the Central Vigilance Commissioner) whose recommendations should be placed before the ACC....

Extension of tenure of officers upto the level of Joint Directors should be decided by a committee comprising the Central Vigilance Commissioner, the Revenue Secretary and the Director of Enforcement giving due weightage to the Director of Enforcement's recommendations in the matter....

The committee recommends that the Directorate should take time bound steps to establish a grievances redressal mechanism to promptly deal with complaints received from the public against actions of the Enforcement Directorate. In so far as complaints of arbitrary actions by senior officers of the Directorate are concerned, the committee recommend that these should be looked into by a committee headed by the Central Vigilance Commissioner and comprising Revenue Secretary, Director General (Revenue Intelligence), Enforcement Director and a senior representative of the Ministry of Law."

The committee (IRC) made several recommendations under paragraph 25 of decision for strengthening the Chief Vigilance Commissioner, Central Bureau of Investigation and

the Enforcement Directorate which recommendations indeed constitute the main basis for several directions given by the Supreme Court.

In the light of these aforequoted directions of the Supreme Court and the terms of the reference assigned to the Commission, it becomes essential to study the existing set up of the Central Vigilance Commission, Central Bureau of Investigation and the Enforcement Directorate in the succeeding Chapter in order to bring out with suitable recommendations.

CHAPTER IV

SET UP OF CENTRAL VIGILANCE COMMISSION, CENTRAL BUREAU OF INVESTIGATION AND ENFORCEMENT DIRECTORATE

4.1 History and functioning of the Central Vigilance Commission:

At this juncture, it would be appropriate to briefly notice the history and functioning of the Central Vigilance Commission, as obtaining at present.

The Central Vigilance Commission was established in 1964 pursuant to the recommendations of the Santhanam Committee to advise the government in respect of all matters pertaining to maintenance of integrity in administration. The CVC's jurisdiction extends to all public servants and employees of central public sector undertakings, nationalised banks and autonomous organisations. It would be appropriate at this stage to set out the Resolution dated February 11, 1964 of the Government of India (Ministry of Home Affairs) No.24/7/64-AVD (as amended up-to-date) which sets out the purpose for which the institution of CVC was created, its functions, powers and other incidental matters. The Law Commission had to and did keep in mind the provisions of this

Resolution while drafting the legislation. This is for the reason that the supervision over CBI and DE provided for in the judgment of the Supreme Court is only an additional function directed by court to be entrusted to CVC. It does not mean that the existing powers and functions of CVC were to be taken away or were intended to be curtailed in any manner. In fact the idea was to strengthen this institution by giving it a statutory character and entrust some more important functions to it. It is for the purpose of rendering the CVC an effective, fair and competent organ that the court had taken the trouble of giving the aforementioned specific directions. One of the main objectives behind giving a statutory basis to CVC is to free it from administrative or other control of any ministry or any other person or body. The Resolution dated February 11, 1964 reads as follows:

No.24/7/64-AVD
Government of India
Ministry of Home Affairs
....

New Delhi - 11
February 11, 1964

RESOLUTION

On a careful consideration of the recommendations made by the Committee on Prevention of Corruption under the chairmanship of Shri K. Santhanam, the government have decided to set up a Central Vigilance Commission which will be headed by the Central Vigilance Commissioner.

2. The powers and functions of the Central Vigilance Commission will be as follows:

The Central Vigilance Commission will have jurisdiction and powers in respect of matters to which the executive power of the Union extends -

- i) to undertake an inquiry into any transaction in which a public servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner.
- ii) to cause an inquiry or investigation to be made into -
 - a) any complaint that a public servant had exercised or refrained from exercising his powers for improper or corrupt purposes;
 - b) any complaint of corruption, misconduct, lack of integrity or other kinds of malpractices or misdemeanor 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;

(The relevant rules under the All India Services Act will be amended in consultation with the State Governments in order to bring the members of those services under the purview of the Commission).

iii) to call for reports, returns and statements from all Ministries/Departments/Corporate central undertakings so as to enable it to exercise general check and supervision over the vigilance and anti-corruption work in the Ministries/Departments/undertakings;

iv) to take over under its direct control such complaints, information or cases as it may consider necessary for further action which may be either;

a) to ask the Central Bureau of Investigation to register a regular case and investigate it, or

- b) to entrust the complaint, information or case for inquiry -
 - 1) to the Central Bureau of Investigation; or
 - 2) to the Ministry/Department/undertaking concerned;

- v) in cases referred to in paragraph (iv)(b) above the report of the inquiry will be forwarded to the Commission so that on a consideration of the report and other relevant records, it may advise the concerned Ministry/ Department/undertaking as to further action;

- vi) the Central Bureau of Investigation will forward to the Ministry of Home Affairs through the Commission the final report in all cases investigated by the Bureau in which it considers that a prosecution should be launched, provided that sanction for such prosecution is required under any law to be issued in the name of the President; and the Bureau will simultaneously send a copy to the

Ministry/Department/undertaking concerned for any comments which it may wish to forward to the Commission;

- vii) a) the Commission will advise the Ministry of Home Affairs, after examining the case and considering any comments received from the concerned Ministry/Department/undertaking, whether or not prosecution should be sanctioned. (Orders will thereafter be issued by the Ministry of Home Affairs in whom the power to accord such a sanction will be vested);
- b) in cases where an authority other than the President is competent to sanction prosecution and the authority does not propose to accord the sanction sought for by the Central Bureau of Investigation the case will be reported to the Commission and the authority will take further action after considering the Commission's advice;

- viii) the Commission will have the power to require that the oral inquiry in any departmental proceedings, except in petty cases, should be entrusted to one of the Commissioners for Departmental Enquiries. (A suitable number of Commissioners for Departmental Enquiries will be attached to the Central Vigilance Commission).
- ix) the Commission will examine the report of the Commissioner for Departmental Enquiries, which will in all cases be submitted by the Commissioner for Departmental Enquiries to the Central Vigilance Commission, and the Commission will forward the record of the case to the appropriate disciplinary authority with its advice as to further action;
- x) in any case where it appears that discretionary powers had been exercised for an improper or corrupt purpose the Commission will advise the Ministry/Department/undertaking that suitable action may be taken against the public servant concerned; and if it appears that the procedure or practice is such as affords scope or facilities for

corruption or misconduct the Commission may advise that such procedure or practice be appropriately changed, or changed in a particular manner;

- xi) the Commission may 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;
- xii) the Commission may collect such statistics and other information as may be necessary;
- xiii) the Commission may obtain information about action taken on its recommendations;
- xiv) the Commission will submit an annual report to the Ministry of Home Affairs about its activities drawing particular attention to any recommendation made by it which had not been accepted or acted upon; and a copy of the report together with a memorandum explaining the reasons for non-acceptance of any recommendations of the Commission will be laid by the Ministry of Home Affairs before each House of Parliament.

