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**14.47 hrs.**

Title: Consideration of the Central Vigilance Commission Bill, 1999. (Not concluded)

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (SHRI HARIN PATHAK): Sir, with your permission, I, on behalf of my senior colleague, Shri L.K. Advani, beg to move:

"That the Bill to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matter connected therewith or incidental thereto, as reported by the Joint Committee, be taken into consideration. "

Sir, the objectives sought to be achieved with the enactment of CVC Bill, 1999 have been given in the Statement of Objects and Reasons attached with the CVC Bill, 1999. To recapitulate briefly, the Central Vigilance Commission was set up in 1964 in pursuance to the recommendations of the Committee on Prevention of Corruption headed by Shri K. Santhanam. The Commission was envisaged to be an advisory body with same measure of independence and autonomy as the Union Public Service Commission.

In September 1997, the Government constituted an Independent Review Committee (IRC) comprising Sarvashri B.G. Deshmukh, S.V. Giri and N.N. Vohra to suggest measures for strengthening, *inter alia*, anti-corruption activities. Based on the recommendations of the IRC and subsequent directions of the Supreme Court in its order dated 18<sup>th</sup> December 1997, in the case of *Vineet Narain and others versus Union of India and others*, the Government decided *inter alia* to confer statutory status upon the Central Vigilance Commission.

Sir, the Central Vigilance Commission Bill, 1999 under consideration of this august House was again introduced in the Lok Sabha on 20<sup>th</sup> December 1999. After introduction, this Bill was referred to the Joint Committee of both the Houses of Parliament under the chairmanship of Shri Sharad Pawar, for examination and report.

Sir, after hearing the views of the experts and officers appeared before it, and after going through the suggestion/comments received by the committee from various organization/individuals etc., and after clause-by-clause consideration on the provisions of the Bill, the Joint Committee presented its Report to the Parliament on November 22, 2000.

Sir, the Joint committee in its Report has made various recommendations and also presented ' the Central Vigilance Commission Bill, 1999', as reported by the Joint Committee. Sir, the Joint Committee has recommended principal changes in twelve out of the twenty-nine clauses of the Bill, besides certain general recommendations.

Sir, after thorough examination of the various recommendations of the Joint Committee, the government has accepted all the recommendations of the Joint Committee and also the Central Vigilance Commission Bill, 1999 as reported by it.

Sir, the Bill also seeks to repeal the Government of India Resolution dated 4<sup>th</sup> April 1999, as amended on 13<sup>th</sup> August 2002, under which the Central Vigilance Commission is presently continuing as a non-statutory body.

Sir, I may also submit here that necessary official amendments in regard to the enacting formula and the change of year to the Central Vigilance Commission Bill, 1999, have already been moved.

With these words, Mr. Chairman Sir, I request that the above Bill, as reported by the Joint Parliamentary Committee, may kindly be considered and unanimously passed along with the official amendments proposed, by this august House. Thank you.

MR. CHAIRMAN: Motion moved:

"That the Bill to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto, as

reported by the Joint Committee, be taken into consideration. "

SHRI SHIVRAJ V. PATIL (LATUR): Sir, the Central Vigilance Commission Bill is before us. This Bill incorporates the suggestions given by the Joint Committee. We have no objection to pass this Bill.

Having said this, I would like to make the views of some of us over here known to this hon. House. One of the things which is happening with respect to this Bill is that we are making a law in pursuance of the directions given by the Supreme Court. We shall have to deal with this issue in a very responsible manner.

The Constitution of India provides that the executive decisions will be taken by the Executive; the laws will be made by the Legislature; and the judiciary shall interpret these laws.

As far as the interpretation of these laws is concerned, whatever is said by the Supreme Court or the High Court or the judiciary is final. The Legislature certainly can change the law, but it cannot change the decision. The decision stands if the laws are not made. The Executive can issue the executive decisions and directions.

