

Constitutional Law and Public Administration in India

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Lecture-03

Non-Constitutional Bodies - I (CVC)

In this unit on the course of constitutional and public administration in India, we will learn about several non-constitutional bodies and a few legislations associated with these institutions to have a comprehensive understanding of these bodies. As the name of this unit very clearly suggests, these bodies are not created by the Constitution. The bodies that are established or created by the Constitution are known as constitutional bodies such as the Election Commission or the Finance Commission. Non-constitutional bodies on the other hand are either created by way of statute or maybe through an executive resolution or other ways. So non-constitutional bodies can be divided into two categories. The first category would be statutory bodies which means they are established by way of a statute. And the second category would be non-statutory bodies which means they are established otherwise. So, like your constitutional bodies such as the Finance Commission or the UPSC, these bodies lack the authority granted by the constitution. However, they are extremely important for the smooth functioning of public administration in India.

We will understand the significance of these bodies as we progress through this unit. So, before moving on to the first non-constitutional body, let us understand the Prevention of Corruption Act of 1988 first. So, let us first understand what corruption is and what are the major causes of corruption and why it is an issue that we need to fix. There are a lot of public officials or bureaucrats in our country such as IAS, IPS, IFS, all of these offices. They have a lot of public duties or functions that they are supposed to perform or discharge, and they also have certain power or authority that comes with the position they are holding. So, when a public official or a bureaucrat is trying to take an undue advantage of their position or their power or authority and accept some kind of a reward or a bribe, that is what is known as corruption. And there can be several causes of corruption. One major cause is poor functioning of public institutions. Another important cause is poor implementation of anti-corruption law such as the Prevention of Corruption Act itself. Another important cause or reason is the lack of awareness among citizens as to what exactly is corruption and how they can help prevent corruption. Lack of political transparency can be another cause. So, there are several causes of corruption. As per the

Corruption Perception Index of 2021, India's rank out of the 180 countries that were surveyed was 85, which means India has a huge issue of corruption. And as per a study conducted by Transparency International in 2005, more than 60% of Indians had paid a bribe at some point in their lives. So yes, corruption is a huge issue in India.

High levels of corruption anywhere in the world is also associated with increased human rights violations. See all these public officials or officers, they are there to uphold the right of law that is envisaged by the Constitution. So, when they choose not to do that, and when they become greedy, and they are not only interested in filling their pockets, but it will also definitely lead to human rights violations of the ordinary people in the country. Corruption is also a huge threat to progress and development and good governance, and it also disrupts democracy. So, we have the Prevention of Corruption Act of 1988, which aims to prevent corruption in the public sector. This is the major objective of this particular Act. One of the most important definitions from this Act that you need to know is the definition of 'public servant', which is given under Section 2(c) of the Act. A public servant can be a person who is in the service of the government, who is remunerated by the government, a public servant, a vice chancellor can be a public servant. It is a long list of definitions that is given under 2(c). So, all of these are considered public servants for the purposes of this Act.

Another important definition that you should know is the definition of 'public duty'. Public duty is defined as a duty in the discharge of which the state, the public or the community at large has an interest. Essentially, public duty is a duty in which public interest is involved. It is precisely this public duty that these public servants are discharging and violation or a breach of this public duty is what gives rise to an action under this Act. The Act provides for different kinds of offences, and it also prescribes punishment for these offences. Let us learn some of the important ones. So, a public servant who attempts to accept or accepts bribe for dishonesty or improperly performing his public duty or choosing not to perform his public duty at all, which means he abstains from performing that public duty, can be punished under Section 7 of the Act. It is immaterial that whether he actually dishonestly or improperly performed or discharged his duty, the very act of attempting to accept bribe or accepting bribe can be punished. And the punishment provided for this particular offence is imprisonment of a minimum term of 3 years, which can be extended up to 7 years and a fine can also be levied.

What about corrupt individuals who try to pay or who pays bribe to public officials? These persons can be punished under Section 8 of the Act with imprisonment up to 7 years or with fine or both. We know that there are a lot of underprivileged population in our country who are often targeted by public servants to pay bribe. They are coerced or compelled or forced to pay bribes in most of the cases. These persons are exempted from the purview of Section 8, which means that if you are forced or coerced or compelled to pay bribe to a public servant, then you won't be punished under Section 8. However, such a person will have to inform the law enforcement agencies within 7 days from the date of paying bribe.

