

Tackling Corruption in India Through Anti-Corruption Agencies: With Special Reference to Lokpal

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Abstract:

Ombudsman refers to a state authority that overlooks the activities of the government and addresses complaints of citizens regarding cases of maladministration within the government. The concept of ombudsman originated in Scandinavian countries. The first ombudsman was established in Sweden in 1809. In India, this concept is embodied in the form of lokpal, lokayukta and the central vigilance commission. The term 'Lokpal' is derived from two words, 'loka' which means people and 'pala' which means protector i.e., lokpal means the 'protector of people'. Apart from Lokpal, there are other anti-corruption agencies in India like the Central Vigilance Commission and the anti-corruption wing of the Central Bureau of Investigation. Even though these agencies are already operating, there is still a demand for the establishment of a central Lokpal. This demand has been made for years and yet there is a delay in its establishment. Therefore, this paper seeks to analyze the functioning of CBI and CVC in order to study why there is a demand for lokpal when other anti-corruption agencies are already present.

Keywords: Lokpal, Corruption, Central Bureau of Investigation and Central Vigilance Commission.

I Introduction

The concept of ombudsman emerged in a few Scandinavian countries. In 1809, the Ombudsman as an institution was first created in Sweden as Parliamentary Supervisor. Ombudsman is a government official who is appointed to investigate and inquire into maladministration in the governmental bodies. This concept then slowly spread to other regions of the world like the United Kingdom, New Zealand and France. Even though the establishment of the ombudsman system in these

countries was an inspiration from Scandinavian countries, each system varies from each other in terms of powers and characteristics of the ombudsman. In India, this concept is embodied in the form of lokpal, lokayukta and the central vigilance commission. The Administrative Reforms Commission first recommended the establishment of lokpal and lokayuktas to address citizen's grievances against maladministration. The complaints against central level ministers and secretaries would be investigated by the lokpal whereas the lokayuktas would address the complaints against ministers and secretaries at the state level.

Though the Indian ombudsmanship i.e. creation of the lokpal, is based on the British model, we are far from achieving the same, this can be seen with reference to the fact that though the bill was passed in 2013, the first lokpal of India was selected in March of 2019. India already has well established agencies like the Central Vigilance Commission and the anti-corruption wing of the Central Bureau of Investigation to tackle corruption cases. Even though such anti-corruption agencies are already present and functioning, there is an ongoing demand for proper establishment of Lokpal. It has also been noticed that both the Lokpal and Central Vigilance Commission, being anti-corruption bodies, share similar functions and jurisdiction. This shows that there are procedural and structural instabilities within the anti-corruption system in India. This gives rise to the following research question: Why does India perceive Lokpal to be the best solution to tackle corruption?

Discussion:

Concept of Corruption:

Corruption refers to the intentional and preconceived misuse of one's authority, power or resources, either directly or indirectly, for personal gains. This could be for various reasons like material gains, increase in power or to have an influence which is not legitimate or sanctioned. Corruption has always existed in human society in form one or the other. Right from ancient times starting with Kautilya laying down a list of practices that could be considered as corruption in the Arthashastra to the modern times where corruption is noticeable in various spheres of life such as social, economic, political, administrative, religious phenomenon to name a few. Kautilya compiled a comprehensive list of embezzlement of 40 kinds. He stated in Arthashastra that “*Just as it is impossible not to haste*

honey or poison when it is at the tip of the tongue, so it is impossible for a government servant not to eat up a bit of revenue. And just as it cannot be found out whether a fish swimming through water drinks or not, so government servants cannot be found out while taking money for themselves. Indeed anything government- is synonymous with corruption, waste, low quality and dishonesty.”¹

The modern period starts with the Britishers entering India. Corruption was rampant increasing in India throughout the existence of the East India Company. The administrators of the company were focused on accumulating wealth and as a result stopped following the norms of conduct. Due to the Bengal famine the fully corrupt company went bankrupt and the British Government took over the administration of India. They built a good administrative system over the years, but even they weren't free of corruption. The department of Revenue, the lower judiciary, the Police and the Excise were highly prone to corruption as they had relatively high discretionary powers. Until the breakout of World War II, corruption was majorly limited to the lower levels of administration. The higher level officials who were mostly Britishers, remained uncontaminated as they didn't work closely with the public and also because they were some of the most salaried officials in the country. So they didn't have the necessity or the opportunity to indulge in corruption. Apart from that, the economic condition of British India was very poor and the circulation of money was limited. Such circumstances gave rise to opportunities for corruption.

