

**PRIVILEGED CLASS DEVIANCE
STUDY MATERIAL (LCR 908)**

UNIT V

**(RESPONSE OF THE INDIAN LEGAL ORDER TO
THE DEVIANCE OF PRIVILEGED CLASSES)**

BY

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1. CENTRAL VIGILANCE COMMISSION

➤ *What is the Central Vigilance Commission (CVC)?*

The Indian government introduced the Central Vigilance Commission (CVC) in the year 1964. The commission was set up on the recommendation of K. Santhanam Committee on Prevention of Corruption. It was originally introduced through an executive resolution. The Central Vigilance Committee's role is to advise and guide the Central Government in the field of surveillance.

It is an agency constituted to curb corruption in offices of the Indian government. Complaints from whistleblowers (an employee of the firm/public office informing the public about frauds/wrongdoings in the office) under '**Whistleblower Resolution**' are received by CVC after which the commission can take actions on motivated acts.

CVC is called the apex vigilance institution. It is free of control from any executive authority. Its role is to monitor all vigilance activity under the Central Government and advising various authorities in Central Government organizations in planning, executing, reviewing and reforming their vigilance work.

➤ *Facts about the Central Vigilance Commission (CVC):*

- Since 25 August 1998, CVC is a multi-member commission having a statutory status.
- Central Vigilance Act came into effect in the year 2003 after CVC bill was passed by both [Lok Sabha](#) and Rajya Sabha.
- First Chief Vigilance Commissioner of India was Nittoor Srinivasa Rau.
- Since 2004, the commission receives complaints under Public Interest Disclosure and Protection of Informers' Resolution" (PIDPI), also called Whistleblowers' Resolution.
- Praveen Kumar Srivastava is the current Central Vigilance Commissioner of India.
- It works on the policy of 'Zero Tolerance Against Corruption.'

➤ *How many members are there in Central Vigilance Commission?*

CVC has three members:

1. Central Vigilance Commissioner
2. Two Vigilance Commissioner (Maximum number of commissioners is 2)

➤ *Facts about CVC Members:*

- President of India appoints CVC members by warrant under his hand and seal
- The President's appointment comes after the recommendation by a three-member committee:

1. Prime Minister
 2. Minister of Home Affairs (MHA)
 3. Leader of Opposition in Lok Sabha
- Term of Office: Four years or if they attain 65 years of age (whichever is earlier)
 - After they retire, they are not eligible for reappointment in any central or state government agency.

➤ ***The Organisation of Central Vigilance Commission***

There are three departments under the commission, given in the table below:

The organisation of the Central Vigilance Commission (CVC)		
Secretariat	Chief Technical Examiners' (CTE) wing	Wing of Commissioners for Departmental Inquiries (CDIs)
<ul style="list-style-type: none"> • Secretary • Joint Secretary • Deputy Secretary • Under-Secretary • Office Staff 	It is the technical wing, having: <ul style="list-style-type: none"> • Chief Engineers • Supporting Engineers 	<ul style="list-style-type: none"> • Inquiry Officers

➤ ***What is the work of the Central Vigilance Commission (CVC)?***

The following are the works of CVC members:

- They inquire or investigate whenever a public servant (Central Government employee) commits an offence under the Prevention of Corruption Act, 1988.
- They inquire or investigate against following officials who commit an offence under the Prevention of Corruption Act, 1988:
 - Members of all-India services serving in the Union and Group 'A' officers of the Central government
 - The specified level of officers of the authorities of the Central government

They superintend the functioning of the Delhi Special Police Establishment (CBI) in cases related to the Prevention of Corruption Act, 1988

They direct Delhi Special Police Establishment in investigative cases related to the Prevention of Corruption Act, 1988

They review the progress of investigations conducted by the Delhi Special Police Establishment in cases related Prevention of Corruption Act, 1988

They review the progress of those applications that are pending with competent authorities for sanction under the Prevention of Corruption Act, 1988

Central Government and its authorities are advised on matters as they refer to CVC members

They also superintend vigilance departments of government ministries

They undertake or cause an inquiry into complaints received under Whistleblower Resolution and recommend appropriate action.

