

Central Vigilance Commission

Service conditions and appointment of Vigilance Commissioner

The Central Vigilance Commissioner is to be appointed by the President of India. He holds the office for 4 years. He can be removed or suspended from the office by the President on the ground of misbehaviour but only after the Supreme Court has held an inquiry into his case and recommended action against him.

Functions

The Commission is mainly an advisory body and has no adjudicatory functions. It mainly considers the complaints relating to corruption, misconduct, lack of integrity or some other kinds of malpractice or misdemeanor on the part of the public servants.

It cannot extend sanction for criminal prosecution for offences committed by public servants. It has no machinery to investigate or inquire into complaints of corruption except to a limited extent.

The commission is not authorized to investigate the complaint itself, it has to refer them to the Central Bureau of Investigation or Ministry or Department for investigation. However, the Chief Technical Examiner's Organization attached to it, conducts technical examination of public works including checking of bills of contractors, contracts and muster rolls. The Commission advises as to the action to be taken in following cases:

(i) Reports of investigation by the Central Bureau of Investigation which involves departmental action or prosecution in the matter either referred to it by the commission or otherwise.

(ii) Reports of investigation by the Ministry or department involving the case of disciplinary action in the matters either referred by the Commission or otherwise.

(iii) Cases received direct from public sector undertakings and statutory corporations; etc.

The commission is required to submit an annual report to the ministry of Home Affairs, stating the cases in which its recommendation were accepted and acted upon by the competent authorities.

The long-standing demand for the formation of an act to deal with the provisions relating to constitution, jurisdiction, power and function of the commission was ultimately meted by passing an act. The said Act was named as central Vigilance Commission Act, 2003.

Functions and Powers of Central Vigilance Commission—

(1) The functions and powers of the commission shall be to—

(a) Exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988

(b) Give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1964 (25 of 1964).

Case laws

The feud between Central Bureau of Investigation (CBI) director Alok Kumar Verma and his deputy Rakesh Asthana, both of whom have been **stripped of their powers** after a damaging internecine war in the agency, has raised a set of legal questions on the CBI chief's authority, tenure and functions, analysts say.

These questions are unprecedented and, therefore, not covered by the series of reforms flowing from the landmark 1997 Supreme Court judgement in the Vineet Narain vs Union of India case, popularly known as the Jain hawala case. These measures were initiated to shield the CBI director from outside interference and make the director's post more transparent.

In that case, the SC had said there was a need to “provide permanent insulation” to agencies such as CBI against “extraneous influences to enable them to discharge their duties in the manner required for proper implementation of the rule of law.”

This led the court to direct a slew of structural changes in CBI. First the CBI director shall have a “minimum tenure of two years, regardless of the date of his superannuation”. Second, the Central Vigilance Commission (CVC) “shall be responsible for the efficient functioning of CBI”. Third, the CVC chief shall be selected by a panel comprising the prime minister, home minister and the leader of the opposition from a panel of “outstanding civil servants”.

Most importantly, the Vineet Narain judgement stated that 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”. This committee comprises the PM, the leader of the Opposition and the CJI.

Citing the judgement that fixes a two-year tenure for the CBI director, [Verma has argued before the SC](#) that the decision to divest him of his powers was illegal. Verma has until the end of January before his term ends.

According to a government statement, CVC had served three notices (under section 11 of CVC Act, 2003) on the director to produce files and documents . “Despite repeated assurances and reminders, the Director, CBI failed to furnish the records / files before the Commission,” the statement said.

The question is, given the fixed two-year tenure of a CBI director, what is the process of removing the CBI director for any misconduct?

“The guidelines emanating from the Vineet Narain judgement deal with the circumstances that were then prevailing. The SC will have to apply its mind on the current set of circumstances, which are unprecedented,” said AS Chandiok, lawyer and former additional solicitor general.

Anti-corruption activist Narain, the original petitioner in Jain hawala case, said CVC and the government could have acted promptly to defuse the crisis. According to Narain, the government took the right decision in divesting Verma and Asthana of their powers because, “unless you remove the warring factions, one cannot have a fair investigation”.