

REFORMING ADMINISTRATIVE LAW THROUGH CBI IN INDIA

*SRISHTI NIGAM

*SNEHIL AJMERA

Introduction

“The faith and commitment to the rule of law exhibited by all the public authorities is the surest guarantee of the survival of democracy of which rule of law is the bedrock”

The basic maintenance of standard of public life is the survival of rule of law and democracy. Every public body which has been given the duty to maintain the law and order in order to uphold the principles of rule of law should draw up its code of conduct incorporating the principles which would not dilute the spirit of law in a democratic society. The internal working of the public body should be independent of any corrupt and malafide intentions. The seven principles¹ which every public body should adhere to while discharging the public duties are selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. It is important that every public authority should incorporate these seven principles failing which it would be a threat to the rule of law.

In order to ensure that a public authority has all these seven principles and which should be insulated from the corrupt hands, CBI was brought into existence. CBI was given the task to handle the cases which are of utmost importance related to criminal law and economic offences. There have been many scams in the Country and the position is still not better owing to the fact that we have an agency which is specially set up to handle the cases with utmost efforts. It was observed by the court that no matter howsoever a rigid rule of law is framed in the society the scams can never be avoided.² This is an alarming situation that in spite of the presence of such a body which deals with such problems and still the state of affairs does not seem to be any better.

* NATIONAL LAW UNIVERSITY, NAGPUR

¹ Lord Nola's Report, "Standards in Public Life", Vol. 1, 1995.

² Shiv Sagar Tiwari v. Union of India (1997) 1 SCC 444

The author in this paper has discussed that how and why the CBI was brought into the existence. The author has established the nexus between the CBI and public accountability. The author has further discussed how every effort is made by CBI to reform the administrative law when the cases of utmost importance are handed over to it so that a fair investigation can be carried out. The author then critically analyses that in spite of the fair investigation why does it happen that there are questions raised on the fairness and credibility of the body. In order to answer the same the author has cited the cases where the CBI was corrupted and lured by the rich and political people. The author has also critically discussed the legal existence of the CBI. The author concludes by saying that such a public authority should be insulated from corrupt hands in order to maintain the rule of law in India.

A Brief Background of The Central Bureau Of Investigation (CBI) In India

The origin of CBI can be traced from Special Police Establishment (SPE) which was set up by Government of India in 1941. SPE's functions were then to investigate cases related to bribery and corruption during the World War II. The need of this agency was needed after the end of the world war to investigate the bribery and corruption related cases by Central Government employees. An Act³ was brought into force in 1946 which transferred the superintendence of the SPE to the Home Department and the functions were enlarged to cover all departments of GOI. In regards to the jurisdiction of SPE, its jurisdiction was extended to all the Union Territories and it could also be extended to the States but only with the consent of the State Government.

Through the resolution dated 1.4.1963 the DSPE got its new name as CBI. In the initial phases the offence which used to be notified by the Central Government (CG) were only restricted to the CG's servants but as the time passed there was establishment of public sector undertakings. CBI is also entrusted with the investigation related to Economic offences and crimes such as murder, kidnapping and terrorist crimes on a selective basis. Hence, undertaking's employees were also now under the under the umbrella of CBI purview. Later on, the nationalisation of the banks in 1969 the purview of CBI got extended as it now included public sector banks and their employees as well.

³ The Delhi Special Police Establishment Act 1946

The people of India, GOI, and the courts of India have a high regard for this agency since it has always maintained its reputation for being impartial and competent. The Supreme Court and High Courts have referred the cases filed by petition to the CBI wherever they thought it fit that CBI would be able to handle them the best. In 1987, it was decided to constitute two investigation divisions in CBI i.e. Anti-Corruption Division and Special Crimes Division.

The supervision over CBI to investigate offences under the Prevention of Corruption Act, 1988 lies with the Central Vigilance Commission (CVC) and in other matters with the Department of Personnel & Training (DOPT) in the Ministry of Personnel, Pension and Grievances of the GOI. The conviction rate in criminal cases prosecuted by CBI is as high as 65 to 70%.⁴ CBI has also been notified as Interpol of India. Thus, CBI is considered to be the most trusted agency today in India.