What happens if a commercial organization commits an offence under PCA? If a commercial organization is found to have committed an offence under this Act, then a fine can be imposed on that organization under Section 9.

The last important offence is Section 13, which talks about criminal misconduct by a public servant. So, if a public servant is found to have misappropriated or converted some kind of a property that was entrusted to him by virtue of his position or if he allows some other person to misappropriate or convert a property that was entrusted to him, he can be held liable for criminal misconduct. Similarly, if a public servant is found to have enriched himself illicitly, in those cases also, he can be punished under Section 13. When can you say a public servant has enriched himself illicitly? If he has a huge number of monetary resources or property that does not correlate with his known source of income or his legal source of income, then he can be said to have enriched himself illicitly. The Act also provides separate punishment for abutment and attempt of any of the offences under this Act.

With this background, let us move on to the first non-constitutional body in this segment, that is the Central Vigilance Commission. The Santhanam Committee on the Prevention of Corruption recommended the establishment of a Central Vigilance Commission in the early '60s. Following this in 1964 through an executive resolution, the CVC was established. So initially we learned that there are two categories of non-constitutional bodies.

One is statutory bodies, which are established by way of statute and the second is non-statutory bodies. So, because CVC was established through an executive resolution, it makes it a non-statutory body. However, in 1996, the Supreme Court in the case of Vinay Dharain and others versus Union of India gave a deduction to the government to confer statutory status to CVC. Essentially the court asked the government to give statutory status to the Central Vigilance Commission. So, the Central Vigilance Act of 2003 was enacted, which conferred statutory status to CVC. Hence, CVC is a statutory body. However, it started off as a non-statutory, non-constitutional body. So CVC is the top agency in the country to prevent corruption in the offices of the central government. It is the apex vigilance institution with no executive influence. Please note and remember that CVC has been designated as the agency to receive and act on complaints under the Public Interest Disclosure and Protection of Informers Resolution or the PIDPI resolution in 2004.

So, this resolution is also popularly known as Whistleblowers Resolution. We learned about the concept of whistleblowers and the Whistleblowers Protection Act of 2014 in a while. However, for the time being, please remember that CVC is the designated authority to receive and act on complaints under the PIDPI resolution. Now let us see what the composition of CVC is. CVC comprises one Central Vigilance Commissioner and a maximum number of two Vigilance Commissioners. A Central Vigilance Commissioner or a Vigilance Commissioner is appointed by the President on the recommendation of a

three-member committee consisting of the Prime Minister, the Union Minister of Home Affairs, or the Leader of Opposition in Lok Sabha. And they are appointed for a term of four years or until they attain the age of 65 years whichever is earlier. And once their term is over, they are not eligible for further employment in Central or State Government courses. This is done to ensure utmost transparency in the functioning of CVC.

Let us see how the Central Vigilance Commissioner or Vigilance Commissioner can be removed from their position. They can be removed by the President if he is adjudged as an insolvent or if he has committed an offence which in the opinion of the Central Government involves a moral turpitude. Thirdly, he can be removed by the President if he engages during the term of his office in some kind of a paid employment outside the duties of his office. So, if he takes up some kind of other job while he is working as a Central Vigilance Commissioner or a Vigilance Commissioner, then he can be removed by the President. Or if in the opinion of the President, he is unfit to continue in the office because he has become unsound or he has some kind of a physical ailment that affects his performance as the Central Vigilance Commissioner or Vigilance Commissioners. Or if this particular Commissioner has acquired any financial or other kind of an interest which will affect the performance of his functions prejudicially.

In all these cases, the President has the power to remove the Central Vigilance Commissioner or Vigilance Commissioners. These are not the only grounds for the removal of the Central Vigilance Commissioner or Vigilance Commissioners. There are two other additional grounds. So, the Central Vigilance Commissioner or Vigilance Commissioners can be removed on two additional grounds which are on the ground of misbehavior or incapacity. But in both of these cases, the President will have to refer the situation to the Supreme Court and Supreme Court after an inquiry is of the same opinion, then it can advise the President and after that the Vigilance Commissioner or the Central Vigilance Commissioner can be removed.

