

India Against Corruption

A-119, Kaushambi, Ghaziabad – 201010. UP Ph: 09868069953

www.indiaagainstcorruption.org

Dated: 1st December 2010

To

The Chief Justice of India,

Supreme Court of India,

New Delhi.

Dear Sir,

Recent few months have witnessed allegations of corruption amounting to over two Lakh Crores in 2G spectrum allotments, Common Wealth Games (CWG), Adarsh Building Society scam, allotment of land and mines in Bangalore etc.

Whereas many steps need to be taken to tackle that, however, creating an effective deterrence against corruption is one of the most important steps. No one gets punished for corruption in our country. A look at the structure of our anti-corruption system shows that there is not a single anti-corruption agency which is independent of the government and also has complete powers to take action.

CVC and CAG are independent but merely recommendatory. Government often ignores their advice.

CBI has powers but is completely dependent on government for permissions for investigations and prosecutions. CBI's lawyers are appointed by and report to Law ministry. That is the reason why everyone demands a Supreme Court monitored CBI investigation (as is the case in 2G spectrum).

Our anti-corruption systems have inherently and intently been kept flawed. Even the Lok Pal Bill pending since 1968 falls in the same category. That is also proposed to be a recommendatory body.

Therefore, no vigilance or anti corruption body in our country is independent and final. Either an agency is recommendatory or it is vulnerable to political influences or both.

That has led to a situation where the high and mighty never get punished for corruption. There is clearly a class divide. We have police stations for the poor but CBI, CVC and CAGs for the rich with nearly NIL recovery of ill usurped wealth.

A note on the structure and powers of existing anti-corruption agencies is attached as **Annexure 1**.

In view of this state of affairs, we need a total overhaul of the anti corruption delivery system.

We believe that the country immediately needs a statutory, effective and independent investigating and prosecuting multidisciplinary agency, paid from the Consolidated Fund and led by independent professionals searched, and not merely appointed and barred for some years from re-employment, to ward off political vagaries.

HongKong was in a similar situation of rampant corruption in 1970s. People took to streets. The island was forced to set up an Independent Commission Against Corruption (ICAC) with functional autonomy, headed by men and women of merit, drawn from many disciplines. And it cleaned up the system. In the first lot, they dismissed scores of top level cops. Today, Hong Kong is one of the most honest countries.

Even India can turn around if we had an effective anti-corruption agency. We have drafted a Bill for the creation of such an agency called Lokpal, completely different from the one presented by the Government. We have also written to the government for the same. A copy of the same is attached. The basic features of the enclosed draft are attached as Annexure 2 to the letter for your ready reference.

We are presenting a comparison of our draft Lokpal with the Government's draft in Annexure 3.

May we request you to kindly direct the government to set up such an agency. Alternately, in the interregnum, you may like to unshackle CBI from the clutches of the government on the following lines:

1. That part of CBI, which deals with corruption cases, should be made independent of the government.
2. CBI should not need any permissions from the government for initiating investigations and prosecutions.
3. CBI Director should be selected through a transparent process, inviting nominations through advertisements, which is independent of any political interference.
4. CBI Director should have complete control to decide its own staff and lawyers.



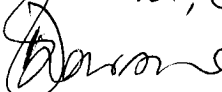
Dear Sir, you are known for your integrity. We look upon you for bringing in much needed reforms in our anti-corruption system.

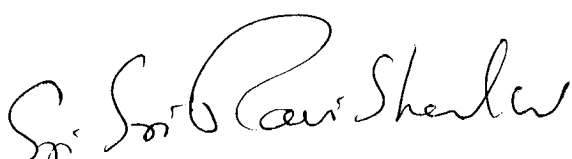


With warm regards

Yours sincerely



(Archbishop Vincent
Michael Concessao)
Anand
(SWAMI AGNIVESH)
गुरुजीशिवजी महाराज
गुरुजीशिवजी महाराज
(ANNA HAZAKE)
Kiran Bedi
Kiran Bedi


(Arvind Kejriwal)

(KAMAL KANT JASWAL)
Director, Common Cause

(Derinder Sharma)
Pradeep Kumar
(PRADEEP GUPTA)
FOR PANIT ALUMNI INDIA


Malviya
(Malviya Sarabhai)

(S.K. TIJARAWALA)
SPOKESMAN
HH SWAMI RAMDEVJI
PATANJALI YOGPEETH

B.R. Lal
Sunita Godara
Sunita Godara

Annexure 1

Deficiencies in the present anti-corruption systems

Central Government level:

At central Government level, there is Central Vigilance Commission, Departmental vigilance and CBI. CVC and Departmental vigilance deal with vigilance (disciplinary proceedings) aspect of a corruption case and CBI deals with criminal aspect of that case.