Whenever the central government makes rules and regulations governing the vigilance and disciplinary matters relating to members of Central Services and All-India Services, CVC is consulted.

CVC members are part of the selection committee which is responsible to recommend the appointment of the Director of Enforcement (ED.)

CVC is a part of the selection committee that recommends officers for appointments to the posts above the level of Deputy Director of Enforcement.

The Commission acts as an authority to receive information that is related to suspicious transactions under the Prevention of Money Laundering Act, 2002

It recommends to Central Government for the appointment of Director of Prosecution in [Central Bureau of Investigation](#)

CVC members are part of a selection committee that is responsible to recommend the appointment of officers to the posts of the level of SP and above in the CBI except for the Director of CBI

Lokpal refers complaints to CVC who initiate a preliminary inquiry in respect of officers and officials of Groups A, B, C & D

➤ *The Whistleblowers Protection Act*

The Act came on the heels of “The Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010” in the Lok Sabha on August 26, 2010. The Bill as passed by Lok Sabha and Rajya Sabha on 21st February 2014 and received the assent of the President on May 9, 2014.

The act has provided mechanisms to secure the identity of public employees who expose corruption in government ministries and departments. It also aids the intention to expose corruption by public servants, including ministers.

➤ ***Facts related to the Whistleblowers Protection Act:***

- There is a penalty of imprisonment for 2 years or a fine of Rs. 30000 or both, in cases related to false charges
- The Act is not applicable to the state of Jammu and Kashmir, the armed forces and the Special Protection Group mandated to provide security to the Prime Minister and former prime ministers, among others.

2. PUBLIC ACCOUNTS COMMITTEE

➤ ***What is the Public Accounts Committee?***

Comptroller and Auditor General (CAG) of India submits three annual audit reports before the President who lay it before each house of the Indian Parliament. These reports are examined by the Public Accounts Committee (PAC) which is a Financial Committee, a type of Standing Committee.

Public Accounts Committee was introduced in 1921 after its first mention in the Government of India Act, 1919 also called Montford Reforms. It is existing in the Indian Constitution since then. Know in detail about the [Montague Chelmsford reforms](#) on the given link.

PAC is one of the [parliamentary committees](#) that examine the annual audit reports of CAG, which the President lays before the Parliament of India. Those three reports submitted by CAG are:

1. Audit report on appropriation accounts
2. Audit report on finance accounts
3. Audit report on public undertakings

The Public Accounts Committee examines public expenditure. That public expenditure is not only examined from a legal and formal point of view to discover technical irregularities but also from the point of view of the economy, prudence, wisdom, and propriety. The sole purpose to do this is to bring out cases of waste, loss, corruption, extravagance, inefficiency, and nugatory expenses.

➤ ***Who are the members of the Public Accounts Committee?***

The financial committee has 22 members. All the members are taken from the Indian Parliament. Out of 22 members, 15 are elected from Lok Sabha (Lower House) and 7 members are elected

from Rajya Sabha (Upper House.) (The [difference between Lok Sabha & Rajya Sabha](#) can be read in the linked article.)

➤ ***Mode of the election of Public Accounts Committee's members:***

The members of the committee are elected annually by the Parliament from amongst its members. The principle of Proportional Representation (PR) by means of Single Transferable Vote (STV.) This election method gives equal representation to all the members of the Parliament.

➤ ***Term of the office of members of the Public Accounts committee:***

Every member elected by the Parliament from both Lok Sabha and Rajya Sabha are a part of the committee for a year. After a year, a new election takes place and members are changed or re-elected.

Note: Similar to [Estimates Committee](#), a minister cannot be elected as a member of the Public Accounts Committee

➤ ***Chairman of the Public Accounts Committee:***

Lok Sabha speaker is the authority to appoint the chairman of the committee. The Chairman of the Public Accounts Committee used to be appointed from the ruling party of the day until 1966-67 however; a convention later decided that the chairman of the committee will be appointed invariably from the opposition party.

