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REIMAGINING THE CBI: SAFEGUARDING INTEGRITY AND BRIDGING TRUST IN A FEDERAL FRAMEWORK

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ABSTRACT

The Central Bureau of Investigation (CBI) plays a pivotal role in investigating corruption charges against political leaders, often straddling the delicate dynamics of Centre-state relations. Its autonomy is crucial for maintaining credibility, yet concerns about its misuse as a political tool have led to calls for reforms. The CBI operates under the Delhi Special Police Establishment Act, of 1946¹, requiring state consent for investigations within their territory, which sometimes results in friction. To ensure non-partisanship, institutional safeguards can include granting the CBI statutory status akin to the Election Commission, shielding it from undue executive influence. Establishing an independent oversight body comprising judiciary and civil society representatives could enhance accountability. Strengthening financial and operational independence, combined with fixed tenures for top officials, would further insulate the agency from political pressures. Constitutional and legal reforms, emphasizing transparency, checks, and balances, are essential to re-envision the CBI as a neutral arbiter in tackling corruption, fostering trust in its investigative integrity.

Keywords: CBI, non-partisan, cooperative federalism, independent agency, caged parrot

INTRODUCTION

The Constitution of India envisages a federal country where powers are divided between Centre and State under the Seventh Schedule and invasion by any level of government into the area of other level is against the spirit of the Constitution.² Therefore, sharing of power should be cordial, where neither the Centre nor the State crosses their boundaries or misuses their powers. However, this ideal Union of States³ faces a threat today. As opposed to the Government's aim

¹ The Delhi Special Police Establishment Act, 1946, § 5(2), No. 25, Acts of Parliament, 1946 (India).

² M.P. JAIN, INDIAN CONSTITUTIONAL LAW 529 (LexisNexis 2018).

³ INDIA CONST. art. 1, cl. 1.

to achieve ‘cooperative federalism’, both the Centre and State Governments act in a way to impinge on the sovereign domain of each other and hinging towards ‘coercive federalism’. Similar is the case with the Central Bureau of Investigation (hereinafter referred to as CBI). Section 5(2) of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as DSPE Act) states that they “be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.”⁴ Correspondingly, Entry 2 of the State List under the 7th schedule of the Constitution gives the State authority to supervise the police force.⁵ Concurrently, Entry 8 of the Union List in the 7th schedule puts the Union in charge of matters relating to CBI.⁶ Therefore, since CBI is covered both under the Union list and the State list, the state and centre need to work cooperatively on the lines of cooperative federalism to avoid disputes. However, both Centre and State have been misusing their powers and letting their political vendettas interfere with the working of CBI, which makes it a partisan agency.

HISTORY AND ROLE OF CBI

The CBI is a non-statutory, extra-constitutional body that traces its origin to the Special Police Establishment which was set up in 1941 by the Government of India. Post World War II, the need for a Central Government agency to investigate bribery and corruption by Central Government employees was felt. The DSPE Act was therefore brought into force in 1946. This Act transferred the superintendence of the SPE to the Home Department and its functions were enlarged to cover all departments of the Govt. of India. The DSPE acquired its popular current name, Central Bureau of Investigation, through a Home Ministry resolution dated 1.4.1963. CBI is presently under the jurisdiction of the Ministry of Personnel, Public Grievances and Pensions. This investigative agency deals with cases broadly segregated into 7 divisions, the ‘anti-corruption division’ being the main area of CBI’s work, in which the body deals with cases of corruption charges against government employees.

CENTRE MISUSING ITS POWER

Since CBI is a central body, the centre broadly influences the way CBI works. The very core of CBI, i.e., the composition that constitutes this investigative entity is majorly influenced by the Centre. The Director of CBI is appointed by a three-member appointment committee,

⁴ The Delhi, *supra* at 1.

⁵ INDIA CONST. List II, Entry 2.

⁶ INDIA CONST. List I, Entry 8 [hereinafter *List I*].

including the Prime Minister, the leader of the opposition in the Lok Sabha and the Chief Justice of India, or a Supreme Court judge nominated by him under S. 4A of the DSPE Act.⁷ Moreover, the CBI officials are paid their salaries by the Central government as per the 7th Pay Commission. CBI also comes under Entry 8 of List I of the Seventh Schedule, over which the Central government has the sole power to make laws.⁸ Therefore, as much as the intention behind the creation of CBI was to attempt to make India a non-corrupt State, the Central government is invested with a ton of power to not only supervise but control CBI for its own political agendas.

The innocence of CBI was questioned when the Supreme Court of India was recently approached by 14 political parties stating that these agencies were being misused by the Centre against the members of the opposition political parties by intentionally targeting and arbitrarily arresting the opposition party members.⁹ Adv. Abhishek Manu Singhvi points out this practice of political influence on CBI as ‘upending the fundamental premises of a representative democracy’ and crushing political dissent.¹⁰ In several other instances such as the CBI closing the disproportionate assets probe case against Mulayam Singh Yadav and his family abruptly after 7 years, and even after requests from the then regional party to elucidate on the reasons for shutting down the investigation into the case, CBI got away with stating ‘insufficient evidence’ as the reason for the same.¹¹ CBI has been in charge of numerous cases that have been halted without proper reasoning, and have bolted from the blue after a long time.