We have been respecting the Supreme Court directions and we should respect the Supreme Court directions. Unless we respect the Supreme Court directions, the Supreme Court decisions, it would be difficult for us to maintain the order, tranquillity and peace in the society. But while doing this thing in a very responsible manner, at some point of the time, we shall have to consider whether the judiciary is in a position to give the directions to the Legislature to make a law or not to make a law or to make a law in a particular manner.

That decision has to be taken by the representatives of the people. That decision is within the jurisdiction of the legislature. So, on the one hand, while respecting the power and authority of the Judiciary to interpret the law, on the other, is the Judiciary, as per the Constitutional provisions, in a position to direct the Legislature or the Executive to make a law in a particular fashion? It is not possible for me to go into the details of this topic and come to certain conclusions. But this is an issue which has acquired very huge proportions and this has to be considered by us at a particular point of time – not with a view to flout the orders given by the Judiciary, but with a view to implement the spirit of the Constitution, according to which, the legislative power rests with the Legislature and not with any other authority. This issue has to be very very carefully considered.

The second issue which should be considered by us is this. Allegations are levelled against the Executive and against those who are in public life for having committed corruption. If the allegations are correct, action should certainly be taken against them. But if the allegations are not correctly made, not based on the facts, then it creates political difficulties, not only political difficulties, but also administrative difficulties and it also creates hurdles in taking decisions.

For instance, if an allegation is made against a Ministry and that allegation is published in the media, and discussed in the House and outside the House too, then the officers who have to take decisions would rather like to avoid taking decisions than to take decisions. What happens is that when a file is presented to an officer and if he is an honest officer and if he becomes apprehensive that allegation can be levelled against him, he would rather not take a decision on the file, but he will see that the file moves from one table to the other.

I have seen files which have been moving not only from one table to the other, but they have been moving from one Ministry to the other. If the Ministry of Defence has to take a decision, the matter is referred to the Finance Ministry. The Finance Ministry's opinion is obtained and then the Finance Ministry also does not give the final opinion. It says that it could go to the Industries Ministry and let the Industries Ministry decide whether a particular thing is to be imported or whether it can be manufactured in the country. If the Industries Ministry says that that can be manufactured in the country or it can be imported from outside also, then they would say that they should examine the legal position. So, the matter goes to the Law Ministry and it opines something and then it comes back to the Ministry of Defence. Then, the Ministry of Defence again says that they have taken decisions separately sitting in their own offices, but they should take the decision jointly sitting in a meeting. Again, the file goes back and then the officers have to come together and take a decision.

The result of this kind of procedure adopted is that not only months, but years pass before the final decision is taken. When years pass, the cost of acquiring the equipments or the cost of implementing a project goes up by 25 per cent or 30 per cent or even 50 per cent. The delays are there; time has its own cost. If you do not respect time now, it will certainly increase the cost. This aspect has to be considered. So, while governing and administering, a balanced attitude is required; and that balanced attitude is that there should not be corruption and at the same time, there should not be undue delays which can increase the cost of doing things.

**15.00 hrs.**

So, it is easy to allege anything against anybody but it is very difficult to substantiate an allegation. As a Government it has a responsibility to see that there is no corruption and everything that is necessary for this purpose should be done. At the same time, it has a responsibility to see that delays are avoided. That is a very important thing. That is why we shall have to be careful in seeing that corruption is not there, delay is not there and the innocent people are not put to any inconvenience.

The matter was discussed and a question came up as to whether the CBI, the Central Bureau of Investigation, be totally under the control of CVC. I think the Government has come to the conclusion that it may not be necessary. The Government has come to the conclusion that the police, which is investigating into the matter, to the extent of investigation of cases, shall be guided by the directions given by the CVC. On this, there may be a difference of opinion in and outside the House. But it does appear to me the view is quite balanced. They can express opinions against this view yet if the sum total of it, is taken into account the view is acceptable.