3. The Central Vigilance Commissioner -

(a) the proposal for the appointment of the Central Vigilance Commissioner shall be initiated by the Cabinet Secretary and approved by the Prime Minister; (*)

(*) Vide DOPT's Resolution No.247/2/95-AVD-II dated 1.11.1995.

(b) will not be removed or suspended from office except in the manner provided for the removal or suspension of the Chairman or a Member of the Union Public Service Commission;

(c) will hold office for a term of five years; (**)

(**) Vide DOPT's Resolution No.247/1/90-AVD-II dated 21.5.1990.

(d) on ceasing to hold the office of the Central Vigilance Commissioner, shall not accept any further employment under the Union or a State Government or accept any political or public office. Provided that the Central Government

may be exceptional circumstances, when the public interest so requires, permit a person who has held the office of the Central Vigilance Commissioner to accept any such employment or office. (***)

(***) Vide Deptt. of Personnel Resolution No.262/2/ 72-AVD-II dated 15.2.1972.

4. The Central Vigilance Commission will, for the present, be attached to the Ministry of Home Affairs, but 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.

5. The Central Vigilance Commissioner will be responsible for the proper performance of the duties and responsibilities assigned to the Commission and for general coordinating the work of and advising the Ministries/Departments/undertakings in respect of all matters pertaining to maintenance of integrity in administration.

6. The Central Vigilance Officer in Ministries/ Departments will be appointed in consultation with the Central Vigilance Commission and no person whose appointment as the Chief Vigilance Officer is objected to by the Central Vigilance Commission will be so appointed.

7. The Central Vigilance Commissioner will have the power to assess the work of the Chief Vigilance Officers and Vigilance Officers and the assessment will be recorded in the character rolls of the officers.

8. The Central Vigilance Commission will take the initiative in prosecuting persons who are found to have made false complaints of corruption or lack of integrity against public servants.

O R D E R

ORDERED that a copy of this Resolution be communicated to all State Governments, all Ministries of the Government of India, etc., and also the Resolution be published in the Gazette of India.

L.P. SINGH

Special Secretary to the Govt. of India

The vast jurisdiction vested in the Central Vigilance Commission is evident from a plain reading of the above Resolution.

4.2. History and functioning of the Central Bureau of Investigation:

We may now briefly mention the position of the Central Bureau of Investigation. During World War II, the Government of India issued an ordinance in 1943 constituting a special police force for the investigation of certain offences committed in connection with the affairs of the Central Government. The said ordinance lapsed with the end of the war. In the year 1946, the Parliament enacted the Delhi Special Police Establishment Act. The Act was intended to create a special police establishment, a specialised agency, for making enquiries and investigations into certain specified offences. Section 5 of the Act provides that the Central Government can, with the concurrence of the State Governments, extend the jurisdiction of the SPE to all States. SPE is envisaged as supplementary to the State police forces, enjoying great powers of investigation in cases notified under section 5 in respect of offences notified under section 3 of the DSPE Act, 1946 which can of course be exercised in a State only with the consent of the Government of that State. The CBI in its present form came

into being in 1963 through a Resolution adopted by the Government of India pursuant to the recommendations of the Committee on Prevention of Corruption (Santhanam Committee). The Resolution also specified the types of cases which would be investigated by the CBI, which of course continues to derive its legal powers for investigation from the aforesaid Act. Over the years the character of the CBI has undergone a significant change. Its role is no longer restricted to anti-corruption activities. It is being increasingly called upon to investigate the conventional crimes and banking and other economic offences. Of course, the main thrust of its functions continues to be on the detection and investigation of offences of bribery and corruption committed by public servants under the control of the Central Government and its undertakings. According to the Report of the IRC, "under the existing arrangements, the CBI is answerable to the courts in regard to the cases investigated by it. It reports to the Department of Personnel and Training in respect of its administrative matters. During the Committee's discussions with Secretary, Personnel and Director CBI, it was noted that the Personnel Department provides CBI with the required back-up support to enable it to carry out its functions but does not play any role in over-viewing the investigations carried out by the agency. The CBI furnishes to the Government monthly reports indicating the number of cases taken up for investigation; number in which chargesheets have been filed in courts; number of cases where sanction for

prosecution is awaited from competent authorities etc. The Committee found that, based on the aforesaid reports, Government has not been exercising the nature of control over CBI's functioning which has compelled the Supreme Court and certain High Courts to take over monitoring of individual cases."

The directions given by the Supreme Court in the matter of supervision of the functioning and working of the CBI must be understood in the above context. It is obvious that for implementing the directions of the Supreme Court, the relevant provisions of the Delhi Special Police Establishment Act, 1946 have also got to be amended.

4.3 Constitution of the Enforcement Directorate:

Section 3 of the Foreign Exchange Regulation Act, 1973 provides for appointment of Directors of Enforcement, Additional Directors of Enforcement, Deputy Directors of Enforcement and Assistant Directors of Enforcement. Section 4, inter alia, deals with appointment of the aforesaid officers. According to section 4, the Central Government is the appointing authority for the aforesaid four class of officers, while other officers of Enforcement can be appointed by any of the above four category of officers as may be authorised by the Central Government. The Enforcement

Directorate implements FERA, which is an Act to consolidate and amend the law relating to certain payments and dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency for the conservation of foreign exchange resources of the country and the proper utilisation thereof in the interest of the economic development of the country. According to the IRC Report, the total sanctioned strength of ED is 798 and its budget is Rs.10.37 crores per annum. The ED functions through seven zones at Delhi, Calcutta, Chennai, Mumbai, Ahmedabad, Bangalore and Jalandhar and 12 field units/subzonal offices. The IRC Report further states that with the introduction of policy of economic liberalisation, the functions of ED have undergone a qualitative change. It is now concentrating on cases pertaining to large illegal cash flows in the nature of money-laundering where the funds have been generated either through evasion of income-tax, sales tax, excise or gains from illicit narcotics apart from organised financial crimes involving over-invoicing, under-invoicing for routing such illegally generated money either for laundering or retention abroad. Indeed the recent events show that even some politicians and bureaucrats have received monies, whether knowingly or unknowingly, which are proceeds of money laundering activities. It appears further that the working of the ED may undergo significant change with the proposed enactment of the Foreign Exchange Management Act (FEMA) which is supposed to replace the

present FERA. The IRC was also informed that the Government is contemplating a Money Laundering Law which would create a new offence in relation to the gains of crime for certain serious offences like trafficking in drugs and psychotropic substances, narco-terrorism, heinous offences under Indian Penal Code and certain offences under the Prevention of Corruption Act, which also may be placed within the jurisdiction of the ED.

