

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIALTEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**

*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*



## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **“UNION OVERREACH”: IS CBI A THREAT TO INDIAN FEDERALISM?**

AUTHORED BY - NUTAN AVULA BALA

## ***Introduction***

The Central Bureau of Investigation (known as “CBI” hereinafter) was established in 1963 under the Delhi Special Police Establishment (DSPE) Act, 1946<sup>1</sup>, to investigate crimes such as corruption, fraud, cheating, and embezzlement, which have Pan-India and inter-state ramifications.<sup>2</sup> Primarily, “investigation” as a subject matter in India is under the purview of State agencies, since “investigation” falls under the ambit of “police” under entry 2 of List II or the State list<sup>3</sup>. Thus, the State by virtue of Article 246(3)<sup>4</sup> has the exclusive power to formulate laws on the subject matters under List II. However, the Union too has exclusive power in reference to the creation of a central entity with respect to investigation, since the same falls under entry 8 of List 1 or the Union list. Thus, relying upon Article 246(1)<sup>5</sup>, the Parliament has exclusive powers to regulate the subject matters falling under the Union List. Hence, the Central Bureau of Investigation has been created by the Union in virtue of these powers, but encompasses the idea of “consent”, which can be interpreted as the inclusion of federal values. The CBI Manual, and the DSPE Act through which the CBI derives its powers, mandates the acquisition of a State approval prior to the CBI’s conduct of an investigation. The inclusion of state consent can thus be interpreted as employing harmonious construction to avoid further discrepancies in the control of CBI, since both the state and the union can formulate an investigative entity. The State, herein the former, can leverage purposive interpretation of entry 2 List II<sup>6</sup>, while the Union, or the latter, can employ originalist interpretation of entry 8 List II<sup>7</sup>. However, Entry 80 of the Union List<sup>8</sup> vests exclusive jurisdiction over the subject matter of extension of police forces' powers and jurisdiction to areas outside that state yet also mandates the state’s consent.

---

<sup>1</sup>The Delhi Special Police Establishment Act 1946.

<sup>2</sup>*Frequently Asked Questions (FAQ)* (Central Bureau of Investigation) <<https://cbi.gov.in/faq>> accessed 6 May 2025.

<sup>3</sup>Constitution of India, sch 7 List II Entry 2.

<sup>4</sup>Constitution of India, art 246(3).

<sup>5</sup>Constitution of India, art 246(1).

<sup>6</sup>Constitution of India, sch 7 List II Entry 2.

<sup>7</sup>Constitution of India, sch 7 List II Entry 8.

<sup>8</sup>Constitution of India, sch 7 List I Entry 80.

Thus, the inclusion of State consent becomes a critical tool to imbibe the values of federalism, but the idea of “consent”, thus, renders the autonomy of CBI disputable in nature. The question thus to be answered pertains to the idea of “consent” as embedded in Section 6 of the DSPE Act<sup>9</sup>, which requires the CBI to investigate only post-acquisition of a State’s consent, despite the authorisation already provided by the Central government. The inclusion of such provisions thus promotes federalism, hereby rendering States autonomy over their affairs and thus nullifying imposition by the Central government. Subsequently, the blog enquires into the idea of consent through Section I, which outlines various ancillary judgements strengthening the powers and autonomy of CBI, while Section II delves into the Pandora of the phrase “consent” hereby highlighting the suit filed by the West Bengal government emphasizing on the abuse of power by CBI specifically in reference to continuation of investigations despite the withdrawal of “general consent”, which is an essential consent to be acquired under the DSPE Act<sup>10</sup>. The blog further scrutinises whether the CBI is a Union agency or an independent body, hereby assessing whether the same is a constitutional or an extra-constitutional body through Section III, ultimately concluding through a summarisation of the issues addressed. Thus, the research question remains as to whether the idea of “consent”, specifically “general consent”, when viewed in corroboration to the scope of its powers, raises the question as to the constitutionality of the CBI, and therein the curb of federalism itself.

