

# MODULE 1

Anti-Corruption and Enforcement Mechanisms Framework in India

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## Chapter 3

### Anti- Corruption Institutions in India

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Corruption has always existed in the society in one or the other form. Many functions which were being performed by the community, are now the responsibility of the state. This increasing role of State authorities in matters of importance to citizens provides opportunities to them for abuse of power vested in them.

India, being a welfare State, has developed a robust mechanism to fight corruption, by establishing institutions and giving them adequate autonomy and authority. Our country, being “Union of States” has a federal constitutional structure with a well-defined division of functions, powers, and authorities. Such distinction of authority has necessitated that there is separate mechanism for Vigilance and Anti-corruption measures at the level of Central and State Governments.

The major Integrity Institutions and Anti-corruption agencies associated with the Central Government are: -

- i. Central Vigilance Commission (CVC)
- ii. Comptroller and Auditor General of India (CAG)
- iii. Lokpal of India
- iv. Central Bureau of Investigation (CBI)
- v. Enforcement Directorate (ED)
- vi. Serious Fraud Investigation Office (SFIO)

#### **CENTRAL VIGILANCE COMMISSION**

Central Vigilance Commission is one of the oldest autonomous Integrity Institutions of the world, which shows that India was way ahead of other countries, in this field. Subsequent to a debate in Parliament about the

increasing cases of corruption, the government in 1962 set up a high-level committee under chairmanship of Shri K. Santhanam, Member of Parliament (known as Santhanam Committee) to investigate twin problems of corruption and administrative reform.

The Committee noting the short comings in the then existing framework for handling matters of irregular conduct by employees of Government organisations, recommended for creation of the institution of Central Vigilance Commission, to oversee and exercise superintendence and control over Vigilance Administration of different Central Government Organisations.

Thereupon, Government of India notified a resolution dated 11.02.1964 for creation of Central Vigilance Commission (CVC). The CVC was envisaged as an apex autonomous body, free of control from any executive authority. Over the next three decades CVC played a very crucial role in evolving mechanisms of sound vigilance administration through conducting inquiries, advising punitive actions, developing systems, and procedures across organizations of Central Government.

Meanwhile, in September 1997, Government of India set up an Independent Review Committee to examine the functioning of anti-corruption agencies in India particularly the CVC, CBI, and the Enforcement Directorate. The Committee in its report of December 1997 made various recommendations to insulate the investigating agencies from the Government. It recommended that the CVC should be given a statutory status and CVC be made responsible for the efficient and independent functioning of the anti-corruption wing of the CBI.

Subsequently, the Supreme Court vide its order dated 18<sup>th</sup> December, 1997 in Criminal Writ Petitions Nos. 340-343/93 Vineet Narain and other versus Union of India and others (generally known as Jain Hawala Case) had directed that statutory status should be conferred upon the Central Vigilance Commission. Subsequently, the Central Government conferred statutory status on the Central Vigilance Commission through the Central Vigilance Commission Act, 2003, which received assent of the President on 11.09.2003 and came into effect from that date. Since then, the Central Vigilance Commission is functioning under the mandate given to it in the CVC Act, 2003.

As per the provisions of the CVC Act, 2003, Central Vigilance Commission has jurisdiction over certain categories of employees of Central Government or a Corporation established by or under any Central Act, Government Company, Society, and any local authority owned or controlled by Central Government. The level of employees covered under the jurisdiction of CVC is specified in Section 8(2) of CVC Act, 2003, read with DoPT Gazette Notification No. 280 dated 18.03.2004 and Gazette Notification No. 1109 dated 12.09.2007 ([https://www.cvc.gov.in/sites/default/files/cvcact\\_0.pdf](https://www.cvc.gov.in/sites/default/files/cvcact_0.pdf)). As per Act, Central Vigilance Commission is mandated to exercise superintendence over the Vigilance Administration of various Ministries/Departments of Central Government or a Corporation established by or under any Central Act, Government Company, Society, and any local authority owned or controlled by Central Government. Alongside, the Central Vigilance Commission is also mandated to exercise superintendence over the functioning of Delhi Special Police Establishment, in so far as it relates to offences committed under PC Act 1988.

## COMPTROLLER AND AUDITOR GENERAL OF INDIA

The Comptroller and Auditor General of India is the supreme audit institution of India, authorized and mandated to conduct audit of all expenditures and receipts of the Central Government, State Governments, Government owned companies and autonomous bodies substantially funded by the Government.

The history of auditing of govt. expenditure in modern India started in 1858, with the creation of the post of Accountant General of India, which was changed to Auditor General of India in 1860 and later to Comptroller and Auditor General in 1884. Under the Government of India Act 1919, the name was changed to **Auditor General in India and further to Auditor General of India in 1935**, which continued till the Constitution of India came into force on 26<sup>th</sup>

January, 1950. Article 148 of the Constitution provides for the creation of the post of “Comptroller and Auditor General of India”.