➤ ***What are the functions of the Public Accounts Committee?***

This standing committee performs various functions. They are given below:

Functions of the Public Accounts Committee	
S.No	Type of Functions of PAC
1	It examines appropriation accounts and finance accounts of the central government which is laid before the Lok Sabha
2	It scrutinizes the audit reports of CAG to satisfy itself that: <ul style="list-style-type: none"> • The money that has been disbursed was legally available for the applied service or purpose • The expenditure conforms to the authority that governs it • Every re-appropriation has been made in accordance with the related rules
3	It examines the accounts of: <ul style="list-style-type: none"> • State corporations • Trading concerns and,

	<ul style="list-style-type: none"> • Manufacturing projects <p>Note: The audit report of these bodies are made by the CAG</p>
4	<p>It examines the accounts of:</p> <ul style="list-style-type: none"> • Autonomous • Semi-autonomous bodies <p>Note: The audit report of these bodies are made by the CAG</p>
5	<p>It keeps a check on the money spent on any service during a financial year. If the money is in excess of the amount granted by the Lok Sabha for that purpose, it goes on to its report.</p>

Note: All the functions performed by the Public Accounts Committee are assisted by Comptroller and Auditor General.

➤ *Limitations of the Public Accounts Committee*

Though the committee is empowered to act upon the audit reports of the CAG, and also to keep a tab on the union government's expenses, there are still a few limitations on it which it should adhere to. The limitations of the Public Accounts Committee are given below:

1. Broadly, it cannot intervene in the questions of policy
2. It can keep a tab on the expenses only after they are incurred. It has no power to limit expenses.
3. It cannot intervene in matters of day-to-day administration.
4. Any recommendation that the committee makes is only advisory. They can be ignored by the ministries.
5. It is not vested with the power of disallowance of expenditures by the departments.
6. Being only an executive body; it cannot issue an order. Only the Parliament can take a final decision on its findings.

3. OMBUDSMAN

What Is an Ombudsman?

An ombudsman is an official, usually appointed by the government, who investigates complaints (usually lodged by private citizens) against businesses, [financial institutions](#), universities, government departments, or other public entities, and attempts to resolve the conflicts or concerns raised, either by mediation or by making recommendations.

Ombudsmen may be called by different names in some countries, including titles such as a public advocate or national defender.

- An ombudsman investigates complaints leveled against businesses and other organizations, including the government.
- Depending on the jurisdiction, an ombudsman's decision may or may not be legally binding.
- However, even if not binding, the decision typically carries considerable weight.
- In the U.S., members of Congress serve as ombudsmen.
- The processing time for a complaint can be between 90 days and nine months, depending on the type and complexity of the complaint.

➤ *How an Ombudsman Works*

An ombudsman typically has a broad mandate that allows them to address overarching concerns in the public, and sometimes the [private](#), sector. That said, sometimes an ombudsman's mandate extends over only a specific sector of society—for example, a children's ombudsman may be tasked with protecting the rights of the young people of a nation, while, in Belgium, the various linguistic and regional communities have their own ombudsmen.

Ombudsmen are in place across a wide variety of countries and organizations within those countries. They may be appointed at a national or local level, and are often found within large organizations, too. Ombudsmen may focus exclusively on and deal with complaints regarding a particular organization or public office, or they may have wider ranges.

Depending on the jurisdiction, an ombudsman's decision may or may not be legally binding. However, even if not binding, the decision typically carries considerable weight.

➤ *Types of Ombudsman*

While the general duty of the ombudsman is the same, the types of grievances they handle and resolution services they provide may differ according to their appointment. Ombudsmen can be found in organizations, governments, schools, and other institutions.

a. Industry Ombudsman

An industry ombudsman, such as a telecommunications or [insurance](#) ombudsman, may deal with consumer complaints about unfair treatment the consumer received from a company that operates within that industry. Often—and especially at the government level—an ombudsman will seek to identify systemic issues that can lead to widespread rights violations or poor quality of service to the public by the government or institution in question.

b. Organizational Ombudsman

A large public entity or other organization may have its own ombudsman—an example being the California Department of Health Care Services. Depending on the appointment, an ombudsman may investigate specific complaints about the services or other interaction a consumer has had with the entity concerned.