It is equally obvious that for carrying out the directions of the Supreme Court relating to ED, certain amendments are called for in the present law i.e. FERA. While drafting the FEMA which is supposed to replace FERA, it is obvious that the aforesaid directions of the Supreme Court have to be kept in mind and implemented.

CHAPTER V

CHANGING SCENARIO IN LAW RELATING TO PUNITIVE MEASURES AGAINST PERSONS HOLDING PUBLIC OFFICE

5.1 Of late, many cases relating to arbitrary/misuse of power by public functionaries have drawn the kind attention of the Hon'ble Supreme Court of India.

The court held in Common Cause (a registered society) v. Union of India, (1996) 6 SCC 530, 555 that even in the matter of grant of largesses including award of jobs, contracts, quotas and licences, the government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of the land. It held that a Minister in the Central Government is in a position of a trustee in respect of the public property under his charge and discretion. The petrol pumps/gas agencies are a kind of wealth which the government must distribute in a bona fide manner and in conformity with law. The court observed as follows:-

" It is high time that the public servants should be held personally responsible for their malafide acts in the discharge of their functions as public servants. This Court in Lucknow Development

Authority v. M.K. Gupta, approved "Misfeasance in public offices" as a part of the Law of Tort. Public servants may be liable in damages for malicious, deliberate or injurious wrongdoing. According to Wade:

There is, thus a tort which has been called misfeasance in public office and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury.

With the change in socio-economic outlook, the public servants are being entrusted with more and more discretionary powers even in the field of distribution of government wealth in various forms. We take it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained such public servant. No public servant can say "you may set aside an order on the ground of malafide but you cannot hold me personally liable.". No public servant can arrogate to himself the power to act in a manner which is arbitrary."

5.2 Award of Exemplary damages: While referring to the observations of Thomas Ringham M.R. in *Broome v. Cassell & Co.Ltd.*, 1972 AC 1027= (1972) 1 All ER 801, the Supreme Court in another case entitled 'Common Cause, a Regd. society v. Union of India', (1996) 6 SCC 593, 598 observed:-

" In the said case Thomas Ringham M.R. further elaborated the concept in the following words;

In the first category there had been what he variously described as an 'arbitrary and outrageous use of executive power.' and 'oppressive, arbitrary or unconstitutional action by the servants of the government'. Minute textual analysis of these expressions is inappropriate. This was a judgment, not a statute. But there can be no doubt what Lord Devlin was speaking out. It was gross misuse of power, involving tortious conduct, by agents of government. According to the traditional classification of the law of tort, such misuse of power could give rise to any one of a number of causes of action, which Lord Devlin was not at pains to identify."

The Court of Appeal also relied upon the judgment of the House of Lords in *Broome v. Cassell & Co. Ltd.*

We are of the view that the legal position that exemplary damages can be awarded in a case where the action of a public servant is oppressive, arbitrary or unconstitutional is unexceptionable."

The court directed the Minister to pay a sum of Rs.50 lakhs as exemplary damages to the Government Exchequer holding "since the property which Capt.Sharma was dealing was public property, the government which is "by the people" has to be compensated."

5.3 Penal action also attracted for abuse of official position: In the matter of a housing scam. the Supreme Court in the case of Shiv Sagar Tiwari v. Union of India, (1996) 6 SCC 599, referred to the relevant part of its order dated 19.7.96, quoted below:-

"Mr. N.N. Singh, Superintendent of Police, CBI, New Delhi has placed on record Interim Report No. 3 dated 17.6.1996 and Interim Report No. 4 dated 16.7.1996. Interim Report No. 3 indicates that a separate preliminary enquiry was registered against

Smt. Shiela Kaul and others in the matters of allotment of shops/stalls made by her on 7.6.1995 and 3.7.1995 in favour of her close relatives/friends of her personal staff as well as those of the officials of Directorate or Estates. According to the report, the preliminary enquiry, prima facie, establishes that Smt Shiela Kaul had abused her official position as the Minister for Urban Development and she had entered into a criminal conspiracy with some of the acquaintances and her personal staff, pursuant to which she in abuse of her official position, made these allotments and caused wrongful loss to the Government by effecting allotments on economical licence fees basis without inviting any tender or by issuing public notice for inviting the response from the general public from the point of view of earning maximum revenue for the Government. A regular case under Sections 120-B, 420, 468/471 IPC and SEction 13(2) read with SEction 13(1)(d) of the Prevention of Corruption Act, 1988, has been registered against Shiela Kaul and her Additional Private Secretary Rajan S. Lala and others."

Thus it was held that when a public functionary had abused her official position and caused wrongful loss to the government, she was liable for prosecution under the relevant provisions of the Prevention of Corruption Act, 1988 and IPC.

CHAPTER VI

RECOMMENDATIONS AND CONCLUSIONS

6.1 The Commission has perused the judgement of the Hon'ble Supreme Court in Vineet Narayan's case (supra) and other relevant decision in the preceding chapters and has also perused the draft Bill entitled "the Central Vigilance Commission Bill" prepared by the Chief Vigilance Commission stated in para 1.1, supra.

As noticed hereinbefore the directions given by the Supreme Court are not confined to the CVC but extend to CBI and ED as well. Indeed the functions and duties of the CVC indicated by the court cannot be divorced and disassociated from the functioning of the CBI and ED. The Commission presumes that giving a statutory basis to CVC is the first step in implementation of the said directions and that the government will be taking up simultaneously the issue of implementation of the directions of the Supreme Court with respect to the CBI and ED. The Central Government may also consider taking immediate steps to create the nodal agency and the prosecution agency in accordance with the directions contained in section III and IV of para 62 of the judgment.

6.2 Accordingly, the Law Commission is submitting a draft of the proposed Bill called the Central Vigilance Commission Bill, 1998 and two consequential amending Bills, namely, the Delhi Special Police Establishment (Amendment) Bill, 1998 and the Foreign Exchange Regulation (Amendment) Bill, 1998, at the end of this chapter.

The Commission makes the following recommendations as regards certain basic features of the proposed Central Vigilance Commission Bill, 1998:-

6.3 It may be mentioned that though the directions of the Supreme Court contemplate a single-member Central Vigilance Commission, the Law Commission is of the opinion that having regard to the vast jurisdiction, extensive powers and expansive supervisory jurisdiction now being vested in the Central Vigilance Commission, it is better and appropriate that the Central Vigilance Commission is made a multi-member body. It is axiomatic that such extra-ordinary powers should never be vested in one individual. Moreover, a multi-member body may have the advantage of mutual deliberation and debate which would go to make the decisions of the Central Vigilance Commission more considered and result of thorough analysis. Accordingly, we are recommending for a five-member body comprising a Chief Vigilance Commissioner and four Vigilance Commissioners.