After the advent of the Second World War, the government's focus shifted and their primary target was to win the war. They increased their expenditure on supplies. The supply of such commodities decreased rapidly so the government was forced to grant licences to trade in them. Getting a licence became difficult and was of high value. This gave rise to many dishonest and corrupt men who offered bribes to obtain licences to trade. The power to grant licences for this purpose was vested in temporary officials. Thus they accepted bribes in order to earn easy money as they had no prospect of a permanent job being in this position. Thus, the Second World War paved the way for corrupt men to illegally gain because of two major reasons- 1) misguided actions of the administrative machinery; and 2) it was difficult to identify and impose adequate penalties to corrupt officials due to defects in the law.²

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¹ B.L. Fadia and Kuldeep Fadia, *Indian Administration* (9th edn, Sahitya Bhawan 2017) pg 1123.

² Maheswari, *Public Administration* (31st edn, Lakshmi Narain Agrawal 2015) pg 648.

After independence, many factors led to the evolution of corruption. There were many new and unfamiliar duties that were introduced and the idea to establish a welfare state increased the responsibilities and functions of the government by many folds. The government also actively involved themselves in the economic sphere by introducing licences, permits, controls and regulations which increased the possibilities of corruption to occur. The thirst for political power increased and worsened. The Central and State governments tried to identify and penalise the corrupt officials, but these measures were not very effective in controlling this issue. The poor measures taken and fostered by the government, in a way created a belief that maybe the government wasn't genuinely concerned about having a clean and impartial administrative machinery. Even though recently independent India had an efficient civil service, over the decades, the integrity has been diminishing and now there is high level of corruption in the system. Maladministration and corruption go hand in hand. Maladministration gives rise to corruption in the government and vice versa. This problem is inborn in society and has to be curbed in order to achieve a healthy welfare state.

Concept of Ombudsman:

The ombudsman deals with the citizen's grievances against maladministration matters. It was created with an intent to protect the rights of the citizens by curbing any malpractices of the public servants. Ombudsman is a Swedish word, the word 'ombud' which means a spokesperson or the representative of another. In the old Norse, 'Umbodhsmadr' referred to a deputy who overlooked the legal affairs of a trade union or a business.³ The concept of ombudsman emerged in Sweden in 1809.

In 1713 King Charles XII ordered for a supreme representative to represent him while he was at war with Russia. This representative was called the "Chancellor of Justice" and his main duty was to manage and oversee the working of the government officials. But the Chancellor could not act independently from the government so as to protect the citizen's rights. Therefore, a proposal was made for the government officials to be supervised by a body independent of the government. The exact details of the creation of such an office is unclear. The Swedish Constitution was drafted when

³ Dilip Pohekar, *A Study Of Ombudsman System In India*. (1st edn, Gyan Publishing House 2010) pg. 63.

there were disparities in the nation as the king had his own men, but the Parliament had an official who could prevent the royal officers who disobeyed the law. As a result the 'Justice ombudsman (JO)' was established. The JO was also known as the 'Parliamentary Ombudsman for Civil Affairs.'

The Constitution that was adopted by Sweden in 1809 prescribed the division of powers between the Judiciary, Parliament and the King. Even though the King relatively had more power and authority, the Parliament was also bestowed with various means to exercise control over the government's actions. The reason for the establishment of such an institution was to check the Royal Officers. One of those powers included the appointment of the other officials to the office of the ombudsman. The most important duty of the ombudsman was to supervise the affairs of the King by exercising Constitutional control over him. Thus, the creation of the office of ombudsman can be traced back to 1809 through the Constitution of Sweden.

The Spread of The Concept of Ombudsmanship:

Post World War 2 countries around the world began adopting the concept of ombudsmanship, this can be attributed to the following reasons:

- Post World War 2 witnessed countries obtaining freedom from colonial rule, many of these newly independent countries established themselves as a welfare state. The concept of a welfare state put a considerable amount of strain on the government to increase their activities in almost all spheres of life. When the government started delegating its functions to administrative bodies fear arose that excessive delegation of powers could infringe the rights of citizens. Unable to manage such excessive functions allotted to them, there was an increase in cases of corruption and inefficiency. Thus, there was a dire need for the setting up of a system that would help fight such issues. Hence, the concept of an ombudsman gained popularity.
- Professor Stephen Hurwitz, who was the first Danish Ombudsman from 1955-1971 is considered one of the first people to have introduced the concept of ombudsman to the world. He spent most of his efforts trying to popularize the office of an ombudsman and would frequently travel to other countries to deliver lectures and seminars on ombudsman.