The Interface of CBI & Public Accountability

One of the emerging facets of the administrative law in the recent time is the doctrine of public accountability. The primary reason for the emergence of this doctrine is to keep a check on the misuse of the power which is exercised by the administration and to provide justice to the people at the earliest who become victims of such powers. The basic connotation for the emergence of this doctrine is that the people who have been entrusted with the public duties must exercise their powers in the best interest of the people.

Attorney General of Hong Kong v. Reid⁵ has widened the scope and ambit of the principle of jurisprudence in public law adjudication. In this case Lord Templeman observed that any benefit which is availed by any person while being in a fiduciary relationship by breaching the legal duty triggers the very foundation of rule of law and foundation of any civilised society. In DDA v. Skipper Construction Co. (P) Ltd.⁶ further widened the scope of the doctrine by laying down that it will be immaterial whether there existed a fiduciary duty or not the person who has been defrauded should be put back to his original position. The court further held that courts in India are courts of equity and this is what equity means.

⁴ <http://www.cbi.gov.in/faq.php> (Visited on October 5, 2020)

⁵ (1993) 3 WLR 1143 (PC)

⁶ AIR 1996 SC 2005

In the case of *State of Bihar v. Subhash Singh*⁷ it was held that until and unless there exist special circumstances the head of the department will be responsible and accountable. In *Nilabati Behera v. State of Orissa*⁸ that whenever there is a violation of the fundamental right the remedy lies in the protection of such right by claiming the compensation from the State. Hence, the courts are under an obligation to make the State or its servant accountable for the violation of fundamental rights of any of the citizens.

CBI is an important instrumentality within the area of enforcing accountability. Since it is functioning under the Executive so much of the matter is left to be decided especially in the cases when it comes to enforcing accountability in high places. The Supreme Court in the landmark judgment vested the superintendence of CBI in the hands of CVC and separated it from the executive.⁹ The court had also fixed the tenure of the directors of at least two years except in the case of exceptional circumstances. It also held that the agency can start the investigation of corruption cases which involve officers of Joint Secretary level or high level without the concurrence of the government.

It was decided to provide the CVC with the statutory status and in order to maintain the impartiality and the fairness in the commission the court directed that the selection committee for the post of commissioner will include the Prime Minister, Home Minister and the leaders of the opposition from the panel which consists of credible civil servants. The duty to allocate the work and constituting the investigation team will be with the CBI director.

The court further in the same case held that the body should be constituted on the line of Director of Prosecution which is a body in UK for the prosecution of cases. It was held that till this body is formed the special counsels will be appointed on the recommendation of the Attorney General for the conduct of the important trials. The court directed that there should be a panel of lawyers which should act as prosecuting attorneys in the cases which are of importance. Every prosecution which results in the acquittal should be reviewed. The court asked the centre to ask the State about the same and similar mechanism should be adopted at the State level as well.

⁷ AIR 1997 SC 1390

⁸ (1993) 2 SCC 746

⁹ The Tribune 18-12-1997, I

The court had the belief that after directing the government about the mechanisms it should adopt and making a commission which is insulated from any political pressure would serve the purpose of a true investigating agency. The court had the belief that now the functioning of the CBI and principle of accountability will be better served.

The court in its utmost capacity tried to make the CBI and the CVC as political free as it can but the corrupt hands have touched them. The selection committee appoints the director which will be inclined towards its party. In this way it goes against the intention of the court and the true spirit of the CBI for which it was established. In author's view the directions which were issued for the better functioning of the CBI and to make it insulated from any political pressure were in vain. The author has supported this argument in the analysis by citing the real life examples where CBI failed the people while discharging its duty.