In T.N.Seshan, Chief Election Commissioner of India v. Union of India & Ors. (JT 1995 (5) S.C. 337), the Supreme Court referred to the decision in S.S.Dhanoo v. Union of India and Others, (1991) 3 SCC 567, paragraph 26 as follows:

"There is no doubt that two heads are better than one, and particularly when an institution like the Election Commission is entrusted with vital functions, and is armed with exclusive uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however, allwise he may be. It is true that the independence of an institution depends upon the persons who man it and not on their number. A single individual may sometimes prove capable of withstanding all the pulls and pressures, which many may not. However, when vast powers are exercised by an institution which is accountable to none, it is politic to entrust its affairs to more hands than one. It helps to assure judiciousness and want of arbitrariness. The fact, however, remains that where more individuals than one, man an institution, their roles have to be clearly defined, if the functioning of the institution is not to come to a naught."

The Constitution Bench approved the observations made in T.N.Seshan's case, supra holding under para 14 as follows:-

"....Notwithstanding this bitter experience, the Division Bench made the observations in paragraph 26 extracted herein before, with which we are in respectful agreement."

6.4 The Supreme Court has indicated for taking measures for improvement of infrastructure, methods of investigation etc. It has emphasised that in order to strengthen CBI's in-house, machinery, professionals from the revenue, banking and security sectors should be inducted into the CBI (see pr.62 I (11) of the decision). Similarly it has stressed that in-house legal advice mechanism shall be strengthened by appointment of competent legal advisors in the CBI/Directorate of Enforcement (see pr.62 (II) (11) of the decision).

As far as the directions concerning the improvement of infrastructure and methods of investigation are concerned, it is relevant to refer to the organisational set up for investigation of offences by the Serious Fraud Office ("SFO") in U.K. (Arlidge & Parry on Fraud, 2nd Edition Chapter 13). In 1983 the Lord Chancellor and the Home Secretary appointed Fraud Trials Committee under the Chairmanship of Lord Roskill to address concerns which have been expressed as to the

difficulties of investigating and prosecuting complex fraud. The SFO became fully operational in April, 1998. Thereafter the Graham and Davie reports also recommended for changes in the working practices of the SFO. It is pertinent to quote the relevant para concerning organisational set up of investigating such serious offences of fraud there:

"13_012 If a case is accepted for investigation, a case team is appointed by the Deputy Director. This team is headed by a case controller, who will be an experienced lawyer. Other members of the team may include an investigating lawyer, accountants, police officers, information technology personnel and administrative support staff. It is this multi-disciplinary approach to investigations that is the innovating hallmark of the S.F.O. The case team may also work closely with other experts, e.g. bankers, stockbrokers and computer specialists, seconded to the S.F.O. as required by the needs of a particular investigation. The case team meets regularly at case conferences, at which the conduct of the investigation is reviewed and its future direction considered."

Thus the multi-disciplinary approach to investigations is the innovative hallmark of the S.F.O. Besides the case team may also work closely with other

experts for example bankers, stockbrokers and computer specialists, seconded to the S.F.O. as required by the needs of a particular investigation. The Commission feels that in sensitive cases and also cases involving complex issues, it is better and appropriate to have a multi-disciplinary investigative team which may work closely with experts in other fields according to the needs of a particular investigation.

6.5 Providing CBI/ED separate trained police force with ultra modern weapons:-

In Vineet Narain's case, supra the Supreme Court has also directed that officers of the Enforcement Directorate handling sensitive assignments shall be provided adequate security to enable them to discharge their functions fearlessly (see para 62(II)(5) of the decision cited in SCALE).

It may be emphasised that not only the Enforcement Directorate but the Central Bureau of Investigation is empowered to carry out search and seizure during investigation of cases and instances have been noticed in recent past in which crores and crores of rupees are recovered from the high level politicians during the searches and seizures in States other than the capital of the country. Such politicians are obviously having strong holds in the

States to which they belong and obtaining local police assistance by the officials of CBI and ED to conduct raids for such searching and seizure of property becomes very difficult. Without adequate police force, the officials of CBI/ED, may not be able to carry on such searches and seizures fearlessly. There may be chances of stiff resistance by local supporters of such politicians. In order to meet such unwarranted situations, in which the evidence of the crime may disappear, the Law Commission is of the considered opinion that in order to strengthen the CBI and ED with separate central armed police force and to let their officials work fearlessly, as well as to provide security to the officers of the ED and CBI handling sensitive assignments, the ED and the CBI may be provided with separate adequate central armed police force equipped with modern weapons. Such contingent of police force can be trained for giving protection during searches and made mobile through air/road and available to their officials at a short notice. The search team should be equipped with latest technological machines e.g. money counting machine, wireless etc. to calculate the amount recovered during searches.

The officers of the CBI and the Enforcement Directorate should also be entitled to call upon the officers and agencies of Central and State Governments to assist them in conducting their operations including searches and

seizures. The officers and agencies of Central and State Governments shall render full and proper assistance when so called upon by the CBI and the Enforcement Directorate.

6.6 Measures to complete trials involving high level politicians/public men, with utmost expedition:-

The Supreme Court observed in Vinbeet Narain's case in its order dated 7.10.96 (reported in 1996(6) SCC 354)-and also referred to in Vineet Narain's case, 1997(7) SCALE 656 (667) that

"the concerned court dealing with the above matters has to bear in mind that utmost expedition in the trial and its early conclusion is necessary for the ends of justice and credibility of the judicial process. Unless prevented by any dilatory tactics of the accused, all trials of this kind involving public men should be concluded most expeditiously, preferably within three months of commencement of the trial. This is also the requirement of speedy trial read into Article 21."

(emphasis supplied)

It is relevant to state that in "Common Cause" A Registered Society Through its Director v. Union of India & Ors. 1996(4) SCALE 127, paras 3, 4 also it was emphasised to try such offences on priority basis. Thus, it was held:-

"4. Directions (1) and (2) hereinabove shall not apply to cases of offences involving of corruption, misappropriation of public funds, whether under the Indian Penal Code, Prevention of Corruption Act or any other statute, (b) smuggling, foreign exchange violation..... offences relating to public servants....."

"5. The criminal courts shall try the offences mentioned in para (4) above on a priority basis. The High Courts are requested to issue necessary directions in this behalf to all the criminal courts under their control and supervision."

Effective steps should be taken to give effect to the above observations of the Supreme Court.