He has written many articles on the same in International Journals to try and spread awareness. The United Nations too has held many conferences in support of the creation of an ombudsman system as seen in the conferences held by the UN Division of Human Rights in Buenos Aires (1959) and Stockholm (1962) etc.

Emergence of Ombudsman in India - Lokpal:

Like all newly independent countries India struggled with the maintenance of a balance between establishing a welfare state and protecting the rights of the citizens. The government had to find a way to protect its citizens from the arbitrary actions of bureaucrats while also addressing issues of inefficiency and corruption prevalent in the administrative system. A new redressal system was needed to address such public grievances as traditional systems such as the courts were inefficient and not accessible by the majority of the population. Thus, began discussions for the setting up of an ombudsman.

The creation of the ombudsman was first propagated for by the Ministry of Law in 1963 during the allocation of the budget. It was Dr. LM Singhvi who stated that “...another matter of which is of very great importance of our country in particular. It is the matter of having a sort of parliamentary commission on the pattern of ombudsman in scandinavian countries.”⁴ While highlighting the issues of corruption in the administrative system, he believed that establishing an ombudsman system similar to that of scandinavian countries would be the solution to such issues and would become an active forum of redressal citizens’ grievances.

In the year 1966 the Central Government constituted the Administrative Reforms Commission to take cognizance of the widespread corruption in administration and issues of inefficiency and unresponsiveness and thus, find new ways of addressing citizen grievances. The commission also did a study on the implementation of ombudsman in India. The main question that was posed before the commission was: “how to provide the citizen with an institution to which he can have easy access for the redress of his grievances which he is unable to seek elsewhere?”⁵ A need was identified for an independent, impartial,

⁴ Prof B.L. Fadia and Dr. Kuldeep Fadia, *Indian Administration* (9th edn, Sahitya Bhawan 2017) 1137.

⁵ ‘Historical Background of Lokpal In General’ (*Shodhganga.in*)

<https://shodhganga.inflibnet.ac.in/bitstream/10603/209431/10/10_chapter%203.pdf> accessed on 25th February, 2020.

investigative body that would look into complaints of administrative corruption. With widespread dissatisfaction and corruption, the public had lost confidence in the administrative bodies, thus, an institution that would not only provide quick and inexpensive justice, but also regain public confidence was a necessity that the commission had to look into. After studying the experiences of various countries, and mapping out the pros and cons, the commission ultimately proposed the setting up of an ombudsman system in India. In its report the commission advocated for the creation of 2 bodies of ombudsman i.e. 'Lokpal' to deal with complaints against administrative acts of officials at the Central level and another authority called 'Lokayukta' in each state. It was proposed keeping in mind the federal set up in India; India being bigger than Scandinavian countries both in size and population, it was identified that having a single body of ombudsman would be ineffective. The functions of the Lokpal as per the commission report are:

- To act upon any complaints registered by a citizen, or any complaints taken upon by him of his own cognizance.
- The Lokpal is to investigate cases involving issues such as corruption, nepotism or maladministration.
- The investigations conducted by the Lokpal are to be conducted in secrecy, privately.
- The Lokpal can only suggest remedies to correct the situation to the concerned department. If the concerned department fails to take necessary action then the Lokpal can report to the concerned Chief Minister or if necessary the Prime Minister.

Following the recommendations of the commission the Lokpal and Lokayukta Bill, 1968 was introduced into the parliament, but was not passed by the Rajya Sabha. Since 1968 - 2011, 8 bills have been introduced in the parliament for the establishment of the Lokpal in India but none were passed. It was only in 2013 that the bill was finally passed.

As per the 2013 Lokpal And Lokayuktas Act, the Lokpal at the centre was to be set up within 1 year of the Act coming into force, but it was only formally created in 2019 with the appointment of Justice Pinaki Chandra Ghosh as the first Lokpal.