### ***Section I: The Idea of “Consent”***

Primarily, the originalist interpretation of the phrase “consent” results in the idea that once the consent has been acquired, the CBI cannot be restricted as to the use of its powers this interpretation is negated in the case of *A.C. Sharma v Delhi Administration*<sup>11</sup>, wherein it was held that the law of the land is that the state’s powers and jurisdiction are not divested even after the state’s consent is given. Moreover, this issue as to the extent of CBI’s autonomy post the grant of consent is also exacerbated when construed in reference to the State’s withdrawal of consent before the completion of the investigation. As emphasised by judicial precedents, such as in the case of *Surinder Singh Ahluwalia v Delhi Special Police Establishment*<sup>12</sup> it can be asserted that when the consent given under Section 6 of the Act, 1946, was withdrawn by the State, the Court held that the State could not do that when consent had been given formally.

---

<sup>9</sup>The Delhi Special Police Establishment Act 1946, s 6.

<sup>10</sup>The Delhi Special Police Establishment Act 1946.

<sup>11</sup>*A.C. Sharma v Delhi Administration* 1973 1 SCC 726.

<sup>12</sup>*Surinder Singh Ahluwalia v Delhi Special Police Establishment* 1991 Cri L.J. 2583.

Furthermore, this stance is strengthened through the case of *Kazi Lhendup Dorji v CBI*,<sup>13</sup> wherein the Court highlighted that the State Government could not revoke the consent given to the CBI to prosecute any matter with retrospective effect. Consequently, what becomes critical to note, is that the idea of “consent” is only construed in reference to State investigations, however, to conduct an investigation on a central government employee when posted in a state doesn’t require consent to be acquired, as held in the case of *CBI v A. Satish Kumar & Ors.*<sup>14</sup>

Hence, through these judgements, it can be interpreted that actual consent is required to be taken by CBI wherein an investigation pertains to any State employee; however, if it is a Central government officer deployed in a particular state, the investigation does not require the State’s consent. However, since discrepancies arise sometimes, with reference to consent being acquired or not, certain scholars suggest that an amicable solution to ensure CBI acquiring due consent of the State prior to investigation, is to create a judicial oversight committee to oversee investigations by the CBI, hereby enabling the investigative body to operate without any hindrance from the state government and any kind of foul play from the Central Government, as alleged sometimes by the State government. Although it seems that the acquisition of “consent” is a federal provision, it becomes pertinent to delve into the essence of the idea of “consent” in itself, to further understand how the same leads to discrepancies in the value of federalism.

### ***Section II: What in essence is “Consent”?***

Subsequently, a further point of debate remains the idea of consent itself, since the “consent” referred to, is further classified into two types of consent, general consent and specific consent. CBI mandates the acquisition of both general consent and specific consent to institute an investigation, wherein the former pertains to the acquisition of an overarching consent allowing the agency to eliminate the process of obtaining fresh consent each time it decides to institute an investigation in a particular State. The latter, which is specific consent, pertains to the acquisition of case-specific consent, without which the CBI officers cannot acquire the powers parallel to that of police in a particular State thereby rendering the investigation difficult to be conducted. Furthermore, the absence of a specific consent also results into the CBI personnel incapable of instituting any fresh case involving either central government officials or

<sup>13</sup>*Kazilhendup Dorji v Central Bureau of Investigation* 1994 SCC (Suppl.) 2 116.

<sup>14</sup>*CBI v A. Satish Kumar & Ors.* 2025 INSC 11.

otherwise such as private individuals, resulting into their power being curbed to a higher extent, and thus, it remains advisable for CBI to acquire both general as well as specific consent. Although the judiciary has restrained the State from withdrawing general consent once given, the issue as to the acquisition of “consent” was exacerbated in the dispute between the West Bengal Government and the Union.