6.7 No premature media/publicity by the CBI/ED:-

In order to maintain the integrity of the investigation and also to avoid any prejudice to the accused, it is essential that no premature media/publicity by the

CBI/ED should be allowed as desired by Hon'ble Supreme Court in Vineet Narain's case, supra (see pr.62 (II)(6) of the decision). Such premature publicity may also tarnish the image of public functionary/accused even if he is acquitted ultimately. In order to implement it, it is essential to provide a clause in the Bill of CVC/DSPE (Amendment) Bill to the following effect:-

"Secrecy of Information:-

Any information obtained by the Central Vigilance Commission or any of the Vigilance Commission or officers or employees in the course of or for the purposes of any inquiry or proceeding or investigation, and any evidence recorded or collected in connection therewith shall be treated as confidential during the course of enquiry, ~~or~~ proceeding or investigation."

6.8 Adhering to the provisions of the Manual in relation to investigative functions like raids, seizures and arrests:-

The Supreme Court has emphasised the necessity of CBI adhering scrupulously to the provisions of the CBI Manual in relation to investigative functions like raids, seizures and arrests. It has cautioned that any deviation from the

established procedures should be viewed seriously and severe disciplinary action taken against the concerned officials. We are of the opinion that such checks should also be enforced against ED as well in respect of their investigative/enquiry functions.

Bill No. of 1998

The Central Vigilance Commission Bill, 1998

A

BILL

to confer upon the Central Vigilance Commission the statutory status and to give statutory recognition to the functions of the Central Vigilance Commission with a view to make it a more effective and efficient institution to undertake, guide and supervise investigations and inquiries into allegations of corruption against public servants and employees of the public sector corporations and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:-

CHAPTER - I

Preliminary

Short title, extent and commencement

- 1.(1) This Act may be called the Central Vigilance Commission Act, 1998.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint provided that such date shall not be later than three months from the date on which the President of India grants assent.

Definitions

2. (a) "Commission" means and refers to the Central Vigilance Commission constituted under sub-section (1) of Section 3;
- (b) "Chief Vigilance Commissioner" means the Chief Vigilance Commissioner appointed under sub-section (3) of section 3;
- (c) "Central Bureau of Investigation" (CBI) means the organisation set up under the Delhi Police Establishment Act, 1946 read with the Resolution of the Government of India No.4/31/61-T/MHA dated 1.4.1963;
- (d) "Enforcement Directorate" means the Directorate of Enforcement constituted under and comprising Directors of Enforcement, Additional Directors of Enforcement, Deputy Directors of Enforcement and Assistant

Directors of Enforcement and such other officers of Enforcement of the like rank appointed under section 3 of the Foreign Exchange Regulation Act, 1973

(e) "Corruption" includes-

(a) any act done or omitted to be done by a public servant with an improper purpose or a corrupt motive in contravention of any of the provisions of-

(i) the Prevention of Corruption Act, 1988;

or

(ii) Indian Penal Code; or

(iii) any other law for the time being in force which bears adversely on the integrity of the public servant; or

(b) any act done or omitted to be done by a public servant involving lack of integrity; or

(c) any act done or omitted to be done by a public servant indicating gross negligence on his part; or

(d) any act of the nature indicated in the preceding clauses (a) to (c) done in violation of the relevant Conduct, Discipline and Appeal Rules.

(g) "Public servant" means a person defined as a public servant under clause (c) of section 2

of the Prevention of Corruption Act, 1988 and shall also include a person defined as public servant in section 21 of the Indian Penal Code, 1860;

(h) "Prescribed" means prescribed by rules made under this Act.

(i) "Vigilance Commissioner" means the Vigilance Commissioner appointed under sub-section (3) of section 3;

CHAPTER - II

Central Vigilance Commission

Constitution of Central Vigilance Commission:-

3.(1) As from the date of commencement of this Act, there shall be constituted a Commission called the Central Vigilance Commission to exercise the powers conferred on, and the functions assigned to it, under this Act.

(2) The Central Vigilance Commission shall consist of-

- (a) a Chief Vigilance Commissioner; and
- (b) four Vigilance Commissioners.

(3) The Chief Vigilance Commissioner and the other Vigilance Commissioners shall be appointed by the President of India under his hand and seal.

Provided that every appointment made under this sub-section shall be made after obtaining the recommendations of a committee consisting of -

- (a) The Prime Minister Chairman
- (b) Minister in-charge of - Member
the Ministry of Home
Affairs in the Government
of India
- (c) Leader of the Opposition - Member
in the House of People
Provided that in case there
is no member of the said
House designated as "the
Leader of the Opposition in
the House of the People", the
the leader of the largest
recognised political party or
group, as the case may be,
shall be the member of the
Committee.

The Committee shall select the Chief Vigilance Commissioner and the 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 Government of India or an equivalent post in any statutory corporation and having qualifications specified under section 4 of the Act, the panel shall be prepared by the Cabinet Secretary to the Government of India, and submitted along with relevant record, to the Prime Minister for being placed before the Committee.

Qualification for appointment of Chief Vigilance Commissioner and Vigilance Commissioners:-

- 4.(1) The Chief Vigilance Commissioner shall be a person having experience and expertise in administrative matters and shall be a person known for his ability, integrity, independence and efficiency.
- (2) The four Vigilance Commissioners shall be persons having wide experience and expertise in the fields of administration, finance, investigation and law respectively and shall be persons known for their ability, integrity, independence and efficiency.

Chief Vigilance Commissioner and Vigilance Commissioners to be ineligible to hold other offices.

- 5.(1) The Chief Vigilance Commissioner or a Vigilance Commissioner shall not hold any office of trust or profit (other than his office as Chief Vigilance

Commissioner or Vigilance Commissioner, as the case may be, or in case of serving civil servant, his lien in his parent organisation if allowed to be retained as per rules applicable), or be connected with any political party, or carry on any business, or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chief Vigilance Commissioner or Vigilance Commissioner shall, --

- (a) if he holds any office of trust, or profit, resign from such office; or
- (b) if he is connected with any political party, sever his connections with it; or
- (c) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or
- (d) if he is practising any profession, cease to practise such profession.

Term of office, salary and allowances and other conditions of service of Chief Vigilance Commissioner and Vigilance Commissioners.-

- 6.(1) The Chief Vigilance Commissioner or Vigilance Commissioner shall hold office as such for a term of five years from the date on which he enters upon his

office, or till he attains the age of 65 years, whichever is earlier, but shall not be eligible for reappointment.

- (2) On ceasing to hold office, a Chief Vigilance Commissioner or the Vigilance Commissioner shall be ineligible to hold any office of profit under the Government of India or the Government of a State or accept any kind of employment under any organisation, public, private or international organisation, as the case may be.

