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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 3.12.2021:—

BILL No. 148 OF 2021

A Bill further to amend the Central Vigilance Commission Act, 2003.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Central Vigilance Commission (Amendment) Act, 2021. Short title and commencement.

(2) It shall be deemed to have come into force on the 14th day of November, 2021.

45 of 2003.

2. In section 25 of the Central Vigilance Commission Act, 2003, in clause (d), the following provisos shall be inserted, namely:— Amendment of section 25.

"Provided that the period for which the Director of Enforcement holds the office on his initial appointment may, in public interest, on the recommendation of the Committee under clause (a) and for the reasons to be recorded in writing, be extended up to one year at a time:

Provided further that no such extension shall be granted after the completion of a period of five years in total including the period mentioned in the initial appointment;"

Repeal and
savings.

3. (1) The Central Vigilance Commission (Amendment) Ordinance, 2021 is hereby repealed. Ord.9 of 2021.

(2) Notwithstanding such repeal, anything done or any action taken under the Central Vigilance Commission (Amendment) Ordinance, 2021, shall be deemed to have been done or taken under the provisions of this Act. Ord.9 of 2021.

STATEMENT OF OBJECTS AND REASONS

The menace of corruption, black money and international financial crime and its intricate link with drugs, terrorism and other criminal offences pose a serious threat to national security and the stability of financial systems of our country. Further, corruption in public life often has the inevitable consequence of economic and social rights of people being violated. The spectre of corruption erodes the confidence of people in the systems that are meant to provide them good governance. Effectively tackling corruption and financial crimes is, therefore, essential for the realisation of economic and social rights of people and for maintaining their faith in institutions of governance. In the present times, the menace of corruption has become inextricably linked with money-laundering which is being tackled by every nation not only individually but as a part of a global network.

2. In order to obviate such threats, international community has been consistently taking multi-lateral global initiatives over the years. With the advent of newer technologies, tax havens and other factors of global importance, newer avenues and techniques have emerged which make the task far more complicated. The fight against corruption, black money, money-laundering and threat of proceeds of crime destabilising the world economy is at a critical juncture.

3. In India, various legislations have been enacted since 1946 to combat corruption, money-laundering and economic offences, amongst other such activities e.g. the Delhi Special Police Establishment Act, 1946, the Prevention of Corruption Act, 1988 and the Prevention of Money-Laundering Act, 2002.

4. India is a member of Financial Action Task Force (FATF), an inter-governmental international body under United Nations. The FATF has developed recommendations or standards to prevent and combat money-laundering and terror financing. About 200 countries or jurisdictions, with India playing a major role, have committed to implement these standards. The FATF conducts peer reviews of these countries or jurisdictions on an ongoing basis to assess levels of implementation of the FATF recommendations, providing an in-depth description and analysis of each country's system for preventing criminal abuse of the financial systems. The peer review to assess technical compliances of India with the recommendations of FATF is scheduled to be held in the year 2022/23 after a gap of more than a decade.

5. The FATF has recommended at para 8 as follows:—

“8. Law enforcement authorities and prosecutorial authorities should have adequate financial, human and technical resources. Countries should have in place processes to ensure that the staff of these authorities maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.”.

Therefore, the subject matter of Indian Mutual Evaluation stipulates that India proves its "capacity" and "resources" for financial crime investigation and financial crime prosecution.

6. India's position requires significant enhancement of capacity and resources. Additionally, under certain circumstances the nation faces certain sensitive investigative and legal processes attendant to important money-laundering cases, requiring extradition of fugitive offenders, which requires a continuum. The Directorate of Enforcement has sole jurisdiction to investigate money-laundering offences in India and co-ordination with global counter-parts, at times it becomes self-defeating to have tenure restriction at supervisory and decision-making position considering that at the level of international co-ordination, it is the personal individual knowledge, information and diplomacy which are required more than

just institutional knowledge and information. Considering that the Director of Enforcement and Director, CBI are important part of the concerted global actions against corruption and money-laundering, legal provisions or service rules restricting their tenure may be counterproductive. In certain situations, their tenure may need to be extended beyond the initial fixed terms. At the same time, it is rational to have an upper limit to the tenure of such appointments to maintain independence. The positive outcome in India's mutual evaluation is critical for the financial future of the country. Further, there is every possibility of such global contingencies occurring in the future and therefore, amendments in the Central Vigilance Commission Act, 2003 are necessitated to meet such contingencies whenever it arises, with certain in-built safeguards.