The last point with respect to this is, we have seen in many cases that the peoples' representatives are less believed than the nominated persons. Sometimes it is thought that the peoples' representatives, who are sitting here, as part of the Government, Ministers or the MPs, are not in a position to come to the correct conclusion and that is why persons are nominated to take decisions. In some cases those who have to take the decision have to be independent. The Members of the judiciary have to be independent. There is no doubt about that, but if all the cases are transferred from the elected representatives' jurisdiction to the nominated persons, that is our good and democratic. You have made the members of the CVC answerable. You have also provided that if any allegation is levelled against a member of CVC, it can be looked into by the Supreme Court and after the Supreme Court gives a decision, action can be taken against the CVC members. But we know how difficult it becomes. The Minister is answerable to us at all times. We can pull him up and tell him as to what he is doing is not correct. He is not under the scrutiny of one or two persons but under the scrutiny of nearly 1000 people. There are 545 Members in this House and 245 Members in the other House and each one, whether he belongs to the ruling Party or the Opposition, is entitled to ask questions and entitled to hold the Ministers of the Government accountable. If we do not believe in the capacity of the Members to do this thing and if we believe that only the nominated persons can do this, it is a journey from democracy to oligarchy. This journey from democracy to oligarchy should be avoided.

In olden days, if a criminal case was to be decided there used to be a jury - a jury and a judge used to sit - and the decision given by the jury, who were not experts in law but common persons, was held as correct and legal. Why was it done? It was done because relying upon one person is not good but relying upon the judgement of many persons would be good. When we are travelling from democracy to oligarchy, from democracy to a sort of oligarchy, this process is being reversed.

We are not relying upon the judgement by many persons but we are relying upon the judgements of a few persons and that too of nominated persons, the persons who are not directly and clearly accountable to a body like ours. This other view has also to be kept in mind.

I would like to repeat and repeat it again and again that with the corruption charges levelled against many persons, the machinery to investigate into it, the machinery to supervise it, and the machinery to decide it should, by all means, be strengthened. Everything that is necessary for this purpose has to be strengthened but that is one side of the coin. The other side of the coin also should be kept in mind while doing this. I do not think it is necessary for me to say anything more than this. I think this Bill is salutary. Let us approve of it.

SHRI ANADI SAHU (BERHAMPUR, ORISSA): I stand in support of the CVC Bill. Moribund mindset and low moral character are the bane of this country at present. We have a democracy, a thriving democracy with lots of vibrant activities. But with democracy, we have brought in two matters. One is population explosion and the other is black money. Black money is coming because of numerous social legislations that have been taken up within the last 50 to 55 years. I do not say that it has been done by this Government or that Government but many Governments have brought in social legislation. Once social legislation comes naturally the decision making rests on some people. When it is a question of decision making or it is a question of arbitrary method of taking a correct path or a proper path, there is bound to be corruption. In this country corruption has come to stay in a very big manner. It is but necessary that we should stem corruption. The ominous signs of this type of corruption were noticed as far back as in 1964.

**15.07 hrs** (Mr. Deputy-Speaker *in the Chair*)

Mr. Deputy-Speaker, Sir, as you are aware, in 1964, the Government of India brought in a Resolution after a proper enquiry by Shri Santhanam. Shri Santhanam had given a report keeping in mind the numerous types of corruption in which unscrupulous persons were indulging in to become rich overnight. It is also a fact that there has been a nexus between the politicians and the administrative machinery and because of this nexus, corruption has been

thriving in a very big manner than what it was earlier.

Now, it became necessary to inquire into the corruption. The objective was that the misconduct, corruption, and malpractice of the public servants had to be looked into. That is why, the first Central Vigilance Commissioner was appointed with some amount of independence. As you are aware, in the first stage, the Central Vigilance Commissioner was to be appointed under the seal, signature, and warrant of the President of India. But at a later stage in 1995 – I do not know for what reason – it was withdrawn. Now it has become necessary that a certain procedure should be adopted to see that corruption has to be stemmed - I do not say completely eradicated.

