



DWINDLING STATUS OF CBI AS AN IMPARTIAL AND OBJECTIVE INVESTIGATIVE AGENCY*

INTRODUCTION

Corruption in India is a major issue that adversely affects its economy. A study conducted by Transparency International in year 2005 found that more than 62% of Indians had first hand experience of paying bribes or influence peddling to get jobs done in public offices successfully.¹ India is one of the most corrupt countries in the world and it has been ranked at 87th from the list of 178 countries.² This is in spite of having sufficiently large paraphernalia to deal with corruption. There are many laws that have been enacted to deal with this problem. Prevention of Corruption Act, 1988 being one of the most important one, followed by the Delhi Special Police Establishment Act, 1946, the Vigilance Commission Act, 2003. Several bodies have also been set up to counter the problem. At the Central level; there is an Administrative Vigilance Division in the Ministry of Personnel, Public Grievance and Pensions. Further every Ministry, department, bank, public sector undertaking has vigilance officers. Then there is the Central Vigilance Commission and the Central Bureau of Investigation. At the state level each State has a Vigilance Commission or a Lok Ayukta which looks after the vigilance matter of the State Government. In addition States have Directorates of anti corruption and vigilance officers in different departments.³ The world has seen the establishment of various anti corruption agencies to tackle the problem of corruption. This history is frequently presented as starting with the establishment of the commission in Singapore in the 1930s, its restructuring in the early 1950s, or even the Hong Kong bureau founded in the 1970s. In fact, a quite similar model began operations in New York City in the 1870s. The relatively late arrival of such institutions derives in part from the wide recognition of corruption as an important dysfunction of public administrations only in the 19th century.⁴

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¹ https://en.wikipedia.org/wiki/Corruption_in_India

² <http://www.transparencyindia.org/resource/press>

³ G.P Joshi, *The Central vigilance Commission and Central Bureau of Investigation-A brief history of some development* available at www.humanrightsinitiative.org

⁴ Patrick Meagher, *Anti-Corruption Agencies: A Review of Experience*, (August 2, 2002), www1.worldbank.org/publicsector/LearningProgram/.../Meagherpaper.d

In India, amongst the various bodies constituted to tackle the problem of corruption, the Central Bureau of Investigation is a premier investigation agency. It is unfortunate that over the years, it has been shrouded in controversies in spite of being given the responsibility of investigating sensational crimes in the last few decades.

One of the foremost functions and duty of the State is maintenance of law and order. The State is required to take all necessary steps to effectuate a system that would ensure the objectives of justice. India has put in place various mechanisms for that purpose and all the organs of Government- the Legislature, Executive and the Judiciary have been equipped to perform their roles for the same.

The CBI is one such mechanism conferred with powers and functions for attaining the goals of justice. However the CBI has often been criticised for its alleged failure to function impartially and objectively as an agency of law.⁵

The formation of the CBI was not a sudden decision as is evident from the entry in the Union List of the 7th schedule of the Constitution.⁶ Though it was set up in 1963, the idea took root even before the Constitution was framed.

The Delhi Special Police Establishment Act and the Origin of CBI

The CBI had its origin in a special order of the British Government in the early stages of World War II. In 1941 the Government of India passed executive order setting up the Special Police Establishment (SPE) under a Deputy Inspector General in the then Department of War with mandate to investigate cases of bribery and corruption in transactions with which war and supply department of the Government of India was concerned.⁷ After the war ended the need for a central agency to investigate cases of corruption involving the Central Government employees continued to be felt. Thus in 1946 the Government enacted the Delhi Special Police Establishment Act which is Act that continues to regulate the functioning of the Central Bureau of Investigation till this day.

The Act was enacted with the objective to provide for the constitution of a special force in Delhi for the investigation of certain offences in the Union Territory and for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences.⁸ The Act is a very short legislation consisting of only 7 sections. It is not confined to the Union Territory and the Act provides that the Central Government can with the concurrence of the State Government, extend the jurisdiction of the said act to all States.⁹ In actuality the Special Police Act is envisaged as a supplement to State Police Force, enjoying graft powers of investigation in cases notified under Section 5. Almost all major offences have been specified by the various notifications issued by the Government. The Act authorises the officers to enjoy all powers, duties, privileges and liabilities that the police officers of that area enjoy.¹⁰ The organisation requires the consent of the State to exercise its powers and jurisdiction in that State.¹¹

⁵ G.P.Joshi, *The CBI and its credibility* available at <http://human rights initiative.org>

⁶ Entry 8 of the Union List

⁷ *Proposed CBI Reforms: Will the Central Bureau of Investigation remain a "caged parrot"* available at <http://polityindiawordpress.com/tag/delhi-police-special-establishment-act>

⁸ Preamble of the DSPE Act

⁹ Sec 5(1)

¹⁰ Sections 2(2),5(2),5(3)

¹¹ Sec.6

Over a period of time the workload of the DSPE increased and as a result CBI was created¹² merging it with the DSPE.¹³ The need to establish the organization was felt not only to investigate crimes handled at that time by DSPE,¹⁴ including crimes with interstate ramifications but also to collect crime intelligence relating to certain crimes, participation in the work connected with INTERPOL, maintain crime statistics and disseminate crime and criminal information, study of specialised crimes, coordination of laws relating to crime and also conducting policy research.