Provided that a Vigilance Commissioner shall be eligible to be appointed as the Chief Vigilance Commissioner, but his term of office both as Vigilance Commissioner and as Chief Vigilance Commissioner put together, shall not exceed the period of five years.

- (3) The salary, allowances and other conditions of service of the Chief Vigilance Commissioner and the Vigilance Commissioner shall be the same as those of the Comptroller and Auditor General of India. Provided that the Chief Vigilance Commissioner shall further be entitled to an additional allowance of Rs.500/- per month.

The status of the Chief Vigilance Commissioner and Vigilance Commissioners shall be that of the Comptroller and Auditor General of India:

Provided that the Chief Vigilance Commissioner shall rank above the Vigilance Commissioners;

Provided further that such salary shall be in addition to any pension to which the Chief Vigilance Commissioner or Vigilance Commissioner may be entitled to in respect of any previous service under the Government of India or under the Government of a State and no deduction shall be made from such salary on the ground of his having received any retirement gratuity, or on the ground that he received the commuted value of a portion of the pension, in respect of his previous service.

- (4) The Chief Vigilance Commissioner and Vigilance Commissioner shall, before entering upon his office, make and subscribe to an oath and of secrecy in such form and in such manner and before such authority as may be prescribed.

Resignation

7. The Chief Vigilance Commissioner or Vigilance Commissioner may resign his office, by writing under his hand addressed to the President of India. Provided such resignation shall take effect only on its acceptance by the President of India.

Removal of Chief Vigilance Commissioner or Vigilance Commissioner.-

- 8.(1) Subject to the provisions of sub-section (3), the Chief Vigilance Commissioner or the Vigilance Commissioner shall only be removed from his office by order of the President on the ground of proved misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry, held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chief Vigilance Commissioner or Vigilance Commissioner, ought on any such ground to be removed.
- (2) The President may, in consultation with the Chief Justice of India, suspend the Chief Vigilance Commissioner or any Vigilance Commissioner of the Central Vigilance Commission in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed order on receipt of the report of the Supreme Court.

- (3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Vigilance Commissioner or any Vigilance Commissioner, if the Chief Vigilance Commissioner or such Vigilance Commissioner, as the case may be,-
- (a) has been adjudged as insolvent; or
 - (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
 - (c) has become physically or mentally incapable of acting as a Chief Vigilance Commissioner or a Vigilance Commissioner; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Chief Vigilance Commissioner or a Vigilance Commissioner; or
- (4) Notwithstanding anything contained in sub-section (3), no Chief Vigilance Commissioner or Vigilance Commissioner shall be removed from his office on the ground specified in clause (d) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the President, has, on an enquiry, held by it in accordance with such procedure

as prescribed in this behalf by the Supreme Court, reported that he ought, on such ground or grounds, to be removed.

Officers of the Commission and other staff.-

- 9.(1) (a) The Commission shall, for the purpose of assisting it in the discharge of its functions under this Act, appoint a Secretary and such other officers and employees as the President may determine, from time to time, in consultation with it.
- (b) The Commission shall establish a department of inquiries comprising adequate number of officers designated as commissioners for departmental inquiries to conduct oral inquiries against public servants.
- (c) The Commission may also establish a technical wing consisting of engineering and financial experts consisting of such number of engineering and financial experts as may be required for due discharge of its functions and powers.
- (2) Without prejudice to the provisions of sub-section (1), the Commission may secure-
- (i) the services of any officer or employee or investigating agency of the Central Government or a

State Government with the concurrence of that Government, or

(ii) the services of any other person or agency.

(3) The terms and conditions of service of the officers and employees referred to in sub-section (1) and of the officers, employees, agencies and persons referred to in sub-section (2) (including such special conditions as may be considered necessary for enabling them to act without fear in the discharge of their functions) shall be such as the President may determine, from time to time, in consultation with the Commission.

(4) In the discharge of their functions under this Act, the Secretary, the officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (2) shall be subject to the exclusive administrative control and direction of the Commission.

Proceedings of the Central Vigilance Commission:-

10(1) The Central Vigilance Commission shall meet at the head office or any of its offices at such time and on such dates as the Chief Vigilance Commissioner may direct. It shall be open to the Chief Vigilance

Commissioner to constitute sub-committees comprising the Chief Vigilance Commissioner and one or more Vigilance Commissioners for convenient transaction of the business of the Commission, which shall be empowered to take decisions on behalf of the Commission.

- (2) The Chief Vigilance Commissioner or, if he is unable to attend a meeting of the Commission, any other Vigilance Commissioner nominated by the Chief Vigilance Commissioner in this behalf and, in the absence of such nomination or where there is no Chief Vigilance Commissioner, any Vigilance Commissioner chosen by the Vigilance Commissioners present from among themselves, shall preside at the meeting.

- (3) All questions which come up before any meeting of the Central Vigilance Commission shall be decided by a majority of votes of the Chief Vigilance Commissioner/Vigilance Commissioners present and voting, and in the event of an equality of votes, the Chief Vigilance Commissioner or the person presiding shall have the right to exercise a second or casting vote.

- (4) Save as otherwise provided in sub-section (3), Chief Vigilance or every Vigilance Commissioner shall have one vote.
- (5) All orders and decisions of the Central Vigilance Commission shall be authenticated by the Secretary or any other officer of the Central Vigilance Commission duly authorised by the Chief Vigilance Commissioner in this behalf.

Vacancies not to invalidate proceedings of Central Vigilance Commission

11. No act or proceedings of the Central Vigilance Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Central Vigilance Commission.

Expenses of Central Vigilance Commission to be charged on Consolidated Fund of India:-

12. The expenses of the Central Vigilance Commission including all salaries, allowances and pensions payable to, or in respect of, the Chief Vigilance

Commissioner and the Vigilance Commissioners and the staff of the Commission shall be charged upon the Consolidated Fund of India.

Powers of the Central Vigilance Commission:-

13. The Central Vigilance Commission shall, for the purposes of any inquiry or proceedings under this Act have the powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
- (b) the discovery and production of any document or other material object producible as evidence;
- (c) the reception of evidence on affidavits;
- (d) the requisition of any public record;
- (e) the issue of commission for examination of witnesses;
- (f) review its decision, directions and orders;
- (g) any other matter which may be prescribed.

