

# PROBING AN AMENDMENT

Relevant for: Ethics | Topic: Challenges of corruption

In the monsoon session, Parliament passed certain amendments to laws on corruption, which could have a far-reaching effect. Among them, the focus here is on two aspects: one requiring prior approval for initiating investigation into allegations of corruption against public servants, and the other requiring prior sanction for prosecution of public servants.

Section 6A of the Delhi Special Police Establishment Act has been amended, reinterring the requirement of prior approval for initiating investigation of corruption cases not only against Joint Secretaries and above, but all categories of public servants. The only exception to this are cases of traps in which such public servants are caught red-handed while taking bribe. Also, till now under Section 19 of the Prevention of Corruption Act, 1988, previous sanction of the competent authority was required to prosecute public servants, under various sections of the Act. This safeguard has been extended to retired public servants.

One worrying factor is the amendment requiring prior approval of the government to even initiate an investigation by the Central Bureau of Investigation (CBI) into allegations of corruption against public servants. Under the law of the land, the police has unfettered jurisdiction to initiate investigation into a crime or acts of corruption, once it gets credible information. There are Supreme Court rulings that even the courts can't interfere in this exercise of power by a competent investigating agency. However, political authorities have been trying to appropriate this power from the CBI. It first came in the shape of the Single Directive under the Rajiv Gandhi government, which was confined to senior officers only. A long legal battle was fought before the Supreme Court, challenging the legality of the directive. The court eventually set it aside, in what came to be known as the Vineet Narain case. The bench, headed by the then Chief Justice of India, J.S.Verma, had held that the Single Directive was liable to be quashed as untenable in law.

While arguing in the case, the Attorney General had sought to justify the Directive on the ground that it was the Minister's ultimate responsibility to Parliament for the functioning of the agencies. On this point, the Supreme Court had said: "All the powers of the Minister are subject to the condition that none of them would extend to permit the Minister to interfere with the course of investigation and prosecution in any individual case and in that respect the concerned officers are to be governed entirely by the mandate of the law and the statutory duty cast upon them."

The court quoted with approval, as has been done in scores of cases, the caution administered by Lord Denning in *Regina v. Metropolitan Police Commissioner* (1968). Indicating the duty of Police Commissioner, Lord Denning stated: "I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive... I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land... in all these things he is not the servant of anyone, save of the law itself."

The burden of the court order was that under the scheme of the criminal justice system and the rule of law, which we have adopted and have been practising, the police and the CBI are bound by the law and the Constitution to investigate a crime reported to them, if there is credible information. They have jurisdiction as per law and that the power to register and proceed with the investigation must remain unhindered. Once the investigation is complete and the police or the CBI is ready with the report on the investigation, other authorities come into play.

But even after the Directive was set aside, the political class brought it back in the Central Vigilance Commission Act of 2003. This led to protests and was challenged before the court. In 2014, the Supreme Court set aside this provision of the Act. Inter alia, the court had observed, "The very power of CBI to enquire and investigate into the allegations of bribery and corruption against a certain class of public servants and officials is subverted and impinged by Section 6A." It also observed, "The scheme of Section 155 and Section 156 CrPC indicates that the local police may investigate a senior Government officer without previous approval of the Central Government. However, CBI can not do so in view of Section 6A."

The recent amendment, therefore, is retrograde in nature and is likely to be quashed if contested in the apex court.

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