Central Vigilance Commission: CVC is the apex body for all vigilance cases in Government of India.

- However, it does not have adequate resources commensurate with the large number of complaints that it receives. CVC is a very small set up with a staff strength less than 200. It is supposed to check corruption in more than 1500 central government departments and ministries, some of them being as big as Central Excise, Railways, Income Tax etc. Therefore, it has to depend on the vigilance wings of respective departments and forwards most of the complaints for inquiry and report to them. While it monitors the progress of these complaints, there is delay and the complainants are often disturbed by this. It directly enquires into a few complaints on its own, especially when it suspects motivated delays or where senior officials could be implicated. But given the constraints of manpower, such number is really small.
- CVC is merely an advisory body. Central Government Departments seek CVC's advice on various corruption cases. However, they are free to accept or reject CVC's advice. Even in those cases, which are directly enquired into by the CVC, it can only advise government. CVC mentions these cases of non-acceptance in its monthly reports and the Annual Report to Parliament. But these are not much in focus in Parliamentary debates or by the media.
- Experience shows that CVC's advice to initiate prosecution is rarely accepted and whenever CVC advised major penalty, it was reduced to minor penalty. Therefore, CVC can hardly be treated as an effective deterrent against corruption.
- CVC cannot direct CBI to initiate enquiries against any officer of the level of Joint Secretary and above on its own. The CBI has to seek the permission of that department, which obviously would not be granted if the senior officers of that department are involved and they could delay the case or see to it that permission would not be granted.
- CVC does not have powers to register criminal case. It deals only with vigilance or disciplinary matters.
- It does not have powers over politicians. If there is an involvement of a politician in any case, CVC could at best bring it to the notice of the Government. There are several cases of serious corruption in which officials and political executive are involved together.
- It does not have any direct powers over departmental vigilance wings. Often it is seen that CVC forwards a complaint to a department and then keeps sending reminders to them to enquire and send report. Many a times, the departments just do not comply. CVC does not have any really effective powers over them to seek compliance of its orders.

- CVC does not have administrative control over officials in vigilance wings of various central government departments to which it forwards corruption complaints. Though the government does consult CVC before appointing the Chief Vigilance Officers of various departments, however, the final decision lies with the government. Also, the officials below CVO are appointed/transferred by that department only. Only in exceptional cases, if the CVO chooses to bring it to the notice of CVC, CVC could bring pressure on the Department to revoke orders but again such recommendations are not binding.
- Appointments to CVC are directly under the control of ruling political party, though the leader of the Opposition is a member of the Committee to select CVC and VCs. But the Committee only considers names put up before it and that is decided by the Government. The appointments are opaque.
- CVC Act gives supervisory powers to CVC over CBI. However, these supervisory powers have remained ineffective. CVC does not have the power to call for any file from CBI or to direct them to do any case in a particular manner. Besides, CBI is under administrative control of DOPT rather than CVC.
- Therefore, though CVC is relatively independent in its functioning, it neither has resources nor powers to enquire and take action on complaints of corruption in a manner that meets the expectations of people or act as an effective deterrence against corruption.

Departmental Vigilance Wings: Each Department has a vigilance wing, which is manned by officials from the same department (barring a few which have an outsider as Chief Vigilance Officer. However, all the officers under him belong to the same department).

- Since the officers in the vigilance wing of a department are from the same department and they can be posted to any position in that department anytime, it is practically impossible for them to be independent and objective while inquiring into complaints against their colleagues and seniors. If a complaint is received against a senior officer, it is impossible to enquire into that complaint because an officer who is in vigilance today might get posted under that senior officer some time in future.
- In some departments, especially in the Ministries, some officials double up as vigilance officials. It means that an existing official is given additional duty of vigilance also. So, if some citizen complaints against that officer, the complaint is expected to be enquired into by the same officer. Even if someone complains against that officer to the CVC or to the Head of that Department or to any other authority, the complaint is forwarded by all these agencies and it finally lands up in his own lap to enquire against himself. Even if he recuses himself from such inquiries, still they have to be handled by those who otherwise report to him. There are indeed examples of such absurdity.
- There have been instances of the officials posted in vigilance wing by that department having had a very corrupt past. While in vigilance, they try to scuttle all cases against themselves. They also turn vigilance wing into a hub of corruption, where cases are closed for consideration.
- Departmental vigilance does not investigate into criminal aspect of any case. It does not have the powers to register an FIR.
- They also do not have any powers against politicians.