CHAPTER III

Jurisdiction and powers of the Central Vigilance Commission

Functions of the Central Vigilance Commission

14. (1) The jurisdiction and powers of the Central Vigilance Commission shall extend to matters to which the executive power of the Union of India extends.
- (2) The Central Vigilance Commission shall have the power:
- a) to undertake an inquiry into any transaction in which a public servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner or is alleged or suspected to be guilty of corruption;
 - b) to cause an inquiry or investigation to be made into:
 - i) any complaint that a public servant has exercised or refrained from exercising his powers for improper or corrupt purpose;
 - ii) any complaint of corruption, misconduct lack of integrity or other kind of malpractice 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;

- c) to call for reports/returns and statements from all Ministries/Departments/corporate central undertakings so as to enable it to exercise a general check and supervision over the vigilance and anti-corruption work in the Ministries/Departments/undertakings;
- d) to call for annual reports from the public servants containing full and proper disclosure of all the movable and immovable assets held by the public servant, and the members of his family including all and any receipts of any movable or immovable assets in any manner whatsoever and from any source whatsoever during the preceding year; to call for such other information from public servants as may be required in the interest of integrity of administration;

Explanation: For the purposes of this clause, the expression "members of family" in relation to a public servant includes -

(i) the wife or husband, as the case may be, of the public servant, whether residing with the public servant or not but does not include a wife or husband, as the case may be, separated from the public servant by a decree or order of a competent Court;

(ii) son or daughter or step-son or ste-daughter of the public servant and wholly dependent on him, but does not include ~~or~~ step-child who is no longer in any way dependent on the public servant or of whose custody the public servant has been deprived by or under any law;

(iii) any other person related, whether by blood or marriage, to the public servant or to the public servant's wife or husband and wholly dependent on the public servant;

- e) 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;

f) 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;

g) to take over under its direct control such complaints, information or cases, as it may consider necessary for further action which may be either:

(a) to ask the CBI to register a regular case and investigate it; or

(b) to entrust the complaint, information or case for enquiry-

(i) to the Central Bureau of Investigation and for further appropriate action; or

(ii) to refer the matter to the Ministry/ Department/Undertaking concerned for appropriate action, as the case may be.

- h) to advise the Ministry of Home Affairs or other competent authority - after examining the cases and considering any comments received from the concerned Ministry/ Department/undertaking - whether or not prosecution should be sanctioned or why the sanction should not be refused, as the case may be;

- i) to advise the Ministries/Departments/ undertakings upon the appropriate action to be taken against a public servant who appears to the Commission to have exercised his powers for an improper or corrupt purpose and also to advise them upon the changes required in prevalent procedures and practices which afford scope for or facilitate corruption or misconduct;

- j) 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;

- k) to collect such statistics and other information as may be necessary for appropriate and effective discharge of its functions;
- l) to call for information from the appropriate authorities about action taken on the recommendations made by the Commission;
- m) to direct the Commissioners for departmental enquiries to conduct oral enquiries on behalf of the departmental authorities and to require that the oral inquiry in any departmental proceedings (except in the case of minor charges) should be entrusted to one of the commissioners for departmental enquiries, to examine the reports submitted by the commissioners for departmental enquiries and advise the competent disciplinary authority on the further action to be taken or penalty to be imposed, as the case may be;
- n) to submit an annual report to the Parliament about the activities of the Commission during the preceding year pointing out in particular cases in which the recommendations of the

Central Vigilance Commission have not been accepted or acted upon; such report shall contain a separate section setting out in detail the functioning of the Central Bureau of Investigation during the relevant year;

- o) to perform such other functions and duties and to exercise such other powers as may be conferred upon the Commission by rules made under the Act.

Evidence

- 15. For the purpose of any enquiry, the Central Vigilance Commission may require any public servant or any other person, who, in its opinion is able to furnish information or produce documents relevant to such inquiry, to furnish any such information or produce any such document;
- 16. The Central Vigilance Commission shall be responsible for generally coordinating the work of and advising all organisations falling within its jurisdiction and control in respect of all matters pertaining to maintenance of integrity and probity in administration.

Departmental Inquiries

17. The Commissioners for Departmental Inquiries shall conduct the oral inquiry in cases of Departmental proceedings on behalf of the disciplinary authorities and shall have the powers under Section (5) of the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972.

CHAPTER IV

Miscellaneous

18. The Chief Vigilance Officer (CVO) and Vigilance Officer in Ministries/Departments of Government of India/Public Undertakings of the Government of India will be appointed in consultation with the Commission and no person whose appointment as the Chief Vigilance Officer or Vigilance Officer is objected to by the Commission, will be so appointed.

Saving of the acts of the existing Commission

19. (1) All acts done, proceedings taken, orders made and directions given by the Central Vigilance Commission established under the Government

of India Resolution dated 11.2.1964 bearing No.24/7/64-AVD (Ministry of Home Affairs) shall be deemed to have been done, taken, made or given, as the case may be, under this Act in so far as they are not inconsistent with the provisions of this Act, as if this Act was in force on the date the said acts, proceedings, orders and directions were made and shall be continued under the Act.

Consultation with the Commission in all Disciplinary Enquiries

20. Notwithstanding anything contained in any special or general rules governing the conduct of oral inquiries, it shall be obligatory upon the concerned authorities to obtain the opinion of the Central Vigilance Commission, at the conclusion of all inquiries into charges attracting major penalties, on the findings recorded by the Enquiry Officer as well as the penalty proposed to be imposed.

Protection of action taken in good faith

21. No suit, prosecution or other legal proceedings shall lie against the Commission or Chief Vigilance Commissioner or any of the Vigilance Commissioners or

any officers or employees of the Commission, for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Over-riding Effect

22. The provisions of this Act shall have over-riding effect over any other enactment in force and shall be given effect to notwithstanding anything to the contrary in any other law for the time being in force.

Secrecy of Information:-

23. Any information obtained by the Central Vigilance Commission or Chief Vigilance Commissioner or any of its Vigilance Commissioners or officers or employees in the course of or for the purposes of any inquiry or proceeding or investigation, and any evidence recorded or collected in connection therewith shall be treated as confidential during the course of inquiry or proceeding or investigation.

Rules

24. (1) The Central Government, by notification in the Official Gazette, may make rules to carry out the purposes of the Act.
- (2) The Rules made under the Act shall be laid, as soon as may be after they are made or issued, before each House of Parliament which is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the said period, both Houses agree in making any modification in the Rules, the Rules shall have effect thereafter only in such modified form and if both Houses agree to annul any Rule, it shall cease to have effect therefrom, so however that anything previously done under the Rule shall not be rendered invalid on that account.

THE DELHI SPECIAL POLICE ESTABLISHMENT (AMENDMENT) BILL, 1998

An Act to amend the Delhi Special Police Establishment Act in the light of the directions of the Supreme Court of India made in Vineet Narain & Others v. Union of India & Another (WP (Cr) Nos.340 - 343 of 1993) and to provide for matters incidental thereto:

Title and Commencement

1. (1) This Act shall be called the Delhi Special Police Establishment (Amendment) Act, 1998.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint provided that such date shall not be later than three months from the date on which the President of India grants assent.