An ombudsman within an organization may also have a primary function of dealing with internal issues, such as complaints by employees, or, if an educational institution, complaints by its students.

4. Classical Ombudsman

Ombudsmen duties may be more wide-ranging nationally. For example, some countries have ombudsmen in place to deal with issues such as [corruption](#) or abuses of power by public officials. Furthermore, some countries have ombudsmen whose main function is to protect human rights within those countries.

While an ombudsman is usually publicly appointed, they will typically have a large degree of independence and autonomy in fulfilling their function. This is to enable the official to act in a fair and impartial way to all parties involved in a complaint.

5. Advocate Ombudsman

An advocate ombudsman, just as the name suggests, advocates for people who have filed grievances or for those with whom the grievances concern.¹ They can be found in the private or public sectors but are typically found championing for long-term care residents, aging adults, the underserved, and those who cannot advocate for themselves.

6. Media Ombudsman

A media or news ombudsman who receives complaints about news reporting. The media ombudsman promotes accurate and transparent news reporting in an environment that fosters trust with the general public. Having a media ombudsman can help media outlets avoid lengthy and costly litigation involving false reporting and claims of defamation.

Media ombudsmen work with journalists, editors, and other media professionals to investigate and respond to complaints. Often, to promote transparency in operations, they publish their response to a broader audience.

➤ *Advantages and Disadvantages of an Ombudsman*

Ombudsmen provide a channel for people to submit complaints against institutions (e.g., governments, businesses, organizations, news outlets, and schools) without influence from the accused. They conduct fair and unbiased investigations at no cost to the complainant, providing resolutions or mediation services.

Where corruption is present, ombudsmen can investigate, expose, and help correct illegal behaviors. Ombudsmen help prevent governments from abusing their power, such as imposing

unfair laws and exerting controls over their citizens without constraints. They also help restore confidence in the system and its ability to fairly address issues.

In addition to investigating and providing resolutions, ombudsmen serve as a source of information about policies and procedures. Serving as an unbiased party, they are able to promote communication between parties and clarify issues that stifle progress.

On the other hand, an ombudsman offers no benefit when their work produces lackluster or no results. A lack of dedication and service erodes the trust of the complainant and the audience they are appointed to serve. If the claim is complex, receiving a quick resolution is unlikely. Investigations take time and may require additional resources. Despite the recommendation or resolution, the institution has the final say on how to resolve the issue.

Unlike lawyers, ombudsmen are impartial—except in cases where they advocate for the rights of others. Some are familiar with or have legal training; however, they cannot provide legal advice.² If the complainant disapproves of the resolution, they may pursue other actions, such as suing the institution. An ombudsman cannot, however, investigate a case after it is submitted to a court.

4. COMMISSION OF INQUIRY

To enable the administration to discharge effectively the multifarious functions entrusted to it, it needs to exercise broad powers of conducting the investigations and inquiry into various matters. The primary purpose of this technique is to collect information with a view to decide upon a further course of action to meet a given situation, or to find correctives to a given problem.

The policy maker or the administrator can initiate effective remedial measures to deal with specific problems only when he is in full possession of the relevant information, facts and figures and to collect these, inquiries and investigations become an inevitable tool in the hands of administrators.

Inquiries and investigations are thus important methods of acquiring information. Such information is needed as feedback for policy making by the government. It is also a source of information for people. Parliament enacted the Commissions of Inquiry Act, 1952, which authorises the central and state governments to appoint inquiry commissions to make inquiries in the definite matters of public importance. This is a central legislation enacted under the constitution, Schedule VII, List I and III.