CBI Reforming Administrative Law Vis-A-Vis Contemporary Issues

One of the important dimensions of rule of law is that a proper investigation should be made and further it should be followed by proper prosecution. It would be a dilution of rule of law if proper investigation and proper prosecution are not followed.¹⁰ The aggrieved party seems to be satisfied when a case is transferred to CBI because people believe in the fair investigation it would carry out and uphold the rule of law. So, it also becomes very important that a competent prosecution follows a fair and competent investigation otherwise the efforts would be futile.

The contemporary criminal cases, economic offences which come as a true shock to the society and brings everybody's attention and a call for CBI to investigate. When the unexpected news of Sushant Singh Rajput's (SSR) suicide was all over media then the family and his fans after few days demanded the investigation should be conducted by CBI. The CBI was given the case of SSR by the court as it was the only way to make people believe that the investigation will be fair and without any prejudice. The result of the investigation will satisfy the kith and kin of SSR or not is still unknown but at least they had the opportunity to ask for the case to be transferred to CBI and court provided the opportunity. The credibility

¹⁰ 'Central Vigilance Commission & Allied Bodies', Law Commission of India, One Hundred and Sixty First Report, 1998.

of the CBI is still respected by the people and the courts though there have been cases in the past where it was accused of being politically biased.¹¹ The case is still being investigated by the CBI and with its talent and resources soon the justice will be served.

A very interesting case has come before the High Court of Andhra Pradesh where the High Court is itself the party in the case. The defamatory sentences have been used by YSRCP's leaders against the judges of the High Court. The fact that Judiciary is one of the main pillars of democracy and defamatory remarks passed against it without any true proof are a clear negation of rule of law. Owing to the importance of the case and to curb the baseless defamatory remarks the High Court has ordered CBI inquiry in the case.¹² This case is an example that CBI is trusted by the judiciary. When the matter came to the court in which court was itself one of the parties then rather on trying the matter itself, court deemed it fit to transfer it to CBI. The case enunciates the true representation of how the CBI is putting in its efforts to reform rule of law.

There have been instances where if a girl is raped and if the accused are the people who belong to the political parties then the investigation is often sabotaged. These cases involve that the culprits are punished with the punishment as prescribed by law but since the investigation is often hampered so the justice does not seem to be served. It then calls for the fair investigation body. One of the recent cases is the Hathras case, where a dalit girl was gang raped and the Centre has now handed over the investigation to the CBI. The UP government has also recommended the CBI probe into the matter.¹³ It is now on the CBI to investigate the matter to its root and find the culprits behind this cruel incidence.

These are only iota of cases out of plethora of cases where the important matters are given to CBI for the fair investigation in order to maintain rule of law and public accountability. These cases depict that the Judiciary (in Andhra Pradesh's case) as well as Legislature (in Hathras'

¹¹ R.K. Raghvan, "SUSHANT CASE: A TRICKY PROBE THAT CBI NEEDS TO HANDLE WITH GREAT DEXTERITY, <https://thefederal.com/opinion/sushant-case-a-tricky-probe-that-cbi-needs-to-handle-with-great-dexterity/>," (Visited on October 12, 2020)

¹² *Andhra HC v. Jagan Government*

¹³ Meenakshi Ray, HATHRAS GANG RAPE CASE TO BE PROBED BY CBI, CENTRE ISSUES NOTIFICATION, <https://www.hindustantimes.com/india-news/hathras-gang-rape-case-cbi-registers-case-begins-investigation/story-qkzUM57e225ZbshikYtn7K.html>, (Visited on October 14, 2020)

case) has time and again has handed the matter to CBI and this lead to the inference that administrative law is reforming via CBI.

CBI- A Crisis of Legitimacy, Credibility, Accountability: A Critical Analysis

CBI is one of the most trusted agencies of India but it has been in criticism because its credibility, legitimacy, and accountability have been compromised by its own actions especially by the acts of its directors and political masters. CBI is preferred to investigate because it functions in an independent manner but now it seems that the independence is being compromised. There have been many instances that have somehow eroded the faith of people in the CBI.