Central Vigilance Commission and Central Bureau of Investigation:

In 1962, prior to the creation of the A.R.C, The Santhanam Committee was created. Otherwise known as the committee on prevention of corruption, it's function was to find ways to address issues of corruption. The committee recommended the setting up of a Central Vigilance Commission (C.V.C) to investigate and combat cases of corruption. The same was established in 1964 and was given statutory status by passing the Central Vigilance Commission Act, 2003 . The C.V.C is considered as the apex vigilance organization, it is free from all executive control. The functions of the C.V.C can be summarised as:

- i) to conduct an enquiry into any complaint regarding a public servant who has used his office in a corrupt manner, or has acted corruptly
- ii) to enquire into other complaints of misconduct, misbehaviour, or lack of integrity of a public servant
- iii) it exercises supervision over ministries and departments of the government and any other agency or organization that is an extension of the Central government.
- iv) it only has an advisory function, it cannot initiate any legal proceedings and can only advise or recommend the concerned department on the appropriate action to be taken
- v) the commission is not an investigative body i.e. it does not have it's own investigative machinery and has to rely on the CBI for investigations
- v) It is important to note that before the CVC can take up any investigations against government officials, it must first seek the permission of the government.

Overlapping Functions of Lokpal And CVC:

The Administrative Reforms Commission submitted its report in October 1966. The commission made various recommendations to curb the growing problem of Redressal of Citizens Grievances. The establishment of a Lokpal at national level and Lokayukta at state level were two of the recommendations made by the commission. The CVC was established as a result of the recommendation of a committee on prevention of corruption in February 1964. The CVC is not an

investigating agency, they are authorised to enquire and conduct such enquiries into offences mentioned under the Prevention of Corruption Act, 1988. It covers vigilance over various departments of the central governments, ministers, national banks, government sectors, etc. They are also empowered to enquire into the workings of the executive body. The CBI works under the supervision of the CVC. The CBI has previously handled high level cases of corruption against ministers, financial institutions, secretaries and so on. Any cases that are left unsolved by the CVC are transferred to the CBI. But the increasing number of corruption cases show that the CBI is being burdened. Therefore, the functioning of the CVC has to be strengthened.

Both Lokpal and CVC are anti-corruption agencies set up to address people's grievances and to prevent cases of maladministration. The lokpal is not yet established. However, various states have successfully established Lokayuktas and also have respective State Vigilance Commissions. They play an important role and have their own investigatory machinery but their functions are limited. Even so it helps reduce the burden on the other anti-corruption agencies to a certain extent.

The CVC is not the most successful in terms of reducing corruption but it is the best available option compared to other committees and commissions. The implementation of Lokpal had been initiated when it was first recommended by the Administrative Reforms Commission in 1966. Since then, many versions of the Lokpal Bill were drafted, but it is yet to be established. In 2011, the Lokpal bill was passed by the Lok Sabha but it was rejected by the Rajya Sabha. After much pressure from the public and the movement led by Anna Hazare, the Lokpal and Lokayukta Act of 2013 was passed. There can be various plausible reasons for this delay, such as:

- The draft of the Lokpal Bill is ambiguous.
- Contentious nature of the bill.
- The reluctance of the government to establish the Lokpal.
- Fear of politicians towards the institution.
- Absence of the desire and lack of strong support from the public, media and various other NGOs and experts.⁶

⁶ Dilip Pohekar, *A Study Of Ombudsman System In India*. (1st edn, Gyan Publishing House 2010).

Jurisdiction of Lokpal and CVC:

The jurisdiction of the CVC is limited to complaints against gazetted officers and other officials of similar status. The CVC is not the best substitute for an Ombudsman in India. The commission is essentially an extension of the bureaucratic set up of the Central Government and its actions are very much restricted by the influential ministries and other political powers at the centre. It is more of an advisory body rather than an investigatory body. Its jurisdiction is limited to higher level public servants. It extends to officials of the central government, corporate bodies, other departments under the central governments, public undertakings etc. but the cvc cannot investigate the Ministers and Members of Parliament.

The Lokpal covers public servants ranging from the Prime Minister to central government officers of group A, B, C and D. It can inquire about corruption cases against a public servant. But in case of the Prime Minister, the lokpal can inquire against him only if the allegations are related to issues such as external and internal security, international relations, space, public order and atomic energy. The inquiry of the PM can happen only if the full bench of the lokpal deems it necessary and two thirds of its members approve of it. This inquiry against the PM cannot be made public and has to happen under camera surveillance. As for Group A and B officials, the lokpal can inquire about them. But Group C and D officials are inquired by the Chief Vigilance Commissioner, who then reports it to the lokpal. The Inquiry wing of the lokpal has a special power of civil court i.e., the lokpal can conduct trials in a special court if the case is of extreme importance.