The commissions of inquiry act gives powers to the central government to appoint a commission of inquiry, to make inquiry into any matter relatable to any of the entries enumerated in List I and III. The Act empowers the state governments to appoint inquiry commissions, to make inquiry into any other matter relatable to any of the entries enumerated in List II or III of Schedule VII.

The Central government can appoint a commission of inquiry to inquire into a matter falling within the purview of a state government if it falls within its plenary legislative power, but a state government cannot appoint a commission of inquiry, to inquire into matters falling within the purview of the central government. Where any commission has been appointed to inquire into a matters by the central government, no state government shall, except with the central government prior approval, appoint another commissioner to inquire into the same matter, so long as the commission appointed by the central government is functioning, or unless the central government is of the opinion that the scope of the inquiry should be extended to two or more states.

➤ ***Appointment object and scope***

An inquiry commission can be appointed by an appropriate government when it is of the opinion that it is necessary so to do, or if a resolution is passed by the house of people (lok sabha) or a state legislative assembly as the case may be (Section 3). The appointment of the commission is to be made by a notification in the official gazette. Where a resolution of the house of people or of a state legislative assembly is passed asking for the appointment of a commission of inquiry, government is bound to make such appointment.

In **B. Jaganathan v State of T.N:** However no mandamus can be issued to compel a government to appoint a commission where there is no resolution of legislature. It is so because the act uses the word **shall appoint** (mandatory) where a resolution is passed by the legislature, whereas it uses the word **may** (discretionary) in other cases.

➤ ***Object***

Matters to be inquired into must be definite **public importance** and must be determinate, distinct, and precise. It should not be vague. If the matters (or charges) to be inquired into are vague or speculative, the courts may intervene. On the whole, the courts are extremely liberal in upholding the action of the government.

Scope:

- i. The purpose of these inquiries has been to ascertain facts so that if any malpractices or problems are revealed, corrective legislative or administrative action, may be taken by the government.
- ii. It is necessary to lay down in the statute the circumstances when the administration may initiate an inquiry, but much of the purpose of doing so would be frustrated if ground for initiating inquiries are laid down in broad or vague language.
- iii. If the statute confers a blanket power on the administration to order an investigation without any restriction or mentioning any ground, then the control of such a power through a court action does not appear to be feasible except on the rare ground of mala fide.
- iv. Period of duration of a commission must be stated in the notification. If the notification does not contain it, the defect can be cured by issuing another notification.

➤ ***Siliguri Municipality v Amalendu Das:***

Where a government refuses to extend duration of a commission, courts do not intervene to compel it to do so, on the ground that the investigation entrusted to it is not over. Where the term of a commission expires, state government is not bound to extend the duration.

➤ ***State of MP v Arjun Singh:***

The supreme court made a close scrutiny of government orders regarding determination of the terms of reference of the commission. Here, the supreme court states that a government's subjective satisfaction, that it is necessary to appoint a commission, should be based on objective and real material and not merely on some vague allegations or hearsay evidence, nor should it intend for nay fishing inquiry.

➤ ***Inquiry into definite matters of public importance***

This phrase is of wide importance and enables the government to launch inquiries practically into any matter. Accordingly inquiries into varied subject matters have been undertaken under the act e.g. railway accidents, the state of the press in India and its present and future lines of development, causes of food contamination, economic irregularities and fraud committed by certain persons managing the affairs of industrial companies, emergency excesses etc. The most common subjects for appointing inquiry commissions are railway accidents, police firings and the misuse of powers by the ex-ministers.

➤ ***In Ram Krishna Dalmia v Justice Tendolkar:***

The government of India appointed a commission of inquiry to enquire into and report on some affairs of some Dalmia Jain companies, and acts of fraud and irregularities of certain persons who controlled these companies. The commission was further required to report the action which should be taken as and by way of securing redress or punishment or to act as a preventive in future cases. The appointment of commission was challenged on a number of grounds. But the supreme court observed that we see no warrant for the proposition that a definite matter of public importance must necessarily mean only some matter involving the public benefit or advantage in the abstract e.g. public health, sanitation or the like. The conduct of an individual person or company(s) may assume such a dangerous proportion and may so prejudicially effect or threaten to affect the public well-being as to make such conduct a definite matter of public importance urgently calling for a full inquiry.