CAG is the guardian of public money and is responsible for upholding the provisions of the Constitution and laws as laid down by the Parliament, in the sphere of financial administration, while ensuring accountability and transparency. Dr. B. R Ambedkar called it the “guardian of public purse”. CAG advises the President in the maintenance of account of Union of India and the States.

The CAG’s report relating to the accounts of Union of India is submitted to the President, who causes it to be laid before each House of Parliament. As regards, the CAG’s report relating to the account of a State, the same is submitted to the Governor who causes it to be laid before the Legislature of that State.

## LOKPAL OF INDIA

The term Lokpal was first used by Dr. L. M. Singhvi in 1963, while floating the idea of having an ombudsman to tackle political corruption and to address public grievances; Ombudsman was originally a concept of Scandinavian construct.

The First Jan Lokpal Bill was proposed by Shri Shanti Bhushan, Advocate in 1968 and was passed by 4<sup>th</sup> Lok Sabha in 1968. However, it did not pass through Rajya Sabha. Finally, “The Lokpal and Lokayuktas Act, 2013” was passed by both the Houses of Parliament in 2013 and received the assent of the President on 1<sup>st</sup> Jan, 2014 and came into force subsequently.

Lokpal of India is an anti-corruption body to receive, inquire and investigate complaints of corruption against public functionaries which includes:-

- i. Prime Minister (Present and past)
- ii. Ministers of the Union (Present and past)
- iii. Members of Parliament (Present and past)

- iv. Group 'A' 'B' 'C' and 'D' employees
- v. Chairperson, members, officers and directors of any board, corporation society, trust or autonomous body either established by an Act of Parliament or wholly/partly funded by the Union or State Government
- vi. Societies, trusts or any other body that receives foreign contribution above Rs. 10 lakhs

The Lokpal of India consists of a chairperson and not more than eight members, out of whom fifty percent are to be Judicial Members.

A complaint under the Lokpal Act should be in the format prescribed by Lokpal and must pertain to an offence under the Prevention of Corruption Act, 1988, against a public servant, covered under the jurisdiction.

## CENTRAL BUREAU OF INVESTIGATION

The Central Bureau of Investigation (CBI) is the premier investigating police agency in India. It is also the nodal police agency in India, which coordinates investigation on behalf of Interpol Member countries.

A central government police force was initially set up by an executive order of the Government of India in the early stages of World War-II (in 1941) to investigate cases of corruption in respect of war related expenditure. This police force was known by the name of Special Police Establishment (SPE). After the war, a need was felt to have a Central Government Agency to investigate bribery and corruption related matters pertaining to Central Government employees. Hence, SPE's scope was extended to cover all departments of Government of India, through the Delhi Special Police Establishment Act, 1946. Its jurisdiction was later extended to cover all Union Territories and to States, with their prior consent. Over the years, CBI has evolved into a multi-faceted, multi-disciplinary central police law enforcement agency.

The Committee on 'Prevention of Corruption', known as Santhanam Committee, in its recommendations dated 17.11.1962, advised the Government to give additional responsibilities to SPE. Subsequent to that, Government of

India notified a resolution dated 01.04.1963, giving the agency a new name, Central Bureau of Investigation and expanding its scope. Initially its role covered corruption by Central Government employees. Later, employees of Central Public Sector Undertakings and Public Sector Banks were also brought within the ambit of CBI.

After the enactment of CVC Act, 2003, the superintendence over CBI vests in the Central Vigilance Commission, in so far as investigation of offences under the Prevention of Corruption Act, 1988, in respect of employees covered under the jurisdiction of CVC is concerned. As per CVC Act 2003, CBI Director was appointed by the Government on recommendations of a committee headed by the Central Vigilance Commissioner. However, after notification of Lokpal and Lokayuktas Act, 2013, in January 2014, the appointment of Director CBI is made by a selection Committee consisting of the Prime Minister (Chairperson), leader of Opposition in Lok Sabha, Chief Justice of India or Judge of the Supreme Court nominated by him.

## ENFORCEMENT DIRECTORATE

Corruption is generally accompanied with money laundering. Proceeds of corruption are often invested in various instruments in such a way so that the investments can be concealed, or these appear legal. Preventing money laundering is, therefore, also an important anti-corruption activity. The origin of the Enforcement Directorate (ED) goes back to 1<sup>st</sup> May, 1956, when an “Enforcement Unit” under the Department of Economic Affairs was formed to deal with cases involving violation of Foreign Exchange Regulation Act, 1947 (FERA-1947). In 1957, the unit was renamed as “Enforcement Directorate’ and in 1960, its administrative control was given to Department of Revenue. FERA-1947 was replaced with FERA-1973, which was further replaced with Foreign Exchange Management Act, 1999.