The lokpal has brought much needed changes in order to curb the issue of corruption and maladministration, but it has quite a few loopholes and lacunae. The Lokpal is not entirely independent of political influence as the collegium for selection of its members consists of members from political parties. Hence, there is a chance for manipulations in the process of appointment of officials to the lokpal. There is no concrete immunity provided to the whistleblowers under the lokpal and lokayukta Act, 2013 which discourages people from making complaints. One of the biggest loopholes of the institution is that the judiciary does not fall under its jurisdiction. The Lokpal does not have constitutional backing and there is a lack of sufficient provision for any appeal to be made against the institution.

III Conclusion:

According to the Corruption Perception Index 2019, India has ranked 80 out of 180 countries and has scored 41 out of 100, with 1 being the most corrupt.

The administrative agencies exercise discretionary powers which has given rise to problems such as corruption and maladministration. There are various legislative and judicial controls through which aggrieved persons can seek remedy against maladministration. But these channels have certain limitations like the lengthy and tiresome court procedures. The parliament is also not in control of the administration directly in such cases. Hence there was a need for an independent agency that could redress the aggrieved persons and ensure proper administration. The anti-corruption movement has progressed a lot since the demand for 'Jan Lokpal' began in 2011. The centre took various measures to clampdown black money through demonetization, banning benami transactions, etc. The ambitious attempt made with demonetization was not a full success because the black money was legitimized again through corrupt practices which crippled the Indian economy. The Lokpal can take up cases where people have filed a complaint and it can also initiate investigations on its own.

The Lokpal was finally elected in 2018 amongst such controversies. There were many complaints filed after the establishment of the Lokpal related to public grievances, pensions, etc. This undermined the primary reason for establishing the Lokpal. But the appointment of the 8 members based on party lines defeated the integrity of the institution from the very start. The selection of the members of Lokpal was not transparent and the whole selection process was delayed.

But the other anti-corruption agencies like CBI and CVC are not able to fulfill their roles to a great extent. The public trust in these agencies are slowly decreasing due to their inefficiency and the unjust practices within the institutions itself which makes one question the quality of their investigations.

The CBI is said to have a conviction rate of 65 - 70%, which has been increasing since 2016. As per the latest reports, in 2019 the CBI has had a conviction rate of 69.92% (Refer Appendix 1).⁷

In a report in the year 2019 it was shown that the CBI had booked approx. 4100 government employees and officials on registered cases of corruption. The CBI had also registered 1767 cases against 4123 public servants from 2016 - 2018. *“Of the 1,767 cases, charge sheets were filed in 900 cases, regular departmental action was recommended in 59 cases and 89 cases were closed or disposed of...”*⁸

The table given in appendix 2⁹ is from the CVC annual report of 2018 and displays the number of cases received and disposed of by the CVC in 2018. (The 2019 details were unavailable.)

An Integrated System: Lokpal, CBI and CVC

Thus, lokpal seems to be the best available option for India. With the existing provisions, all the three agencies- lokpal, CVC and CBI, can simultaneously take up a complaint which may ultimately lead to confusion. Therefore, there should be a single integrated system where the CVC and anti-corruption wing of CBI, are both under the Lokpal. This way, the Lokpal can utilise these agencies for various matters regarding prosecution, investigation and enquiry. This would make a more competent organisation to fight corruption and would also reduce the financial burden.

The problem with CVC is that their jurisdiction is limited to take up complaints only against gazetted officials and others of similar status. Hence, the CVC is not an equivalent substitute for the Lokpal. Also the CVC is essentially an extension of the bureaucratic apparatus of the Union

⁷ CBI Scores Better In Conviction Rates' (*Telangana Today*, 26th December 2019) <<https://telanganatoday.com/cbi-scores-better-in-conviction-rate>> accessed on March 24th 2020.

⁸ CBI Booked Over 4100 Govt Employees For Corruption In Last 3 Years: Govt' (*Business Standard*, 13th February 2019) <https://www.business-standard.com/article/pti-stories/cbi-registered-corruption-cases-against-over-4-100-govt-employees-in-last-3-yrs-govt-119021300579_1.html> accessed on March 24th 2020.