One CBI director was accused of surrendering a secret video-graphed report containing the proceedings of the top-level meeting which decided to demolish the Babri Masjid in 1992. He was accused for surrendering the video to NDA government of 1998-2004 in the lure of post of governor of one of the North-Eastern states. Then in the list is the case of one CBI director who let off one BJP leader from the criminal case he was handling. In reward of this he obtained a major-post retirement position. C.G. Somiah who was a former union home secretary revealed in his autobiography that the then CBI director, Mohan Khatre, helped Rajiv Gandhi in CBI's Bofors case against him and for this he obtained post-retirement extension in service. Somiah rejected Khatre's request for the extension. Khatre in order to take the revenge attempted to drag Somiah in a corruption case related to the purchase of firearms for a central armed police force.

Ranjit Sinha is one of the many directors who have committed felony during their official duties. The Supreme Court issued the order to Sinha asking him to rescue himself on the eve of his retirement from 2G spectrum allocation scam cases' investigation which involved top politicians and bureaucrats. This order calls for the review of CBI's role in discharging its basic anti-corruption responsibilities.

The coming into picture of all these incidents led to the downfall of trust in the most trusted agency. The catena of all the politically motivated moves tends to lure CBI which in turn

leads to lack of accountability, transparency and credibility on its part. An agency which was established to fight against corruption in Indian politics is now somewhere being dominated by the corrupt politicians who have effectively destroyed its functioning. There have been recent positive intervention by selected civil society forces but there appear no structural reforms in the agency.

The CBI is the leading agency for the criminal investigation in India. It finds its place in the Union List of the Seventh Schedule of the Constitution. It still remains a mystery as to why the CBI which because of its importance finds its place in the grundnorm was set up by a government resolution in the Ministry of Home Affairs. The main question to ponder upon is that despite finding the place in the Constitution, the agency works under the legislation named Delhi Special Police Establishment (DSPE) Act of 1946.

The question about the constitutionality of the CBI was first raised in the case of Bajrang Lal Kedia v. Union of India. Then, the Guwahati High Court in 2013 questioned the legal existence of CBI.¹⁴ The unanswered questions in Bajrang Lal were put up before the Guwahati High Court and the court nullified the 1963 executive order from which CBI was brought in existence.¹⁵ The court declared CBI as unconstitutional. The matter is still pending before the Supreme Court. Justice Chelameswar in an interview said that Sitaram Yechury moved a private member bill to create a statutory body but it was shot down by the government.¹⁶ He added that nobody wants it as everyone wants a flexible organisation and that is the nature of power.¹⁷ The rule of law and good governance demand that veil should be lifted as to determine the legal status of CBI. The existence of the CBI still hangs by a thread today.¹⁸

The government has ignored the direction given by the Supreme Court that an independent legislative framework should be given to the CBI. Keeping in mind the growing horizons of the agency, it is still unknown as to why the government does not want to address the rising

¹⁴ Navendra Kumar v. Union of India W.A. No. 119 of 2008

¹⁵ Pritesh, CONSTITUTIONALITY OF CBI: THE NAVENDRA VERMA DEBACLE, <https://thegclsblog.wordpress.com/2020/09/03/constitutionality-of-cbi-the-navendra-verma-debacle/> (Visited on October 10, 2020)

¹⁶ The Central Bureau of Investigation Bill, 2010

¹⁷ Y.S. Rao, 'CBI: A CAGED PARROT', AND AN ILLEGITIMATE ONE AT THAT, <https://www.deccanherald.com/opinion/panorama/cbi-caged-parrot-and-an-illegitimate-one-at-that-733697.html> (Visited on October 10, 2020).

¹⁸ Manish Tewari, IS CBI A LEGAL ENTITY?, <https://www.asianage.com/opinion/columnists/281018/is-cbi-a-legal-entity.html> (Visited on October 11, 2020).

concern. This organisation of highest trust should be insulated from external influences and should be made accountable to the public. The exclusion of political influencers or any other outer influencers will maintain its credibility and accountability.

The government has a responsibility that it should ensure the impartial system in the CBI. The political motives and external factors should not dilute the spirit of the competence and independence of CBI. A new law which should regulate and govern the working of CBI has been recommended by the Parliamentary Standing Committee of the Ministry of Personnel, public grievances and pensions.