Now the salary, allowances, and other conditions of service of a Central Vigilance Commissioner is similar to that of civil servants. Moving on, let us look into the organizational structure of CVC. CVC has its own secretariat consisting of a secretary, additional secretaries, deputy secretaries, undersecretaries and other office staff. CVC also has a Chief Technical Examiner's wing which consists of two engineers of the rank of Chief Engineers, and they are designated as Chief Technical Examiner and it also has other supporting engineering staff. Chief Technical Examiner's wing is the technical unit of CVC, and their functions include conducting a technical audit of construction works of governmental organizations from a vigilance angle, investigation into complaints on construction works of the government, assisting CBI in matters involving technical issues and also advising CVC in cases involving technical issues. Finally, CVC also has a commissioner for departmental inquiry. So, the commission may appoint persons as commissioners for departmental inquiries whose function is to conduct oral inquiry in

departmental proceedings initiated against public service. So, this is the organizational setup of CVC.

Let us learn about some of the functions of CVC. Now we learned about some of the offenses under the Prevention of Corruption Act previously. If there is an allegation of commission of any of these offenses under PCA by a Central Government employee or an authority or by a group A civil servant or any other level of Central Government authority as specified, it is CVC that has the power to inquire into that allegation or cause an inquiry into that allegation. Secondly, CVC also exercises superintendents over the Central Bureau of Investigation of investigations relating to PCA offenses. CVC also reviews the progress of application spending with competent authorities for sanction of prosecution under PCA. PCA has a provision which talks about prior sanction for initiating prosecution.

Please note that the sanction is not required for investigation, only for prosecution there is a provision for sanction. CVC also advises the Central Government and its authorities on matters referred to the CVC. CVC also exercises superintendents over the vigilance administration in various Central Government ministries and its authorities. We previously learned about the PIDPI resolution, the Public Interest Disclosure and Protection of Informers Resolution and how CVC was designated as the agency to receive and act on complaints under this particular resolution. So yes, that is another function of CVC that they receive complaints regarding public interest disclosure, and they recommend appropriate action as per the complaint.

CVC has another role when it comes to making rules governing vigilance and disciplinary matters of civil servants. The Central Government is required to consult the CVC before they make such rules and CVC has a special role in the appointment of direct rate of enforcement. And we will learn about the prevention of money laundering act towards the end of this particular unit and the directorate of enforcement or ED is the authority that is responsible for the administration of prevention of money laundering act. So, as per Section 25 of CVC Act, a committee consisting of the Central Vigilance Commissioner as the chairperson and members including Vigilance Commissioners, Home Secretary to the Government, Revenue Secretary to the Government, secretary of the department of personnel and training, all of them together recommends appointment of officers to the post of deputy director and above in the directorate of enforcement. CVC has a specific authority to receive information regarding suspicious transactions under the Prevention of Money Laundering Act.

In 2013, the Lokpal and Lokayukta Act was enacted in a further effort to prevent the menace of corruption and this act has added some functions to CVC. Firstly, CVC will recommend the director of prosecution under the directorate of prosecution which is something that the Lokpal Act envisages to the Central Government. CVC also has a role in the appointment of officers to the post of SP and above in CBI except for the director of

CBI. CVC has been empowered to conduct preliminary inquiry into complaints referred by the Lokpal in respect of certain officers and officials. So, these are the different types of functions that CVC has to discharge.

CVC also has certain powers, and it also has to discharge some kind of duties. Regarding powers, CVC has the power to regulate its own procedure. We talked about how CVC is a body without any executive influence. So, it has the power to determine and regulate its own procedure and whenever it is exercising some proceedings that are of a judicial character, CVC has the power of a civil code and CVC can also require the Central Government or its authorities to submit information for exercising supervision. When it comes to duties, CVC has to present an annual report to the president on whatever activities they conducted in that particular year and the president will then place this report before each house of the parliament.