Amendment of S.4 of Act 25 of 1946

2. For section 4 of the principal Act, the following shall be substituted:-

"Superintendence and administration of Special Police Establishment.-

4(1) The superintendence and the responsibility for the efficient functioning of the Delhi Special Police Establishment shall vest in the Central Vigilance Commission.

(2)(i) The Central Vigilance Commission shall review the progress of all cases moved by the Central Bureau of Investigation for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused;

(ii) The Delhi Special Police Establishment (CBI) shall submit reports, as and when called for by the Central Vigilance Commission, with respect to the cases taken up by it for investigation and with respect to the progress of investigations and the progress of cases in courts;

(iii) the Central Bureau of Investigation will forward to the Ministry of Home Affairs through the Central Vigilance Commission the final report in all cases investigated by the Bureau in which it considers that a prosecution should be launched, provided that sanction for such prosecution is required under any law to be issued in the name of the President; and the Bureau will simultaneously send a copy to the Ministry/Department/undertaking concerned for any comments which it may wish to forward to the Central Vigilance Commission;

(3) Notwithstanding anything contained in this section, the Central Government shall ultimately remain answerable for the functioning of the Central Bureau of Investigation (DSPE). In matters other than those specified in sub-sections (1) and (2) of this section, the power of superintendence over the Delhi Special Police Establishment shall continue to vest in the Central Government.

(4) The administration of the said police establishment shall vest in an officer appointed as Director of the Central Bureau of Investigation in this behalf by the Central Government who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State, as the Central Government may specify in this behalf.

(5) Manner of appointment of the Director of the Central Bureau of Investigation.-

(a) The Committee consisting of the Chief Vigilance Commissioner, Union Home Secretary and Secretary, DOPT in the Government of India, headed by the Chief Vigilance Commissioner, shall draw up a panel of IPS officers on the basis of their seniority,

integrity, experience in investigation and anti-corruption work and recommend a panel of three officers for appointment as Director (b) Before making its recommendation, the Committee shall take into consideration the views of the incumbent Director in the matter. If the Central Government does not find any one in the panel fit for appointment, it shall record its reasons therefor and call for a fresh panel from the aforesaid Committee.

(6) The Director, Central Bureau of Investigation, shall have a minimum term of two years regardless of the date of his superannuation, and shall not be transferred to or assigned any other job except with the approval of the Selection Committee referred to in sub-section (5).

(7) The Director, Central Bureau of Investigation shall also:

(i) allocate the work within the Bureau/establishment and constitute teams for carrying out investigation into various cases:

Provided that any change in the Head of an investigating team for the purpose of

effective investigation can be effected by him only by an order in writing, after recording special reasons for such change; and

ii) take such effective measures as may be required to ensure expeditious completion of investigation.

(8) The Joint Director of Central Bureau of Investigation or any officer above him shall also be appointed in accordance with the procedure prescribed in sub-section (5).

(9) The selection or extension of the tenure of officers (not including Joint Director and above) shall be made by a Board comprising Chief Vigilance Commissioner, Union Home Secretary and Secretary, (DOPT), Government of India. The Chief Vigilance Commissioner shall head the Board. The Board shall take into consideration the relevant information and material as may be placed before it by the Director, Central Bureau of Investigation."

3. After section 7 of the principal Act, the following sections shall be inserted, namely:-

"Over-riding Effect

8. The provisions of this Act shall prevail notwithstanding anything to the contrary in any other law for the time being in force.
9. Secrecy of Information:-

Any information obtained by the Director or other officers of the Delhi Special Police Establishment (Central Bureau of Investigation) or any of its employees in the course of or for the purposes of any inquiry or proceeding or investigation, and any evidence recorded or collected in connection therewith shall be treated as confidential, during the course of inquiry or proceeding or investigation.

THE FOREIGN EXCHANGE REGULATION (AMENDMENT) BILL, 1998

An Act to amend the Foreign Exchange Regulation Act 1973, in the light of the directions made by the Supreme Court of India in Vineet Narain and Others v. Union of India and Another (WP (Cr) 340-343 of 1993) and to provide for other incidental matters:

Title and Commencement

1. (1) This Act shall be called the Foreign Exchange Regulation (Amendment) Act, 1998.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint provided that such date shall not be later than three months from the date on which the President of India grants assent.

Amendment of S.4(1)

2. Sub-section (1) of section 4 of the principal Act shall be substituted with the following sub-sections (1) and (2) and the existing sub-sections (2) and (3) shall be renumbered as sub-sections (3) and (4) respectively:

"(1)(a) The Director of Enforcement, who shall be in the rank of Additional Secretary/ Special Secretary to the Government of India. shall be appointed by the Central Government from out of a panel of three names recommended by a Selection Committee, which shall consist of the Chief Vigilance Commissioner, Union Home Secretary, Secretary, Department of Revenue and Secretary, DOPT of the Government of India. The Selection Committee shall be headed by the Chief Vigilance Commissioner.

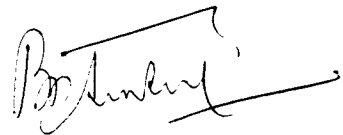
(b) The Director of Enforcement shall be appointed for a minimum tenure of two years regardless of the date of his superannuation, and any transfer of the Director to any other post, before the expiry of his tenure, shall be effected only with the approval of the Selection Committee mentioned in clause (a).

(c) The appointment of a Special Director shall also be made in the manner prescribed in clause (a) of this sub-section and his minimum tenure on the post shall also be the same as in the case of the Director of Enforcement.

(2)(a) It shall be the duty of the Director of Enforcement to monitor the progress of all investigations and adjudications being handled by the Directorate and to take steps for their speedy and effective completion. He shall also monitor and guide all prosecutions launched by the Enforcement Directorate, subject, of course, to the overall supervision of the Secretary, Department of Revenue, Ministry of Finance, Government of India.

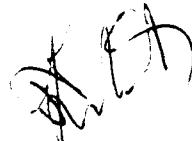
(b) The annual report of the Enforcement Directorate shall contain a full and clear account of the working of the Directorate.

We recommend accordingly.



(MR. JUSTICE B.P. JEEVAN REDDY) (RETD.)

CHAIRMAN



(MS. JUSTICE LEILA SETH) (RETD) (DR. N.M. GHATATE) (R. L. MEENA)

MEMBER

MEMBER

MEMBER -

(ON LEAVE)

SECRETARY

DATED: 13th August, 1998