

## CONSTITUTIONALITY OF CBI- AN ANALYSIS

M BALAJI

(Christ University, Bengaluru)

### **Abstract:**

In recent pasts, there have been lots of instances where Federalism, which was asserted as basic structure of the constitution, had been shattered due to several reasons. One among those was the pandemic. But, even before this pandemic, there were situations where both centre and state governments fought to ensure they are independent and have unlimited power under the constitution. Ultimately, in one way or the other, current Indian democracy is at stake, and central government tries to over-ride constitutional mandate through its policy decisions. This would be defended through an example, where CBI-under the control of centre tries to intervene with the state police powers, without any legal backing. This was also brought before one of the apex courts of state, and has interpreted this body-CBI as unconstitutional in nature. Despite this was stayed by apex court of the country, the decision further proves that such body should be backed by a legal statute, keeping in mind the federal structure and distribution of powers among centre and state. Former Chief Justice of India, J Ranjan Gogoi also recommended the need of a statutory status for CBI similar to existing CAG model. In 1978, LP Singh committee recommended comprehensive central legislation to remove the deficiency in lack of investigative agency with no statutory charter of procedures and functions. Supreme Court in various cases established that discretionary power would enable the government to enforce their powers arbitrarily, which is also against rule of law and article 14 of Indian constitution. Thus, there is an immediate need to provide a statutory status to CBI to protect Indian structure enshrined in the constitution. This paper will look into the question of constitutionality of CBI, and pushes the urgent need for enactment of law to protect CBI-the independent body and federal structure.

Key words: Arbitrariness, Democracy, Federalism, Indian Constitution, Rule of law.

## Introduction:

**“Power tends to corrupt and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority; still more when you super add the tendency of the certainty of corruption by authority.<sup>1</sup>”**

- ***Sir John Dahlberg-Acton***

India's political system roots its origin with the intention of making the country on democratic principles. But, later circumstances i.e. throughout the time after independence, has not been the same as intended by the former. In India, matter of democracy diverted with its agenda and has now been depicted as democracy-only in theory and not in practical sense. Recently, Maharashtra state government withdrew its consent for any CBI's action or investigation in the state matters<sup>2</sup>. This would be the best example for the result of such diversion from democratic agenda. It has been in news for several decades that CBI-a non-statutory body should not interfere into the matters of state, especially with respect to investigation matters. This paper would analyze the formation of CBI, followed by the unending question on constitutionality of CBI. Lastly, it would also give some suggestions relating to a statutory requirement of CBI.

### 1. Story behind Formation of CBI:

CBI has been constituted by a pre-independent government through the Delhi Special Police establishment act and has been assigned to investigate on different crimes, such as corruption, economic and special crimes, which includes the state and central governmental officers and other bodies. Later, through a government resolution, it has been provided with six important branches to lookup. As it is established through the Ministry of Personnel, Pension and Public grievances, it directly falls under the control of Prime Minister's Office<sup>3</sup>. The main issue is that through this power given by the Central government, CBI with the central vigilance commission would investigate even into the state crimes as per the direction of the Union government. At times, the Center would empower CBI to curtail the dissent also. Even though it interferes into the investigation of crimes of the state government with its

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<sup>1</sup> Lord Acton's Quote Archive, <https://acton.org>

<sup>2</sup> <https://theprint.in/opinion/maharashtra-govt-vs-cbi-the-law-and-politics-behind-clash-why-it-is-not-about-trps/529384/> [Accessed on 27<sup>th</sup> October 2020]

<sup>3</sup> <https://www.thestatesman.com/opinion/cbi-in-a-democracy-1502737915.html> [Accessed on 27<sup>th</sup> October 2020]

permission, the powers of State police is getting diminished and it is against the quasi-federal structure of Indian constitution, relating to the crime investigations.

Constitutionality of CBI is yet to be guaranteed by the Supreme Court, as all the actions it was declared as unconstitutional body with no statutory obligations of any sort, by a division bench of Guwhati High court, which also had struck down the resolution through which it was set up<sup>4</sup>. The order of Guwhati High court has been stayed by the Supreme Court, allowing the organization to function, whereas legality of CBI is still in question before the court. Hence, the definite need for the legal statute specifically defining the powers of the CBI distinct from that of Police powers is sought. Former Chief Justice of India, J Ranjan Gogoi also recommended the need of a statutory status for CBI similar to existing CAG model.