I would further embellish what Shri Shivraj Patil said by saying that the executive had frittered its right in bringing about resolutions and legislation to ensure that corruption is prevented in a big manner. The Prevention of Corruption Act, 1947 was of no use because of which the 1988 Act was enacted by this Parliament. But in spite of that also, they were not able to stem corruption.

As the Executive failed, rather frittered away its powers, naturally the vacuum was filled up by the Judiciary. In the case of Vineet Narain *versus* the Union of India, the first thing that the Supreme Court did was to usurp the powers of the Legislature itself. It is an ominous sign. It is an ominous sign because as per the constitutional requirement, the Judiciary is to make interpretation and not to give directions. That is the main reason for which the Joint Committee had taken exception to the Objects and Reasons that had been indicated in the Bill of 1999. While I stand here to support the Bill, I am only giving the idea or the background of the matter that had gone into the minds of the framers of the Bill itself.

Sir, the NDA Government under the leadership of Shri Atal Bihar Vajpayee has been telling – also has been working towards it – that corruption has to be completely wiped off and that there should be transparency in the administrative functioning of the Government and its different branches. So, for that purpose and keeping that aspect in view, ordinances were brought in since the Bill could not be passed because of certain difficulties. The Bill had the meandering of the Brahmaputra river, going from one Committee to another, coming back and again and ordinance being promulgated and again going back to the Committee and all those things. It was necessary to promulgate an ordinance and then bring the Bill itself. The Bill had to go to the Joint Committee and the Joint Committee had recommended certain amendments. We are grateful that the recommendations of the Joint Committee have been accepted almost in toto by the Government.

Sir, the present day society has one difficulty. The difficulty is that an honest person or an honest administrator is not able to withstand the pressures of corrupt administrators or public servants. I would like to quote, with your permission, a portion of a poem by Oliver Goldsmith. In the late 18<sup>th</sup> century he had given a very good message to the public about how the honest people are under pressure not to say what they are willing to say or wish to say. I quote, "Conscience is a coward and those faults it has not strength enough to prevent, it seldom has justice enough to accuse". It does not have the strength to prevent it and it cannot accuse also. So, now we have to think in what manner we can accuse and we should not be cowards and in order to accuse others of being corrupt in many manner, it is necessary that there should be a legislation.

Sir, as you know for any good administration, there has to be seven conducts, namely, selflessness, integrity, objectivity, accountability, openness, honesty and the last is leadership. Unless there is leadership, all the other six qualities would be completely eclipsed. In the present day governance, the leadership that Shri Atal Bihar Vajpayee is giving gives an impetus to ensure that there is honesty, integrity and a little bit of selflessness in the bureaucracy and, to some extent, in persons who are in public life. As everybody knows, honesty and integrity are at a premium in this country. How do we ensure that there is a certain amount of honesty and integrity amongst the administrative functionaries? For this there has to be some sort of a punitive action. There has to be some sort of a procedure to see that those who are corrupt and those who are not doing their work properly have to be weeded out and for weeding them out certain rules have to be framed and certain functionaries would have to be appointed. That is what the Central Vigilance Commission Bill aims at.

As you know, the Central Vigilance Commission Bill stands on four pillars. Firstly, when we are thinking of weeding out people, the net that has to weed out the unwanted things from the water has to be very strong. So, it is important as to how the fabric is prepared. Therefore, the question comes as to who are the persons to be appointed as Central Vigilance Commissioners. The appointment of the Commissioners is the most important aspect. The Bill has carefully taken this aspect into consideration as to who are the persons who would qualify to be appointed as Central Vigilance Commissioners and who are the people who would decide about the qualifications of the members to be selected for the post of the Central Vigilance Commissioner. Who are the persons who would select them? They are the Prime Minister of India, the Home Minister and the Leader of the Opposition. This selection machinery is a very good composition.