Media trials and public pressures affect the working of the police investigations but the same does not happen when the CBI takes an investigation. It has various experts from forensics, finance, law. It is often seen that sometimes the State government requests that the investigation should be given to CBI because then no political pressure can be build up on the agency and it will work in an impartial manner maintaining its credibility. Having said so, if we will see the real incidents where the directors were politically influenced and lured by the higher posts the credibility of the CBI is degrading. CBI has often seen reluctance to investigate ruling politicians resulting in the dilution of the purpose for what it was really brought into existence.

The CBI did no remain untouched by the political people for fulfilling their political motives. In the most celebrated case of Vineet Narain¹⁹ or Jain Halava, the Supreme Court pulled up the CBI for its inertia in investigating top politicians who are involved in the criminal cases.

L.K. Advani who was the accused, was discharged in the criminal case by a special court which involved the demolition of Babri Masjid. The CBI was under the political pressure so it desisted from submitting a criminal revision petition to challenge the discharge. CBI reopened the case in 2004 when the new government came into power. Recently, the special CBI court acquitted the 32 accused of the Babri Masjid demolition case holding that nobody is found guilty. The judgment received lots of criticism on the ground that how can it be possible that a big mosque is brought down and nobody is guilty.²⁰ The Supreme Court again in 2010 had to pull up CBI for lollygagging the Chief Minister's prosecution in a

¹⁹ Vineet Narain v. Union of India 1997 (7) SCALE 656

²⁰ Shekhar Gupta, WHY BABRI MASJID JUDGMENT AND HATHRAS GANG RAPE CASE ARE EXAMPLES OF INADEQUATE JUSTICE, <https://theprint.in/opinion/why-babri-masjid-judgment-and-hathras-gang-rape-case-are-examples-of-inadequate-justice/514392/>, (Visited on October 16, 2020).

disproportionate assets' case. These are just the iota of the cases where delays have occurred in the cases which involved top politicians.²¹

Conclusion

The Hypothesis made by the author has been proved to be true. The Parliament is barred from exercising its control over the functioning of the CBI because there exists a lack of legislation. Hence, CBI becomes immunized from the parliamentary oversight. When the Parliament is unable to exercise its control over the investigating body, it in turns gives more control to the Executive and it leads to the interference of external sources such as political parties and other corrupt but powerful people.

The constitutionality of the most powerful body should be decided and the questions which were put before the Guwahati High Court need serious deliberations by the Supreme Court. The government as well as the Apex Court seem to be indifferent to address and decide upon the issue of such a prime importance. One of the many reasons why legal existence of the CBI is yet not thought to be addressed is that no government wants to share its power with the Parliament which it exercises exclusively over the body. Till the questions are not being answered, the fate of the CBI hangs by a thread which can be snapped at any time.

The answer on the issue of the constitutionality is the need of the hour. The fundamental rights of the citizens who are arrested and prosecuted by the CBI are in a great danger. Article 21 says that a person can be deprived of his life and liberty only by the procedure established by law. CBI without any legal backing prosecutes the people so it has threatened the fundamental rights. A specific Legislation is necessary if the government wants to exercise some powers in addition to what it possess under the ordinary law.²² Thus, any extra power which the government wants to exercise must be constitutional in its nature and should have a legal backing. An executive action cannot devoid a person of him from his life and personal liberty without any legal authority.²³

²¹ KS Subramaniam, "CBI- Crisis of Legitimacy, Credibility and Accountability", ECONOMIC AND POLITICAL WEEKLY, Vol. 49 No. 51 2014, pp. 13-15

²² Ram Jawaya Kapur v. State of Punjab AIR 1955 SC 549.

²³ State of M.P. v. Thakur Bharat Singh 1967 SCR 454



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Moreover, the most trusted agency should not lose faith of the people and should act for the objectives for which it was brought into existence. The malafide and luring hands should not touch it and destroy its sanctity.