In *Abhishek Banerjee vs Soumen Nandy*¹², an allegation was made by the General Secretary of the Trinamool Congress (TMC), Abhishek Banerjee, on the political biases of the Centre was where CBI dropped the investigation against BJP MLA Suvendu Adhikari, who was charged with defection, extortion of money etc. This event suggests that the Centre gave Mr. Suvendu

⁷ The Delhi Special Police Establishment Act, 1946, § 4A, No. 25, Acts of Parliament, 1946 (India).

⁸ List I, *supra* at 6.

⁹ *Supreme Court to take up 14 political parties’ PIL against ‘misuse’ of CBI, ED against political rivals on Wednesday*, THE TRIBUNE (Apr. 4, 2023, 8:48 PM), <https://www.tribuneindia.com/news/nation/supreme-court-to-take-up-14-political-parties-pil-against-misuse-of-cbi-ed-against-political-rivals-on-wednesday-494162>.

¹⁰ Utkarsh Anand, *Supreme Court refuses to admit PIL on central agencies*, HINDUSTAN TIMES (Apr. 6, 2023, 12:48 AM), <https://www.hindustantimes.com/india-news/supreme-court-rules-political-leaders-not-immune-to-law-as-opposition-parties-demand-fresh-guidelines-for-arrest-remand-and-bail-political-leaders-legal-immunity-supremecourt-oppositionparties-cbi-ed-arrest-remand-bail-guidelines-india-101680719858861.html>.

¹¹ Dhananjay Mahapatra, *Closed DA case against Mulayam Singh Yadav, sons for lack of proof: CBI*, THE TIMES OF INDIA (May 22, 2019, 4:04) <https://timesofindia.indiatimes.com/india/closed-da-case-against-mulayam-singh-yadav-sons-for-lack-of-proof-cbi/articleshow/69436833.cms>.

¹² *Abhishek Banerjee v. Soumen Nandy*, 2023 SCC OnLine SC 723.

a “blanket protection” for the Centre’s personal interests.¹³ The credibility of CBI was again questioned in *Manohar Lal Sharma v The Principal Secretary and Ors.*¹⁴, popularly known as the Coal Block Allocations case (Coalgate scam). CBI first shared its report with the government, which was supposed to be confidential. And then it did not reveal the exchange of the status draft report with the centre and of the changes made in the report keeping the Courts in the dark.¹⁵ The Apex Court rightly termed CBI as a “caged parrot speaking its master’s voice”¹⁶ and said that the whole basis of the investigation has shaken¹⁷. The supervisory role of the Government has thus converted to a corroborative role-play between the CBI and the Government.

In 2018, the Centre amended the Prevention of Corruption Act 1988 to add Section 17A¹⁸, which made it mandatory for the CBI to get permission from the Central government to register any case of corruption against any government official. Earlier, such permission was needed only in case of officials above the Joint Secretary level. This amendment effectively made the CBI a puppet of the Centre. CBI would investigate only the cases that the Centre wants it to investigate. This was also evident from the fact that corruption cases registered by the CBI dropped by 40% after this amendment between 2017 & 2019.¹⁹ Therefore, by misusing its powers in CBI, the central government is violating the principle of cooperative federalism and moving towards coercive federalism.

STATE MISUSING ITS POWER

Under S. 6 of the DSPE Act, the CBI has to obtain consent from a state to investigate and exercise cases in that state.²⁰ This follows from the principle of Federalism as police (Entry 2) and Public Order (Entry 1) is a part of the State List in the Seventh Schedule and so the state

¹³ Ashmita Saha, *Calcutta High Court protecting BJP leaders, claims Abhishek Banerjee; party responds*, INDIA TODAY (Jul. 15, 2023, 4:10) <https://www.indiatoday.in/india/story/trinamool-abhishek-banerjee-accuses-calcutta-high-court-protect-bjp-leaders-2406756-2023-07-15>.

¹⁴ *Manohar Lal Sharma v. Principal Secretary and Others*, (2014) 9 SCC 516 [hereinafter *Manohar Lal Sharma*].

¹⁵ Shiladitya Chakraborty, *An Impossible Dream? Depoliticising the Central Bureau of Investigation*, 32 *Economic and Political Weekly* 15, (2015), <https://www.jstor.org/stable/24482518> [hereinafter *Shiladitya Chakraborty*].