In the initial stage it was thought that there would be a five-member Commission – one would be the Chairperson and four others would be Commissioners. But, after due deliberations, the Government decided that there would be

one Chairperson and two Commissioners – one Chief Vigilance Commissioner and two more Commissioners. It is a good thing. Appointing a person of integrity from different services itself is absolutely necessary. It is not necessary that all the members, including the Chairman, should be from the Indian Administrative Service or some from the Indian Police Service. A rider has been provided wherein it indicates that not more than two shall be from the same Service. It has been done because corruption has various angles. Corruption, like adultery, has to be inferred in many respects. Corruption is a question of consent between two groups. So, lots of things have to be gone into while deciding about the corrupt practices of an administrative functionary. Therefore, officers or public servants from different walks of life have to be taken into the Commission. It is not necessary that only IAS or IPS officers should be taken. It is also not necessary that officers from Customs and Revenue Services need be taken. It can be an officer of a public sector undertaking. As I know, at present the former Chairman of the State Bank of India has become the Central Vigilance Commissioner. It has to be done so that we keep track of corruption in different departments, different corporations and different public sector undertakings. As I said, the first thing is how do we recruit people and give them a certain amount of impunity from breathing down their neck.

The question of removal from office comes next. The question of removal has been very clearly taken into account. In case of any misconduct by the commissioners, a certain procedure has been provided. The President of India is to take steps to suspend him and the Supreme Court of India is to decide after due inquiry as to what action has to be taken. The first section is about the appointment and the removal from service of the CVC. I am not going into all the sections of the Bill.

Once we have decided about certain amount of independence for the CVC, now it is necessary to know as to what are the duties of the Commission. Clause 8 enumerates at length the duties of the Commission. When the Commission takes up a case for action in respect of anybody, a certain amount of stigma will be attached to that officer. As Shri Shivraj Patil has said about decision making, there could be two sides to it. Three or four years after an officer has taken a particular decision, that could come into question. The officer concerned may not be able to answer the questions being put by the prime investigating agency or the inquiring authority. So, certain elaborate procedures have been provided for the Vigilance Commission itself. As of now, the Vigilance Commission has to look into 605 departments and public sector undertakings. They cannot do it alone. If they try to do it, it would be superficial.

So, the Central Vigilance Commission must also have other vigilance officers in different departments, institutions, corporations, public sector undertakings, etc. These vigilance officers are to work in tandem with the CVC. If they do not work in tandem with the CVC, then the entire objective of this Bill will be vitiated. Whatever we may try to achieve will be vitiated and again, we will be sending it back to the Supreme Court itself to decide on the interpretation part of it. As I said in the beginning, we have frittered our powers. The Legislature has given away its powers. That is why, the vacuum was filled up by the Judiciary. We have to be very cautious. Whatever is required has to be done by this Parliament itself. It is the power of the Parliament as per the Constitution of India.

For example, what are the powers to be given to the CVC? This Bill has indicated that the powers of the civil court would be given to the CVC. So far so good. There are powers like summoning people to appear, filing affidavits or to seize property and all those things. Unless powers are given, it would not be possible for any Central Vigilance Commission to work in a proper manner.

But what is most important is that there are two functionaries who would be assisting the Central Vigilance Commission. The Directorate of Customs and Excise is the most important functionary or a body of people who are mostly involved in collection of taxes, funds, etc. and coming in contact with the people. The second one is the Director of Central Bureau of Investigation. One part is the Directorate of Excise and Customs and those functionaries in the Finance Ministry and the other is the Delhi Special Police Establishment. Appointments of these functionaries are very important for the working of the Central Vigilance Commission. Appointments of the officials of the Directorate of Excise and Customs or the Director of Enforcement have been taken into account by the Bill itself. Clause 26 is very elaborate on who are the persons who can be taken into consideration and who would appoint them.

In the initial stage, the Chief Vigilance Commissioner was to sit with other Members but, later on, it was decided that the other two Members also will associate themselves in deciding as to who would be the officer to preside over the matter relating to the Directorate of Enforcement. That is a very vital thing because the Directorate of Enforcement comes in contact with different people and there is easy money. One interpretation here and there may cause loss or gain to the other person himself. So, it is a very vital work which has been done.