- Since the vigilance wing is directly under the control of the Head of that Department, it is practically impossible for them to enquire against senior officials of that department.
- Therefore, , the vigilance wing of any department is seen to softpedal on genuine complaints or used to enquire against " inconvenient" officers.

CBI: CBI has powers of a police station to investigate and register FIR. It can investigate any case related to a Central Government department on its own or any case referred to it by any state government or any court.

- CBI is overburdened and does not accept cases even where amount of defalcation is alleged to be around Rs 1 crore.
- CBI is directly under the administrative control of Central Government.
- So, if a complaint pertains to any minister or politician who is part of a ruling coalition or a bureaucrat who is close to them, CBI's credibility has suffered and there is increasing public perception that it cannot do a fair investigation and that it is influenced to scuttle these cases.
- Again, because CBI is directly under the control of Central Government, CBI is perceived to have been often used to settle scores against inconvenient politicians.

Therefore, if a citizen wants to make a complaint about corruption by a politician or an official in the Central Government, there isn't a single anti-corruption agency which is effective and independent of the government, whose wrongdoings are sought to be investigated. CBI has powers but it is not independent. CVC is independent but it does not have sufficient powers or resources.

Annexure 2

Basic features of the Bill presented by us

1. There shall be an institution of Lokpal with ten members and headed by a Chairperson.
2. That part of CBI which deals with cases of corruption, shall be merged with Lokpal.
3. CVC and the entire internal vigilance set in various central government departments will be merged with Lokpal.
4. Lokpal will be completely independent of the Government.
5. Lokpal shall have jurisdiction over bureaucrats, politicians and judges.
6. Lokpal shall have the powers to initiate investigations and prosecution without needing permission from any other agency.
7. Public grievances are often linked to demands/expectations of bribery. Lokpal shall act as appellate authority and supervisory body for grievance redressal systems in all central government departments.
8. Lokpal shall be responsible for providing protection against physical and professional victimization to whistleblowers.
9. Members and Chairperson in Lokpal shall be selected through a transparent and participatory process.
10. The functioning of Lokpal shall be completely transparent to avoid it from becoming a hub of corruption.
11. Any complaint of wrongdoing against an official of Lokpal shall be investigated and acted upon within a month through a transparent enquiry process.
12. If charges are proved and conviction takes place, loss to the exchequer caused due to his wrongdoing shall be recovered from all those who are convicted.

Annexure 3

Comparison of our draft Lokpal Bill with that of the one presented by the Central Government in Lok Sabha earlier

Subject	Government's draft	Our draft	Justification
Jurisdiction over politicians, bureaucrats and judiciary	CVC to have jurisdiction over bureaucrats, Lokpal to have jurisdiction over politicians. Law silent on judiciary.	Gives jurisdiction over politicians, bureaucrats and judiciary to Lokpal	Politicians and bureaucrats do not indulge in corruption separately. So, if government's draft, both CVC and Lokpal will have to enquire into any case, which will lead to a lot of confusion (as records related to any case would be with one agency, the other agency would find it difficult to investigate the same case). It will lead to duplication of efforts. If the findings of the two agencies are different in any case, it would be a severe blow to the success of that case in the courts
Powers of Lokpal	Lokpal to be an advisory body	Lokpal to have complete powers to initiate investigations and prosecution in any case without needing anyone's permission.	Advisory role will make Lokpal a toothless and ineffective body like CVC. If Lokpal were advisory and if after investigations, Lokpal advised the Prime Minister that such and such minister is guilty and should be prosecuted, we do not believe that with the kind of coalition governments that we have, any Prime Minister of the day will ever have the courage to initiate prosecution against his own ministers.
Whistleblower protection	The government recently introduced a bill for the protection of whistleblowers. It gives responsibility of providing protection to CVC.	Lokpal to provide protection to whistleblowers against professional and physical victimization	CVC neither has powers nor resources to provide protection to whistleblowers. All cases of murders of whistleblowers in the last five years are outside the jurisdiction of the bill proposed by the government.

Selection and appointment of Lokpal	Selection to be made by a committee consisting primarily of politicians from ruling and opposition parties	Selection shall be done by a committee consisting of apolitical persons.	The process of selection should be completely out of the control of political parties. Both opposition and ruling party would not be interested in having strong and independent Lokpal as both of them are interested parties.
Internal transparency and accountability of Lokpal	Silent on this issue	Lokpal's functioning to be transparent. Complaint against any employee of Lokpal shall be investigated and acted upon within a month and he shall be summarily repatriated or dismissed if found guilty.	
Recovery of loss caused to the government due to corruption	Does not talk about it. There is no provision in any other law about recovery of loss caused to the government	Trial court to make an estimate of such loss and order its recovery from all convicted.	