Herein, the primary issue remained as to whether the CBI can operate in a state despite the withdrawal of the state’s “General Consent”. This led to the filing of an original suit at the Supreme Court by the State of West Bengal<sup>15</sup>. The suit alleged that the Union of India violated the principles of federalism, which the Constitution of India was built on, and engaged in Constitutional overarching acts by arbitrarily investigating matters within the state by posting the CBI within the state.<sup>16</sup> Further on, though, the state withdrew its general consent in the month of November 2018, the CBI continued to exercise its duties within the state. The West Bengal Government contended that Entry 80 of the Union List<sup>17</sup> and Entries 1 and 2 of the State List<sup>18</sup> should be read together along with Section 6 of the DSPE Act<sup>19</sup>. It was further contended that such a reading and interpretation of the Constitution would render it clear that the State government's consent is a prerequisite and that CBI would therefore have no jurisdiction for operating within the territorial boundaries of the State. Additionally, it was advocated by West Bengal that by unilaterally deploying CBI to investigate State matters despite withdrawal of “general consent” violated federalism and thus the Union had engaged in “constitutional overreach”, and although no substantive hearing has taken place, reliance should be placed on preliminary observations.<sup>20</sup> According to Justice Gavai, Section 6 of the DSPE<sup>21</sup>, through which the CBI derives its powers, explicitly emphasises upon the acquisition of State consent, and thus, CBI or DSPE cannot exercise their powers over a jurisdiction in the absence of “general consent” being acquired. In light of this case, increasing jurisdictions and States such as Tamil Nadu have decided to withdraw the “general consent” provided to CBI, in order to preserve federalism and uphold the State’s autonomy over central investigation of

---

<sup>15</sup>*State of West Bengal v Union of India* 2024 8 SCC 767.

<sup>16</sup>Ritu Singh, ‘Karnataka Withdraws General Consent to CBI: Which Other States Have Done It & Why’ *Moneycontrol* (Bengaluru, 6 April 2024) <<https://www.moneycontrol.com/news/india/karnataka-withdraws-general-consent-to-cbi-which-other-states-have-done-it-why-12831023.html>> accessed 6 May 2025.

<sup>17</sup>Constitution of India, sch 7 List I Entry 80.

<sup>18</sup>Constitution of India, sch 7 List II Entries 1–2.

<sup>19</sup>The Delhi Special Police Establishment Act 1946, s 6.

<sup>20</sup>Ritu Singh, ‘Karnataka Withdraws General Consent to CBI: Which Other States Have Done It & Why’ *Moneycontrol* (Bengaluru, 6 April 2024) <<https://www.moneycontrol.com/news/india/karnataka-withdraws-general-consent-to-cbi-which-other-states-have-done-it-why-12831023.html>> accessed 6 May 2025.

<sup>21</sup>*ibid*.

internal matters.<sup>22</sup>

Hence, it becomes important to understand that the suit raised some critical questions, as to the constitutionality of CBI, and further in reference to the scope of its powers and whether the same results in a violation of federal principles. Although the CBI is deemed to be an independent entity, questions as to how the same is controlled have been witnessed several times, the answer to which becomes important to assess. This assessment becomes critical to understand the violation of federalism therein, which has been enquired into in the upcoming section.

### ***Section III: Is CBI a Union Agency?***

It is pertinent to delve into judicial precedents to further analyse the friction between the State and the Union or the Centre over the control of the investigative agencies in India. The first case is that of *Vineet Narain v UOI*<sup>23</sup>, wherein the Supreme Court struck down the “Single Directive” of the Union Government as it is unconstitutional and directed that the Central Vigilance Commission be directed to be made a statutory body to supervise the CBI. The first set of instructions, which are known as the “Single Directive”,<sup>24</sup> was issued in 1969 to bodies like the CBI, where it directed that the CBI needs prior approval before investigating a certain rank of officers. This was also to ensure that the CBI functions effectively and efficiently, and as a non-biased agency operating on the whims of a certain agency.