⁹ 'Annual Report 2018' (*Central Vigilance Commission*, 31st December 2018) <<https://cvc.gov.in/sites/default/files/Annual%20Report%202018%20%28English%29.pdf>> accessed on 24th March 2020.

Government and therefore its functioning is most likely to be hindered by the ministries and other political forces at the Centre. The Lokpal has wider jurisdiction including the Prime Minister. It also has the power to direct any other anti-corruption agency including the CBI. The Lokpal exercises the authority to sanction prosecution against any public officer. With the approval of the Lokpal the CBI can appoint a panel of advocates without having to rely on government advocates.

One of the major issues raised was whether it was possible to bring the CBI under the Lokpal. The CBI is a large agency that investigates various matters other than corruption cases too. However, if the CBI remained under the Central government then it could give rise to the issue of bias and unjust proceedings in cases where the government is the prosecutor. This causes a conflict of interest while addressing corruption cases against the government. The CVC and Lokpal have overlapping functions. Due to such reasons, a parliamentary committee recommended to bring both the CVC and the anti-corruption wing of the CBI under the Lokpal. This gives a clear functional distinction between the three and also creates a more concrete organisation to tackle the ever growing problem of corruption in India.

There is a landmark case where the incompetence of the CBI was showcased. In the *Vineet Narain v. Union of India* case, the Supreme Court laid down certain guidelines regarding the functioning of the CBI. The brief facts are- the CBI seized two diaries and notebooks from a raid conducted in the house of a high ranking politician. It contained information of several transactions to many high-profile politicians and bureaucrats. But the CBI did not conduct further investigations on the people mentioned in the diaries. The petition revolves around the allegation that CBI and other government bodies like the revenue authorities had failed to perform their duties and did not investigate further after obtaining the 'Jain diaries'. Therefore, the court monitored the investigation process and gave out directions by issuing the writ of continuing mandamus. The agencies had to perform the investigations instantly and had to keep the court updated of any progress made. The court overlooked the process until the investigations were complete and the charge sheets were filed in competent court.

One of the directives issued specified that the CBI should not have to report the findings of the investigation to higher political officers so as to eliminate any chance of bias or lack of fairness. This direction also applied to an authority who holds an office which has administrative control over CBI. The Court passed an order to remove the CBI from the supervision and interference of the

Central Government and instead placed it under the Central Vigilance Commission which is an independent agency.

This shows that there is a dire need for the establishment of Lokpal in India to counter maladministration and corruption.

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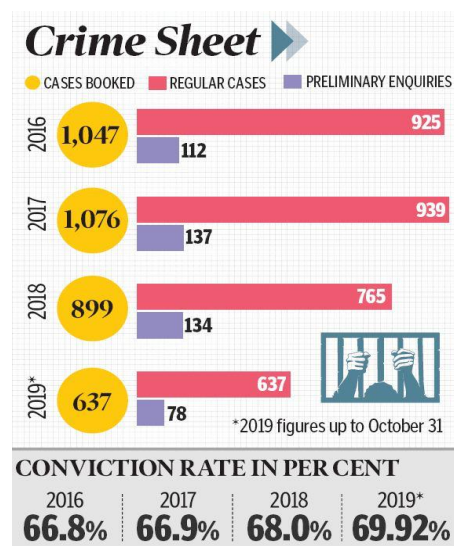
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APPENDIX 1

Conviction Rates Of CBI



source : ‘CBI Scores Better In Conviction Rates’(*Telangana Today, 26th December 2019*)
<<https://telanganatoday.com/cbi-scores-better-in-conviction-rate>> accessed on March 24th 2020.

APPENDIX 2

Number of Cases Received And Disposed of By The CVC in 2018

Cases	Investigation Reports (First Stage Advice)	Inquiry Reports and minor penalty cases (Second Stage Advice)	Other Reports/ cases of reconsideration etc.	Total
Brought forward from 2017	1030	142	215	1387
Received	1894	402	837	3133
Total	2924	544	1052	4520
Disposed off	1889	430	843	3162
Carried forward to 2019	1035	114	209	1358

Source: ‘Annual Report 2018’ (Central Vigilance Commission, 31st December 2018)
 <<https://cvc.gov.in/sites/default/files/Annual%20Report%202018%20%28English%29.pdf>>
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