Another important thing that you should know about CVC is the chief vigilance officers. Now chief vigilance officers are appointed in every ministry or department of the central government and he heads the vigilance division of these ministries or departments and he connects his division with the CVC and CBI. So, basically what a chief vigilance officer will do is that he will collect intelligence about the corrupt practices engaged in by the employers of his organization. He also can investigate verifiable allegations reported to him. So, after the investigation he will prepare a report and he will send this report to the disciplinary authority concerned for further consideration and he can also refer matters to CVC for advice whenever necessary. So, that is all about the central vigilance commission.

We will learn about a very important legislation which is the Whistleblowers Protection Act of 2014. We talked a bit about this legislation when we talked about the PIDPA resolution. Now we will understand this act in a bit more detail. So, let's first understand what exactly this term whistle blowing means. Back in the day this English Metro Bolton police used to carry a whistle around with them. If you are a policeman and you are walking around the neighborhood and you witness a crime or you see an offender running away from the crime scene you will blow the whistle to let other police officers nearby or the general public know that a crime has taken place in this particular area. Similarly, you must have seen security guards carrying around a whistle. They are also carrying around a whistle for similar purposes. So, if somebody is trying to break into the ATM or a building that they are guarding they might use this whistle to alert the people nearby that some kind of a crime or an illegal activity is taking place here.

Similarly, whenever an employee or an ordinary citizen or a non-governmental organization brings about some kind of an information regarding a fraudulent or an illegal activity committed by his employer or an organization they are also metaphorically blowing a whistle. They are not physically blowing a whistle but metaphorically they are blowing a whistle and alerting the society or the general public regarding this fraudulent or

illegal activity committed by the employer or the organization. So, that is why people who come forward with such kind of information are known as whistleblowers. And whistle blowing is a very important thing if we want to prevent corruption because we know we were talking about corrupt public servants and corrupt organizations. In order to bring about the truth about these servants or organizations we need brave whistle blowers. Whistle blowing indicates that there is a fault in the system and that has to be fixed. That is exactly what these brave whistleblowers are doing. We have a lot of brave whistle blowers in our country as well as in other jurisdictions. We have Sunil Toke; he is a head constable at the traffic division of Mumbai Police, and he has raised his voice against the rampant corruption in the traffic division and because of this very reason he has been transferred around 12 times.

To give an example of a whistle blower from another country we have Erin Brockovich, she is an American paralegal. She was instrumental in finding evidence against this company known as Specific Gas and Energy that was releasing a chemical called hexavalent chromium into the water bodies in an area in California and that was causing widespread illness and people had no clue what the cause was for this particular illness, and she was an ordinary citizen. She was not an employee in the Specific Gas and Energy unlike Sunil Toke. He complained about his own employees or the organization. Erin Brockovich was not an employee; she was an ordinary citizen. However, she was instrumental in finding information against the Specific Gas and Energy. Now that we know what is whistle blowing and who is a whistleblower, naturally the question might come to you 'why do whistleblowers need protection'? As we saw in the case of Sunil Toke, he was transferred around 12 times because he was a whistleblower. Similarly, whistle blowing can also be an extremely dangerous activity as you are going against public servants or organizations that have enormous power and resources with them.

They have the power to take away your jobs, they can run you out of money and even in extreme cases they can resort to violence. In India we have something called Right to Information, this Right to Information Act under which you can file a Right to Information application, and you can recover information regarding the government or government authorities. People use RTI as a tool to collect information regarding the government and use it for whistle blowing and these RTI activists are under great threat. Several have been attacked, harassed, and even murdered by public servants or organizations against whom they were whistle blowing. This is a reality in our country. This is precisely why whistle blowers require a great deal of protection. Back in 2001, the Law Commission in its 179th Report on Public Interest Disclosure and Protection of Incomers, proposed a bill for the protection of whistleblowers. In 2003, a very unfortunate incident happened which was the murder of Satyendra Dubey. Satyendra Dubey was an engineer at the National Highway Authorities of India. It is alleged that he was murdered because he was a whistleblower in the Golden Quadrilateral Project of the National Highway Authorities of India.

Following this, a repetition was filed in Supreme Court and in 2004, the court gave a direction that administrative set up has to be made until a suitable legislation to protect whistleblowers is enacted. In 2004, the PIDPA resolution about which we learned was issued by the government and it empowered CVC to act on complaints from whistleblowers. In 2005, India signed the UN Convention against corruption. So, now India not only has a national commitment to fight corruption, but India also has international commitments to curb this menace of corruption. Finally in 2011, the bill was proposed and in 2014, the Act was enacted.