As you know, we are facing lots of difficulties because of the enforcement agencies. As I have said in the beginning, many pieces of social legislation, tax reforms and other aspects have complicated the working pattern of this administrative machinery.

The other agency is the directorate of Central Bureau of Investigation. One thing which crept in mind is the

superintendence over the working of the directorate of the CBI. Sir, superintendence, as such, has been indicated in Article 227 of the Constitution of India where the High Courts have been given the powers of superintendence which is a very wide power. Every High Court shall have superintendence over all the courts and tribunals throughout the territory in relation to which it exercises jurisdiction. Superintendence is a two-edge sword. It can cut on both sides. So, one has to be very cautious when the question of superintendence is given to the Central Vigilance Commission.

It is because we have seen in the past that the Central Vigilance Commissioner was too big for his toes. He started giving directions as if he was deciding on the policy of a particular Ministry or a particular Department or a particular public sector undertaking. This is too much because the policy decisions are to be taken by the Government of India or by those people who are in power at a particular given moment of time. If the Central Vigilance Commission starts giving policy directives, then the entire Government machinery will fail. That is why the question of superintendence has to be thought of properly.

The Delhi Special Police Establishment Act, 1946 has given superintending powers to the Government because the Government has the powers for superintendence of all functionaries in different Departments. Now, when we have constituted the Central Vigilance Commission with far-reaching consequences in the administrative functioning of the Government because it mostly relates to Government of India -- the Central Government -- the superintendence matter has to be thought of in a proper manner.

Then, we come to clause 27 of this Bill. I would like to know whether the Central Vigilance Commission will have the total power of superintendence over the Delhi Special Police Establishment Act or the CBI for that matter. Now, the CBI looks into investigation of criminal cases or those which are related to Indian Penal Code and certain minor Acts. Investigation of a particular type of case relating to Prevention of Corruption Act should only be the domain of the Central Vigilance Commission. Nothing else. That has to be kept in mind. When we say that the superintendence of the Central Vigilance Commission shall apply to the CBI, it is only with respect to investigation of cases relating to Prevention of Corruption Act and other related matters of corruption. Not beyond that. If that is not properly adhered to, then we may have a system which would collapse in no time. That has been taken into account. As I said earlier, a person of integrity has to be appointed as the Director of the CBI. Certain procedures have been provided in clause 27 itself. There is a note of caution. The note of caution is regarding the single directive system.

Mr. Deputy-Speaker, Sir, as I had said earlier, suppose an officer of the level of Joint Secretary or Additional Secretary decides on a particular matter and after five or ten years that matter comes up, and somebody either in the Directorate of Enforcement or in the CBI would think it proper that the decision was not proper -- or the CVC itself thinks that the decision was not proper although the CVC might not have been privy to the decision that was taken earlier -- and if the CVC immediately starts an inquiry or directs the CBI for an investigation, then it would be travesty of justice and fairness.

The most important thing is that we must give protection to certain group of officers at certain level, like Group V officers of the public sector undertakings or the Joint Secretary and Additional Secretary rank officers or above the Additional Secretary and Secretary level officers, as the case may be. So, the single directive system is most important when we empower the CVC to go into the matter relating to corruption. I do not say that corruption is not there. It has become all-pervading in our society. But there are certain officers who, in spite of all pressures from different sides, like monetary, psychological and mental agony, have tried to withstand the pressures and give decisions. Those are the officers who have to be protected. If we protect them properly, if we give them due assurance that no harm would befall them, then only we can change the tide which has created a lot of difficulties for this society in the last fifty-five years after Independence.

So, the single directive system is absolutely necessary to ensure that officers give their opinion freely and fearlessly.

MR. DEPUTY-SPEAKER: Shri Anadi Sahu, you can continue your speech in the next working day, that is, on Monday probably.

SHRI ANADI SAHU : Thank you, Sir, I will continue next time.

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