7. While the Directorate of Enforcement (ED) has the sole jurisdiction to investigate the money-laundering cases, the Central Bureau of Investigation (CBI) has the primary responsibility to investigate cases of corruption. With the interlinking of persons and groups involved in money-laundering and corruption activities, unravelling the crime and corruption nexus through the ED and CBI becomes not only complex, but also has international ramifications. Thus, investigation of such crimes requires the two investigating agencies to have robust processes and senior personnel in position for sufficiently long tenures. As such, enhancing capacity and resources for continuing oversight by the senior officers, especially the heads of the two agencies, is fundamental to the proposed re-strengthening. It is strongly felt that assured long tenures of the heads of ED and CBI on similar lines would be highly desirable.

8. Considering that ordinarily, longer tenures are an established practice in major countries, two years tenure ought to be a minimum and that is what is contemplated in the statutory provisions. However, in India's case owing to several factors, including the issues of seniority and hierarchy, two years tenure has in fact become the upper limit with individuals being appointed close to their date of superannuation.

9. In view of the above, while leaving sufficient room for the competent authority to suitably decide the tenure of the officer heading the important investigating agencies of the Government and supervising sensitive cases involving public interest depending upon the circumstances, it is essential to provide clear enabling stipulations in the Central Vigilance Commission Act, 2003 and the Delhi Special Police Establishment Act, 1946 in regard to the tenure, and extension of his tenure of appointment and an upper limit of tenure. The said enabling provisions ensure the continuity of tenure depending upon the exigencies of the office at a given point of time and also safeguard the sanctity and independence of the sensitive position occupied by the person in-charge and will remove possibility of any other interpretation.

10. Keeping the above in view and with the objective to remove any contrary interpretation and with a view to make a specific provision, leaving room for the competent authority, depending on the exigencies of circumstances, in the tenure of the officer heading the important investigating agency of the Government and supervising sensitive cases involving public interest, it is essential to provide clear and unambiguous enabling provision regarding tenure of the officer heading the investigating agency in the Central Vigilance Commission Act, 2003.

11. The Central Vigilance Commission Act, 2003 was enacted to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto.

12. The appointment of officers of Directorate of Enforcement is governed by the Central Vigilance Commission Act, 2003. Clause (d) of section 25 of the said Act provides

that—“a *Director of Enforcement* shall continue to hold office for a period of not less than two years from the date on which he assumes office;”.

13. As the Parliament was not in session and there was an immediate need of legislation in this regard, the Central Vigilance Commission (Amendment) Ordinance, 2021 (Ord. 9 of 2021) was promulgated on 14th day of November, 2021.

14. The Central Vigilance Commission (Amendment) Bill, 2021 which seeks to replace the Central Vigilance Commission (Amendment) Ordinance, 2021 (Ord. 9 of 2021) provides for amendment of section 25 so as to insert two provisos therein.

15. The Bill seeks to replace the aforesaid Ordinance.

New Delhi;
The 1st December, 2021.

DR. JITENDRA SINGH.

BILL NO. 147 OF 2021

A Bill further to amend the Delhi Special Police Establishment Act, 1946.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

Short title and
commencement. **1.** (1) This Act may be called the Delhi Special Police Establishment (Amendment) Act, 2021.

(2) It shall be deemed to have come into force on the 14th day of November, 2021.

25 of 1946.

2. In section 4B of the Delhi Special Police Establishment Act, 1946, in sub-section (1), the following provisos shall be inserted, namely:—

Amendment of
section 4B.

"Provided that the period for which the Director holds the office on his initial appointment may, in public interest, on the recommendation of the Committee under sub-section (1) of section 4A and for the reasons to be recorded in writing, be extended up to one year at a time:

Provided further that no such extension shall be granted after the completion of a period of five years in total including the period mentioned in the initial appointment."

Ord.10 of
2021.

3. (1) The Delhi Special Police Establishment (Amendment) Ordinance, 2021 is hereby repealed.

Repeal and
savings.

Ord.10 of
2021.

(2) Notwithstanding such repeal, anything done or any action taken under the Delhi Special Police Establishment (Amendment) Ordinance, 2021, shall be deemed to have been done or taken under the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The menace of corruption, black money and international financial crime and its intricate link with drugs, terrorism and other criminal offences pose a serious threat to national security and the stability of financial systems of our country. Further, corruption in public life often has the inevitable consequence of economic and social rights of people being violated. The spectre of corruption erodes the confidence of people in the systems that are meant to provide them good governance. Effectively tackling corruption and financial crimes is, therefore, essential for the realisation of economic and social rights of people and for maintaining their faith in institutions of governance. In the present times, the menace of corruption has become inextricably linked with money laundering which is being tackled by every nation not only individually but as a part of a global network.

2. In order to obviate such threats, international community has been consistently taking multi-lateral global initiatives over the years. With the advent of newer technologies, tax havens and other factors of global importance, newer avenues and techniques have emerged which make the task far more complicated. The fight against corruption, black money, money laundering and threat of proceeds of crime destabilising the world economy is at a critical juncture.