➤ ***Powers of commission***

➤ ***A commission of inquiry has powers of a civil court are:***

- i. summoning and enforcing attendance of any person from any part of India and examining her on oath.
- ii. requiring discovery and production of nay document.

- iii. receiving evidence on affidavits.
- iv. requisitioning any public record or copy thereof from any court or office.
- v. issuing commissions for the examinations of witnesses or documents and
- vi. any other matter, which may be prescribed.

The commissions powers under Section 4 of the Act to call upon any person to appear as a witness in terms is very wide and is not circumscribed by fetters of state. A commission has power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as in the opinion of the commission, may be useful for, or relevant to, the subject matter of the inquiry. That persons is deemed to be legally bound to furnish such information within the meaning of sections 176 and 177 of IPC.

A commission is deemed a civil court when any offence, to described in section 175, 178, 17, 180 or 228 of IPC, is committed in its view or presence. It may, after recording the facts of the offence and statement of the accused, forward the case to a magistrate having a jurisdiction to try those offences. A commission has the power to utilise services of certain officers and investigation agencies for conducting investigations pertaining to inquiry. It has also been given powers to appoint persons having special knowledge of nay matter connected with inquiry as assessors, to assist and advise it.

➤ *Quasi judicial functions*

Although a commission of inquiry has been given powers of a court for some purposes, if it is not a court and its functions is not judicial (*Ram Krishna Dalmia v Justice Tendulkar*). The reasons for holding it to be a administrative are:

- i. There may not be any dispute before the commissions.
- ii. It does not decide anything conclusively but merely gives its findings.
- iii. There is no appeal against its findings.
- iv. It does not follow the adversary procedure but is essentially inquisitorial in its approach.

The act however says that any proceedings of a commission shall be deemed judicial proceedings within the meanings of Section 193 and 228 of IPC.

It was held in **Kiran Bedi v Committee of Inquiry** that a commission of inquiry was a tribunal for the purpose of Article.

5. PREVENTION OF CORRUPTION ACT, 1988

The Prevention of Corruption Act, 1988 (PCA, 1988) is an Act of the Parliament of India enacted to combat corruption in government agencies and public sector businesses in India.

The PCA 1988 has gone through many amendments in order to better implement it. This article will highlight the features of the Prevention of Corruption Act and also shed light on the amendments implemented.

Highlights of Prevention of Corruption Act, 1988

The Prevention of Corruption Act was enacted in order to fight corruption and other malpractices in government and public sector business in India. Under PCA, 1988 the Central Government has the power to appoint judges to investigate and try those cases where the following offences have been committed

- Offences punishable under the act
- A conspiracy to commit or an attempt to commit the offences specified under the act

The following are the offences specified under the Prevention of Corruption Act as well as their subsequent punishments:

Punishments and Offences under PCA, 1988	
Offences	Punishments
Taking gratification other than legal remuneration	Those found guilty shall face imprisonment of 6 months extendable upto 5 years. A fine shall also be levied
Taking gratification with the purpose of influencing a public servant, through illegal and corrupt means	Imprisonment for not less than three years which is expandable upto seven years. A fine shall also be levied.
Taking gratification with the purpose of wielding personal influence with public servant	Imprisonment not less than 6 months extendable upto 5 years. A fine shall also be levied
Act of criminal misconduct by the public servant	Imprisonment not less than 1 year expandable upto 7 years. A fine shall also be levied

Investigation shall be done by a police officer not below the rank of:

- In the case of Delhi, of an Inspector of Police.

- In metropolitan areas, of an Assistant Commissioner of Police.
- Elsewhere, a Deputy Superintendent of Police or an officer of equivalent rank shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a magistrate of first class, or make any arrest therefore without a warrant.