The CBI initially consisted of six divisions, namely Anti corruption division, corruption division, Technical division, Crimes Records and Statistics Division, Research division, Legal and General Division and Administration Division. Over the years the CBI's character has undergone a change. Its role is no longer restricted to anti corruption activities and we can see that it is called upon to investigate conventional crimes as well as banking and other economic offences. Many of its functions have also been transferred to other organisations. For example several of its functions have been transferred to Bureau of Police research and Development and the National Crimes Record Bureau. As the workload of the organisation increased, the work was distributed amongst the various arms of the organisation. The anti-corruption division was to take up the investigation of corruption cases; the Special Crimes Division would investigate major conventional crimes such as murder, kidnapping, rape, rioting, arms smuggling, hijacking etc and economic offences such as banking and other financial frauds, black marketing, custom offences and drug peddling was transferred to a separate Economic Offences Division.¹⁵

Presently the CBI consists of the Anti Corruption Division, Economic Offences Division, Legal Division, Technical division, Special Crimes Division and the Central Forensic Science Laboratory¹⁶ The superintendence of the CBI vests with the Central Government,¹⁷ except in so far as it relates to the investigation of officers alleged to have convicted under the Prevention of Corruption Act, 1988 for which superintendence is by CVC.

Present Scenario

The functioning of the CBI has been heavily criticised in recent times with even the Supreme Court pointing out its inefficiency in dealing with situations. In fact in the Havala case the Supreme Court pulled up the CBI for showing 'inertia' to investigate offences involving influential persons.¹⁸ The CBI was widely criticised when its prosecutions collapsed, and the [Supreme Court of India](#) in deciding the *Vineet Narain Case* made directions that included new supervision of the CBI by the [Central Vigilance Commission](#).

There are several instances to illustrate the unprofessional attitude shown by the organisation. The organisation has been criticised in handling of several of the cases like such as *Bofors*, *Mumbai Port trust case*, *Chandraswamy case*¹⁹, *the Judeo cases* and several other

¹² CBI was established through a resolution no 4/31/61-J in 1963

¹³ CBI Manual, 182, para 1.6

¹⁴ the CBI Manual 182, para 1.7 - the manual states that the act confers concurrent and co-extensive powers, duties, privileges, and liabilities on the members of DSPE (CBI) with police officers of the Union Territories in relation to investigation of offences notified by the Central Government under Sec 3 of the Act and arrest of persons concerned in such offences)

¹⁵ GOI Resolution No 24/66/64-AVDII dated 29.2.64

¹⁶ India.gov.in/official-website-central-bureau-investigation

¹⁷ Section 4 of the DSPE Act

¹⁸ *Vineet Narain and others v. UOI*, AIR 1998 SC 889.

¹⁹ 148 (2008) DLT 277

sensational cases. The criticisms have particularly highlighted the CBI's reluctance to investigate issues where powerful politicians are involved. This is quite evident in the case of Former Chief Minister of UP, Mayawati who was accused in the disproportionate assets case. The CBI filed an affidavit in Supreme Court on 10th April 2010, restating its earlier charge that she was guilty of amassing wealth disproportionate to her known sources of income. However it changed its stand on April 23rd, 2010, stating that it was considering Mayawati's plea to close the case. There are many other instances where the CBI has changed its stand according to the accused status in politics.

In *Narendra Kumar v UOI*²⁰ and another, the constitutional validity of the formation of CBI and its powers to investigate and function as a police force and /or its powers to prosecute an offender were challenged in the writ petition, by contending that the CBI is not a statutory body as it was not constituted under a statute but under a resolution of Home Affairs, GOI. The Gauhati High Court declared the CBI as unconstitutional. It said that CBI cannot be treated as a police force and can only conduct inquiries. The Centre's resolution they noted was not even sent to President and never received his assent and therefore could not be treated as a police force. The Supreme Court stayed the Gauhati High Court order. But the judgement was certainly able to highlight some of the loopholes persisting in the functioning of the CBI.

The CBI is still regulated by an archaic act which bears no significance to the need of the present time. There is a lack of understanding as to whom the organisation is accountable to, as to what powers it has, what are its functions and how it should carry them out. There is no clarity on any of these aspects. The legislation lacks institutional and other arrangements to insulate it from undesirable outside control. The CBI should act with unquestionable integrity and impartiality. However, its structural infirmities have impeded the investigation process and several loopholes exist which allow excessive and unwarranted intervention by the executive²¹. There is also a concern over the recent revocation by the Supreme Court of Section 6(A) of the DSPE Act which means that CBI would no longer need sanction from Government to start probe or lodge an FIR against officers of the level of Joint Secretary and above. There is a fear that this could be misused by the CBI. But however others have supported this move of the Court as it would give fair amount of autonomy to the organisation as well as do away with the discrimination of segregating corrupt officers into two classes.²² Then the Prevention of Corruption Act allows the CBI to book officials for conferring 'pecuniary benefits' on the private sector and charges can be filed even if there is no evidence that the official had received personal benefits.²³