Let us learn about some of the salient features of the Whistle Blowers Protection Act of 2014. As the name suggests, it is an Act to protect whistleblowers. So, public servants or any other person or a non-governmental organization can make a public interest disclosure to a competent authority. We learned about the definition of public servants under the Prevention of Corruption Act. The definition is applicable here Section 2(c) of PCA. However, the only difference is that under PCA judges are considered as public servants, but for the purposes of Whistle Blowers Protection Act judges are not considered as public servants. Now, let us understand who a competent authority is. Competent authority is different for different groups. For example, for a union minister, the Prime Minister is the competent authority. So, if a union minister wants to whistle blow, he will have to disclose that information to the prime minister.

For a state minister, the Chief Minister is the competent authority. In some cases, CVC is the competent authority, and it changes according to different groups. Now, let us understand what a public interest disclosure is. So, public interest disclosure is a complaint regarding an offense under the Prevention of Corruption Act or it can be a complaint regarding willful misuse of power that has caused demonstrable loss to the government or caused wrongful gain to a public servant or a third party or it can be a complaint regarding an attempt or commission of a criminal offense by a public servant. Once a complaint is received by the competent authority, the first thing that they will do is that they will ascertain the complaint. They will make sure that the complaint itself has sent in the particular complaint.

Anonymous complaints are not entertained by the Act. Even the PIDPI resolution did not entertain anonymous complaints. So once this ascertainment is done, the competent authority might do a discrete inquiry. If the complaint is not sufficient to move forward with a full-fledged investigation, however, they feel that there is some merit to it, they can conduct a discrete inquiry to get more information. So, as part of this discrete inquiry, they will seek comments or explanations or a report from the heads of departments in which this public servant is working. And this competent authority as well as the head of the department is under an obligation to not reveal the identity of the complainant except if the complainant himself has disclosed his identity to the public servant or to the general public through his complaint or otherwise.

Once this report is submitted by the head of the department and the report is of the opinion that it reveals a willful misuse of power, then the competent authority can initiate proceedings against this particular public servant. Please note that the competent authority does not have jurisdiction in all situations. For example, if a matter or any of the matters raised in the complaint has already been dismissed, or is decided by a court of law, then competent authority will not have jurisdiction in that case. Or if seven years or more has passed since the incident that gave rise to the complaint, then also competent authority will not have jurisdiction.

The Act provides protection against victimization. What is victimization? For example, if you are an employee in an organization and you are whistleblowing against this particular organization or certain higher-ranking officials in that organization, this organization can take some sort of an adverse action against you. For example, they can relocate you into another remote location or they might terminate you from your job without any explanation. So, a whistleblower is protected from such acts under this particular legislation. So, it is a duty of the Central Government to ensure that there is no victimization against a whistleblower, and this is given under Section 11 of the Act. And a whistleblower can make an application to the competent authority if he is victimized, or he feels that he is likely to get victimized and the competent authority will issue directions to the public authority or public servant to prevent victimization.

If at all some sort of an adverse action was taken against the whistleblower, the burden of proof to show that this was an action that was taken with sufficient reasons and not as an act of revenge is on the public authority or the public servant. And if at all they fail to adhere to the directions given by the competent authority, action can be taken against them, and they can be charged a fine of up to 30,000 rupees. The Act also provides for punishment for revealing the identity of the complainant malafidely. We talked about how there is a strict obligation of the competent authority and the heads of department to not reveal the identity. So, if anyone reveals the identity of the complainant with malicious intentions, then they can be punished with imprisonment up to 3 years and with a fine up to 50,000 rupees.

It also provides for punishment for filing false or frivolous disclosures. If somebody is filing a complaint which turns out to be false or files a frivolous complaint which is not important or necessary by any means, those can be punished under the Act and the punishment is an imprisonment up to 2 years with fine up to 30,000 rupees. The Act also prescribes separate punishment for heads of departments and companies. If at all one is not satisfied with the decision of the competent authority after all the investigation, then an appeal can be made to the High Court. And this competent authority is also under an obligation to prepare annual reports and submit them to Central and State governments.