In tune with the times, Prevention of Money Laundering Act (PMLA)-2002 was enacted. PMLA is a criminal law to prevent money laundering and for

confiscation of property relating to money laundering. ED is mandated to enforce PMLA provisions and to prosecute the offenders. Under the newly enacted Fugitive Economic Offenders Act 2018, ED is empowered to attach properties of fugitive economic offenders, who remain outside the jurisdiction of Indian Courts to evade the process of law.

The CVC Act, 2003, entrusts a nodal role to the CVC in the appointment of Director of Enforcement and other senior officials in Enforcement Directorate. These appointments are recommended by the committee headed by the Central Vigilance Commissioner, Vigilance Commissioners, Home Secretary, Revenue Secretary and the Secretary, Personnel, as its members.

## SERIOUS FRAUD INVESTIGATION OFFICE

Serious Fraud Investigation Office (SFIO), an agency to investigate corporate frauds was set up through a resolution dated 02.07.2003, issued by Government of India. Later, while amending the Companies Act, 2013, Section 211 was included in the same to grant statutory status to SFIO. Its mandate is to investigate major corporate frauds, commonly called white collar frauds/crimes.

SFIO was setup in the backdrop of stock market scams and the failure of non-banking finance companies, leading to huge financial loss to the public. It has experts from various fields, i.e. financial, capital market, forensic audit, taxation etc. having domain knowledge and expertise to handle financial frauds.

## STATE AGENCIES

There are agencies in the States which have the responsibility of ensuring an effective anti-corruption mechanism in the respective States. The main agencies working at State level are:



## LOKAYUKTAS

Lokayukta in the States is an agency similar to the Lokpal of India in functions. Lokayuktas have jurisdiction over public servants belonging to that State. Although the Lokpal and Lokayuktas Act was passed in the year 2013, but many States already had the institution of Lokayukta for handling corruption related matters pertaining to public servants of that State. As already pointed out, the Jan Lokpal Bill was passed by Lok-sabha in 1968, but could not get through the Rajya Sabha. However, the Jan Lokpal Bill served as a model bill for those States, who wished to create the institution of Lokayukta. Government of Maharashtra was the first State to introduce the institution of Lokayukta, through the 'Lokayukta and Upa-Lokayukta Act' in 1971. After the enactment of the Lokpal and Lokayuktas Act 2013, which makes it mandatory for each State to have an institution of Lokayukta, most of the States and Union Territories have established the institution of Lokayukta.

The Lokayukta's jurisdiction varies from State to State. Some States have made a provision for keeping the present and past Chief Ministers under the jurisdiction of Lokayukta, whereas other States have kept Chief Minister outside Lokayukta's jurisdiction. However, the Lokayuktas of all States have jurisdiction over: -

- i. Ministers (present and past)
- ii. Members of State legislature (present and past)
- iii. Members of Local authorities (present and past)
- iv. All India Service officers (working in connection with the affairs of that state)
- v. Officers and Employees of the state government

## ANTI CORRUPTION BUREAUS IN STATES

The States also have Anti-Corruption Bureaus, which are specialised police investigating agencies meant to investigate offences alleged to have been committed by public servants of that State. The main functions of ACBs can be summarised as:-

- i. Investigation of cases punishable under PC Act, as referred to it by State Government
- ii. Investigation of complaints containing allegations of corruption, as received from various sources
- iii. Taking into custody those public servants who are, prima-facie, found indulging in corrupt practices

After investigation, based on the seriousness of the allegations found true, prima-facie, ACBs are also empowered to seek and initiate criminal proceedings against persons concerned, in the appropriate Court of Law.

#### STATE VIGILANCE COMMISSION

Many States also have established the institutions of State Vigilance Commission. The role, responsibilities and mandate of the State Vigilance Commissions differs from State to State and there is no uniformity among different States. However, the State Vigilance Commissions have jurisdiction over public servants belonging to that state and broadly speaking, act on complaints and cases which have a visible vigilance angle.

Gujarat Vigilance Commission is the oldest State Vigilance Commission in the country. Government of Gujarat took note of the recommendation of Santhanam Committee, which had recommended creation of Central Vigilance Commission. The Government of Gujarat vide its resolution dated 17.04.1964 constituted Gujarat Vigilance Commission, broadly in line with the constitution of Central Vigilance Commission. It is a one-member Commission and has jurisdiction over matters to which the executive powers of State of Gujarat extend.