3. In India, various legislations have been enacted since 1946 to combat corruption, money-laundering and economic offences, amongst other such activities e.g. the Delhi Special Police Establishment Act, 1946, the Prevention of Corruption Act, 1988 and the Prevention of Money-Laundering Act, 2002.

4. India is committed to fostering respect for international law and treaties (article 51 of the Constitution of India). It has ratified the United Nations Convention Against Corruption (UNCAC) in May 2011 which requires States parties to introduce effective policies aimed at the prevention of corruption by variety of measures ranging from institutional arrangements such as the establishment of the specific anti-corruption body, to codes of conduct and policies promoting good governance, rule of law, transparency and accountability. The Convention is applicable to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of established offences.

5. Article 36 of Chapter III (Criminalization and law enforcement) of the Convention prescribes for specialized authorities in this regard. A peer review for India was done with respect to the implementation of the articles under Chapter III and it has been recommended to take steps to further strengthen the law enforcement agencies tasked with investigation and prosecuting corruption and money laundering offences, and to strengthen inter-agency coordination.

6. Thus, India's position requires significant enhancement of capacity and resources in the agencies tasked with matters relating to corruption and money-laundering. Additionally, under certain circumstances the nation faces certain sensitive investigative and legal processes attendant to important cases, requiring extradition of fugitive offenders, which require a continuum. Considering that the Director of Enforcement (ED) and Director, Central Bureau of Investigation (CBI) are relevant and significant part of the global movement against corruption and money-laundering, any possibility of restricting the tenure may defeat the object under certain circumstances. Further, at the same time, it is rational to have a fixed upper limit to the tenure of such appointments to maintain independence. Furthermore, there is every possibility of such global contingencies occurring in the future and therefore, amendments in the Delhi Special Police Establishment Act, 1946 are necessitated to meet such contingencies whenever arises with certain in-built safeguards.

7. While the ED has the sole jurisdiction to investigate the money-laundering cases, the CBI has the primary responsibility to investigate cases of corruption. With the interlinking of persons and groups involved in money-laundering and corruption activities, unravelling

the crime and corruption nexus through the ED and CBI becomes not only complex, but also has international ramifications. Thus, investigation of such crimes requires the two investigating agencies to have robust processes and senior personnel in position for sufficiently long tenures. As such, enhancing capacity and resources for continuing oversight by the senior officers, especially the heads of the two agencies, is fundamental to the proposed re-strengthening. It is strongly felt that assured long tenures of the heads of ED and CBI on similar lines would be highly desirable.

8. Considering that ordinarily, longer tenures are an established practice in major countries, two years tenure ought to be a minimum. However, in our case owing to several factors, including the issues of seniority and hierarchy, two years tenure has in fact become the upper limit with individuals being appointed close to their date of superannuation.

9. In view of the above, while leaving sufficient room for the competent authority to suitably decide the tenure of the officers heading the important investigating agencies of the Government and supervising sensitive cases involving public interest depending upon the circumstances, it is essential to provide clear enabling stipulations in the Delhi Special Police Establishment Act, 1946 in regard to the tenure, and extension of tenure of appointment and an upper limit of tenure. The said enabling provisions ensures the continuity of tenure depending upon the exigencies of the office at a given point of time and also safeguard the sanctity and independence of the sensitive position occupied by the person in-charge and will remove possibility of any other interpretation.

10. Keeping the above in view and with the objective to remove any contrary interpretation and with a view to make a specific provision, leaving room for the competent authority, depending on the exigencies of circumstances, in the tenure of the officers heading the important investigating agency of the Government and supervising sensitive cases involving public interest, it is essential to provide clear and unambiguous enabling provision regarding tenure of the officer heading the investigating agency in the Delhi Special Police Establishment Act, 1946.

11. Sub-section (1) of section 4B of the Delhi Special Police Establishment Act, 1946 deals with the appointment of Director of the Central Bureau of Investigation which provides that—*“The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office”*.

12. As the Parliament was not in session and there was an immediate need of legislation in this regard, the Delhi Special Police Establishment (Amendment) Ordinance, 2021 (Ord. 10 of 2021) was promulgated on 14th day of November, 2021.

13. The Delhi Special Police Establishment (Amendment) Bill, 2021 which seeks to replace the Delhi Special Police Establishment (Amendment) Ordinance, 2021 (Ord. 10 of 2021) provides for amendment of section 4B so as to insert two provisos therein.

14. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;

DR. JITENDRA SINGH.

The 1st December, 2021.

UTPAL KUMAR SINGH
Secretary-General