## 2. Why does question of constitutionality arise?

Before looking into the constitutionality of CBI, it is important to make a reference on the constituent assembly debates on 'Investigation', that has been provided in seventh schedule of the constitution. Dr. B.R. Ambedkar noted that *"The word 'investigation' therefore is intended to cover general enquiry for the purpose of finding out what is going on. This investigation is not investigation preparatory to the filing of a charge against an offender, which only a police officer under the Criminal Procedure Code can do<sup>5</sup>."* With respect to who can make investigation, it is observed that Entry 8 of Union list, in no way, allows for an investigation of any crime, where as Entry 2 of state list allows the states to make or enact laws for the purpose of investigation of crimes. Similar contention as made in the case of *Navendra Kumar v. UOI, 2013<sup>6</sup>*, where they observed that both the entries (Entries in both lists) are not the same and they are separate as per the intentions of Constituent assembly members<sup>7</sup>. Such a distinction was made to provide two main authorities to look into the aspect of investigation, but the power for enabling such investigation lies with the states, and the CBI can only enquire on crimes. So, no officer under CBI can be granted with the powers

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<sup>4</sup> *Supra note 2*

<sup>5</sup> Dr. Ambedkar on "Investigation", Debates on Entry 2 of Seventh Schedule of the Draft constitution, Constituent Assembly Debates, 29<sup>th</sup> August, 1949, [https://www.constitutionofindia.net/constitution\\_assembly\\_debates/volume/9/1949-08-29](https://www.constitutionofindia.net/constitution_assembly_debates/volume/9/1949-08-29)

<sup>6</sup> *Navendra Kumar v. Union of India, (2013) CLJ 5009*

<sup>7</sup> *Supra note 1*

same as the powers that vests with the state police force (under Section 173(2) of the Cr.P.C.), unless through a statute to override such a procedure<sup>8</sup>.

Now, the question is whether the law that gave power for such an investigation stands valid or not? The answer stands no, because DSPE act does not make CBI as a statutory body under such act and an investigation without proper consent from state government questions the federal structure of Indian Constitution. If such law does not allow for a valid procedure for Investigation of crimes, then the investigation conducted by the officers under the act and the resolution, would stand void and is a violation of Article 21 of Indian Constitution. Article 21 provides that no person shall be deprived of his life and liberty except through the procedure established by law<sup>9</sup>. In case of CBI, there is no valid law to enquire and TO proceed with the procedures as per Cr.P.C. In such case, detainment or an investigation would be a deprivation of a person's liberty under article 21.

In the same manner, it can also be shown that there is a discretionary power with the central government if there is no law to legalize the existence of CBI as an organization. In *E.P.Royappa's case*<sup>10</sup> of 1974, court observed that if there is a discretionary power, then that would lead to arbitrariness. Central government's recent exercise of powers through CBI would be an example of such arbitrariness. Since its constitution, CBI has been criticized as the puppet in the hands of union government by several leaders. Such arbitrariness would be a violation of article 14. In *Maneka Gandhi's case* of 1978<sup>11</sup>, Justice Bhagwati opined that Article 14 aims to strike arbitrariness in the state action, and it ensures fairness and disables arbitrariness. Thus, it stands unconstitutional in nature.

### 3. What should be done?

It is important, at this situation to provide an autonomous position to Central Bureau of Investigation. This would directly detach the administrative actions of central government and the actions of CBI. This disables the discretionary power that is vested with union government.

24<sup>th</sup> standing committee report on Personnel, public grievance, law and justice recommended immediate enactment of statutory body for CBI that is equivalent to Comptroller and Auditor

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<sup>8</sup> *Chandan Biswas v. State of West Bengal* (2019), MANU/WB/0954/2019, *Navendra Kumar v. Union of India*, (2013) CLJ 5009

<sup>9</sup> Article 21 of Indian Constitution, 1950

<sup>10</sup> *E.P. Royappa v. State of Tamil Nadu* (1974)

<sup>11</sup> *Maneka Gandhi v. Union of India* AIR 1978 SC 597

General of India. In 1978, LP Singh committee recommended comprehensive central legislation to remove the deficiency in lack of investigative agency with no statutory charter of procedures and functions.

Implementing these committee recommendations would be the best possible solution to reinstitute CBI in line with the constitutional principles. Similarly, an amendment to Indian constitution to include the investigation matters and related legislations into the union list would also be a relevant solution. But, the same would never be possible as the states will not let go their autonomy with respect to police force and legislation<sup>12</sup>.

#### 4. Conclusion:

Supreme Court in various cases established that discretionary power would enable the government to enforce their powers arbitrarily, which is also against rule of law and article 14 of Indian constitution. It is, now, in the hands of centre to look into the matters concerning CBI and should legislate a statutory backing for the better functioning of CBI. It cannot be left as it is, because the same would affect the centre-state relation and would lead to arbitrariness in the administrative action from the side of government. State's autonomy should be respected and the interference with its power would be debatable in the view of constitutionality.

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<sup>12</sup> <https://www.thehindu.com/opinion/lead/a-charter-for-the-cbi/article5042518.ece>

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