Post 6 years after the *Vineeta Narain* case<sup>25</sup>, the Union amended the DSPE Act by inserting Section 6A<sup>26</sup>, which basically stated that the CBI requires prior approval from the Central Government to investigate offences under the Prevention of Corruption Act<sup>27</sup> against Central Government employees of joint secretary rank and above. This move by the Union led to the executive regaining control over investigations and overlooked the *Vineeta* case<sup>28</sup>. Furthermore, this move can be read into as a step towards the violation of federal principles hereby concentrating higher power in the Union, as opposed to a balance being struck between

---

<sup>22</sup>Ritu Singh, ‘Karnataka Withdraws General Consent to CBI: Which Other States Have Done It & Why’ *Moneycontrol* (Bengaluru, 6 April 2024) <<https://www.moneycontrol.com/news/india/karnataka-withdraws-general-consent-to-cbi-which-other-states-have-done-it-why-12831023.html>> accessed 6 May 2025.

<sup>23</sup>*Vineet Narain & Others v Union of India & Another* 1998 (1) SCC 226.

<sup>24</sup>The Single Directive 1969.

<sup>25</sup>*Vineet Narain & Others v Union of India & Another* 1998 (1) SCC 226.

<sup>26</sup>The Delhi Special Police Establishment Act 1946, s 6A.

<sup>27</sup>The Prevention of Corruption Act 1988.

<sup>28</sup>*Vineet Narain & Others v Union of India & Another* 1998 (1) SCC 226.

the States and the Union. In 2014, in the case of *Subramanian Swamy v Union of India*<sup>29</sup>, the Court struck down Section 6A of the DSPE Act<sup>30</sup> by holding that this violated Article 14<sup>31</sup> by extending arbitrary protection only to a class of public servants. This holds a major constitutional significance as it holds equal application of criminal law and ensures judicial scrutiny. The Union introduced Section 17A of the Prevention of Corruption Act<sup>32</sup>, wherein it made prior government approval mandatory for investigating any public servant. The difference is that the approval is required for all public servants and not just for a certain category. The aforementioned judgement hereby restored federal values by eliminating the Union's abuse of power, specifically construed in reference to interference with investigations over State affairs. However, the arbitrariness of the Union's position as to directing the CBI to conduct investigations raises several questions as to the constitutionality of the same, since it becomes relevant while addressing the issue around the violation of federal values.

Although the CBI and various Courts historically have stated that, "The CBI is an organ or a body which is established by and which is under the superintendence of the Government of India in view of the statutory scheme as enacted by the DSPE Act"<sup>33</sup>, the issue as to the autonomy of the CBI ultimately came up in the suit instituted by West Bengal government on 16 November 2018. Justice Sandeep Mehta in preliminary observations, raised a critical question as to, "Who authorizes the CBI to proceed to another State for investigation?"<sup>34</sup>, herein re-iterating the debate as to whether CBI is a constitutional body or an extra-constitutional body deriving its powers from the Centre or a resolution passed by the Ministry empowering its formation and derivation of powers. Although the Solicitor General asserted that Section 5(1) of the DSPE Act<sup>35</sup> empowers the Union to "pass orders extending to any area in a State", hereby extending the scope of CBI's jurisdiction, Justice Mehta interpreted the same as being construed as if the "CBI Director and the Central Government are the same".<sup>36</sup> Thus the statement hints at the fact that the CBI is a Union Government Agency, and thus a non-

---

<sup>29</sup>*Subramanian Swamy v Central Bureau of Investigation* 2014 (8) SCC 682.

<sup>30</sup>The Delhi Special Police Establishment Act 1946, s 6A.

<sup>31</sup>Constitution of India, art 14.

<sup>32</sup>The Prevention of Corruption Act 1988, s 17A.

<sup>33</sup>The Delhi Special Police Establishment Act 1946 .

<sup>34</sup>'*West Bengal's Original Suit Against CBI's Jurisdiction, Explained*' (Supreme Court Observer, 11 March 2024) <<https://www.scobserver.in/journal/west-bengals-original-suit-against-cbis-jurisdiction-explained/>> accessed 6 May 2025.

<sup>35</sup>The Delhi Special Police Establishment Act 1946, s 5(1).