¹⁶ Samanwaya Rautray, *Coalgate: SC flies at govt, calls CBI a caged parrot & a mouthpiece*, THE ECONOMIC TIMES (May 9, 2013, 1:30AM), <https://economictimes.indiatimes.com/news/politics-and-nation/coalgate-sc-flies-at-govt-calls-cbi-a-caged-parrot-a-mouthpiece/articleshow/19948812.cms?from=mdr>.

¹⁷ Shiladitya Chakraborty, *supra* note 15.

¹⁸ Prevention of Corruption Act, 1988, § 17A, No. 49, Acts of Parliament, 1988 (India).

¹⁹ Deeptiman Tiwary, *General consent for the CBI: The law, and political reasons for its denial*, THE INDIAN EXPRESS (Nov. 11, 2021, 3:54), <https://indianexpress.com/article/explained/sc-state-government-consent-cbi-investigation-7617317/>.

²⁰ The Delhi Special Police Establishment Act, 1946, § 6, No. 25, Acts of Parliament, 1946 (India).

needs to consent before any investigation.²¹ This consent requirement is a double-edged sword. The state government, on one hand, will have the power to ensure that CBI is not partisan to the central government and on the other hand, the state can also use this power to play its own political games.²²

The consent given by a state can either be general or specific. General consent gives seamless power to a CBI to investigate any case of corruption against a Central government employee in a state.²³ Whereas specific consent is consent taken from the state on a case-to-case basis. Though CBI earlier had general consent from all states to investigate, nine states - Chhattisgarh, Jharkhand, Kerala, Meghalaya, Mizoram, Punjab, Rajasthan, Telangana and West Bengal had withdrawn this consent till 2023²⁴. If the CBI does not have consent from a state or the state has withdrawn its consent, the CBI will have to get permission from the State government before investigating every new case, without which they cannot presume.²⁵ This would hamper their investigation and given that corruption is a matter of public interest, it needs expedient redressal.

One major reason behind the withdrawal of consent by states is the political rivalry. In 2015, Mizoram, which was ruled by Congress, was the first state to withdraw general consent when the Modi government gained power in the Centre in 2014. Many other opposition-ruled states like West Bengal, Chhattisgarh, Punjab, etc, also withdrew their consent, stating misuse of power by the Central government as a reason.²⁶ In *Central Bureau of Investigation & Anr. v. Mohammad Altaf Mohand & Anr*²⁷ (2021), the CBI submitted before the SC that more than 150 requests for specific consent were pending from 2018 to 2021 before eight states withdrew their general consent. Justice SK Kaul said that ‘this is not a desirable position’.²⁸

²¹ INDIA CONST. List II, Entry 1, 2.

²² D. Shyam Babu, *The CBI and the rules of political combat*, THE HINDU (Jan. 7, 2019, 12:02 AM), <https://www.thehindu.com/opinion/lead/the-cbi-and-the-rules-of-political-combat/article25926694.ece> [hereinafter *D. Shyam Babu*]

²³ Deeptiman Tiwary, *Explained: What is ‘general consent’ for the CBI, now withdrawn by Meghalaya?*, THE INDIAN EXPRESS (Mar. 4, 2022, 3:57), <https://indianexpress.com/article/explained/what-is-general-consent-for-cbi-now-withdrawn-by-meghalaya-7800997/> [hereinafter *Deeptiman Tiwary*].

²⁴ *9 States Have Withdrawn General Consent To Probe Agency CBI: Centre*, NDTV (Mar. 23, 2023, 7:02 PM), <https://www.ndtv.com/india-news/9-states-have-withdrawn-general-consent-to-probe-agency-cbi-centre-to-parliament-3886433>.

²⁵ Deeptiman Tiwary, *supra* note 23.

²⁶ Shiladitya Ray, DH Web Desk, *Explained / What is general consent to the CBI and which states have withdrawn it*, DECCAN HERALD (Oct. 31, 2022, 3:07), <https://www.deccanherald.com/india/explained-what-is-general-consent-to-the-cbi-and-which-states-have-withdrawn-it-1158109.html>.

²⁷ SPECIAL LEAVE PETITION (CRIMINAL) Diary No.45871/2019.

²⁸ *Id.* at 26.

Therefore, the centre and CBI also cannot perform their duties well without cooperation from the states, and the states are not cooperating due to political reasons. This is also evident from the fact that when one single party was ruling the centre and state, there was no issue of political meddling, and states were not withdrawing their consent.²⁹

CONCLUSION

The purpose of CBI can best be achieved when this agency is given complete autonomy to perform investigation and is liberated from political interventions by the Centre and State and other extraneous considerations.³⁰ CBI is responsible for dealing with crimes that directly involve public interests. Thus, there is a need to remove the political influences within and outside this organisation that prevent CBI from conducting thorough investigations. CBI should be given statutory status by enacting a law that demarcates the role of the Centre and State and establishes CBI as an independent agency, giving it the power to uphold public interest over the political interests of the Government.

²⁹ D. Shyam Babu, *supra* note 22.

³⁰ Manohar Lal Sharma, *supra* note 14.