<sup>36</sup>'*West Bengal's Original Suit Against CBI's Jurisdiction, Explained*' (Supreme Court Observer, 11 March 2024) <<https://www.scobserver.in/journal/west-bengals-original-suit-against-cbis-jurisdiction-explained/>> accessed 6 May 2025.

constitutional body which derives its powers through the establishment of the DSPE Act viewed in corroboration with the Santhanam Committee on the Prevention of Corruption during the years of 1962-1964 which recommended the creation of a central entity called CBI.

CBI's constitutionality as to investigation of crimes was challenged through the case of *Navendra Kumar v UOI*<sup>37</sup>, thereby alleging that since CBI is a non-constitutional body, it cannot be empowered to leverage powers parallel to that of police such as registration of FIR, arresting individuals, prosecution of offenders and filing of charge sheet. The Guwahati High Court, while elucidating on the constitutionality of the CBI, asserts that it is undisputed that the CBI does not derive its powers from the DSPE Act, but rather through an impugned resolution passed by the Ministry of Home Affairs, herein rendering the CBI as an extra-constitutional body. Subsequently, a resolution passed by the Ministry of Home Affairs cannot be held to be a decision of the Union Cabinet. Additionally, delving into the Constituent Assembly Debates (CAD), the Court outlines debates around disputing the centralisation of investigative powers in the Union, hereby elucidating that the phrase 'investigation' is not inclusive of powers conferred on the CBI but rather pertains to mere enquiry into factual matrix which might be violative of economic integrity. Consequently, building upon the same, the Court held that in reference to Entry 80<sup>38</sup> as aforementioned, the Parliament cannot create a separate police force for investigation, but rather can only extend the powers and scope of the police forces. Therefore, the Court quashed the resolution empowering the CBI, thereby also rendering the CBI unconstitutional in nature, therein raising questions as to the powers, scope and existence of the CBI in its entirety.

These aforementioned arguments become relevant while scrutinising CBI's scope of power, since the same can be construed as destroying the federal values as enshrined in the Constitution of India. The primary question as to the essence of federalism, as outlined in *SR Bommai v UOI*<sup>39</sup> is demarcation of powers, and thus, the Union by imposition of directions over CBI indirectly violates the distribution of powers between the Centre and the States. The CBI, thus being held unconstitutional in nature can be read into as the judicial activism towards the promotion and maintenance of the federal values. Thus, the case of *Narendra Kumar* provides clarity to a long-unanswered question as to the constitutionality of CBI, which is in

---

<sup>37</sup>*Navendra Kumar v Union of India & Ors* 2013 CRI L J 5009.

<sup>38</sup>Constitution of India, sch 7 List I Entry 80.

<sup>39</sup>*S.R. Bommai v Union of India* 1994 3 SCC 1.

direct nexus to the existence of federalism.

### *Conclusion*

The blog thus traverses through judicial precedents, primarily delving into judgements which hereby strengthen the autonomy and powers exercised by CBI, ultimately probing into what in essence can be interpreted through the phrase “consent”, hereby construing the same in corroboration with the recent suit filed by the West Bengal government as to the violation of DSPE provisions by furthering the investigations despite the withdrawal of “general consent”. Consequently, the questions as to whether the CBI is a Union agency and a non-constitutional body are addressed, hereby outlining that the imposition of CBI’s investigations on States despite their withdrawal of consent, is a breach of values such as federalism enshrined in the Constitution of India through the Preamble thereby, thus threatening the federal values imbibed in India. Therefore, the blog initially delves into the research question as to whether the interpretation of “consent” and thereby the constitutionality of CBI violates the value of federalism as enshrined in the Preamble of the Constitution of India. Hence, the blog ultimately scrutinises the establishment of CBI in its entirety through the case of *Navendra Kumar v UOI*, hereby questioning the scope of powers and the idea of CBI’s “investigation” in its entirety. The questionable constitutionality of CBI becomes critical to analyse since when construed in reference to the idea of “consent”, the latter is rendered negligible in importance, since the entire process of “investigation” and the power to conduct the same is questionable owing to CBI possessing overarching powers despite being an extra-constitutional body, which can be construed as violation of federalism.