There are other administrative problems that are also encountered by the CBI. It is facing a lot of problem with severe manpower crunch notably investigating officers and public prosecutors. This can compromise the effectiveness in its functioning.²⁴

²⁰ Writ Appeal ;119/2008

²¹ www.thehindu.com

²² The court held that 'corruption is an enemy of nations and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the Prevention of corruption Act, 1988. The status or position of public servant does not qualify such public servant from exemption for equal treatment. The decision making power does not segregate corrupt officers into two classes as they are common crime doers and have to be tracked down by the same process of inquiry and investigation"Prabhati Nayak Mishra, *CBI can prosecute senior bureaucrats without Government sanction: Supreme Court* available at www.dnaindia.com/india/report-cbi

²³ articles.economic times.indiatimes.com

²⁴ Hemant Kumar, *Caged birds independence-But it must not go frenzy,*

LAWYERS.UPDATE.co.in/LU/8/1293.asp visited on 30.09.2014

Accountability v Independence.

Counterbalancing an anti-corruption body's (ACA) accountability is its independence. Here, Pope cites the following as important structural protections for an agency's independence: the provisions for appointment and removal of senior ACA officials, the placement of the ACA in a position where it is not subject to direct political or ministerial dictates, and a direct role for public stakeholders who provide a discrete political base for the agency. Also important is some measure of fiscal independence – either the ability to propose a budget directly to the legislature, or a guarantee of budgetary stability.²⁵

The Transparency International puts forward certain important criteria to judge whether the body can function effectively-²⁶

- Is the agency head free of political control in day-to-day operations?
- Are other staff free from political interference and “no go” areas?
- Are staff adequately trained and remunerated?
- Is the office of the chief of state effectively within the ACA's jurisdiction?
- Is the agency accountable to all branches of government and the public?
- Are staff subject to integrity reviews and tests, and can doubtful members be removed quickly?

Hong Kong's Independent Commission against Corruption (ICAC) has been cited by many as possessing the balance for independence and accountability.²⁷ It not only investigates all public officials without regards to their position, but also to pursue corruption in the private sector. ICAC has authority both to respond to complaints and to undertake investigations on its own initiative. Importantly, ICAC does not have power to prosecute, but transmits its investigative findings to the Attorney General.²⁸ This is the responsibility of the country's Secretary for Justice, a prosecutorial restriction that is maintained as a safeguard against the possible misuse of power by the commission. It is the Commissioner's responsibility to present the evidence to the Secretary for Justice so he/she can decide whether or not to proceed with a criminal prosecution.²⁹ The ICAC is independent in terms of structure, personnel, finance and power.³⁰

²⁵ Pope, Jeremy, *The Need for, and Role of, an Independent Anti-Corruption Agency*, prepared for Transparency International, (Aug. 13,1999).

²⁶ Transparency International, “*Chapter 11: Independent Anti-Corruption Agencies*”, in TI SOURCE BOOK 2000, <www.transparency.org/sourcebook/11.html>.Viewed September 23rd 2014.

²⁷ The Independent Commission against Corruption (ICAC)was established on 15 February 1974, by virtue of Section 3 of the ICAC Ordinance as the primary body for combating corruption applying the three-pronged approach of prevention, investigation and public education

²⁸ (<http://www.icac.org.hk>)

²⁹ Srinivasa Rao Gochipata & Y. R. Haragoopal Reddy □ INSTITUTIONAL ARRANGEMENTS TO COMBATING CORRUPTION: A COMPARATIVE STUDY INDIA'S (C.B.I) AND HONG KONG'S INDEPENDENT COMMISSION AGAINST CORRUPTION (I.C.A.C),available at <http://www.commonlii.org/in/journals/NALSARLawRw/2013/5.pdf> visited on 11th October,2014

³⁰ See Section 4,8,10 of the ICAC ordinance

ICAC has made public trust and transparency pillars of its strategy, has very strong accountability structures and mechanisms. These checks are arranged in such a way as to counterbalance the authority of the Governor. Four committees comprised of prominent community members scrutinize the activities of the each of the Commission's departments and provide advice to the Commissioner, while the ICAC Complaints Committee handles all public complaints made against the Commission and its officers. Accountability begins with strict responsibility of ICAC and senior officers to the Governor, and equally strict responsibility of ICAC staff to the Commissioner. The most innovative and well-known accountability mechanisms are the citizen oversight boards, known as Advisory Committees. These are appointed by the Governor, but consist of some 40 citizens, and are required to be headed by private citizens according to the amended Ordinance. The consensus view of ICAC is that it has been a stunning success. These areas are usually cited as elements of this success: investigations leading to prosecution and conviction of senior officials and powerful businessmen ("big fish"); changing Hong Kong's "ethical climate" through example, outreach, and education; and eliciting citizen input in both oversight and reporting of corruption cases.³¹ Today the corruption in Hong Kong is under control placing it at the 12th position out of 180 countries.³²

Thus there is a need for introspection in the Indian context in order to strengthen the premier investigation agency for them to do its function in an objective and impartial manner.

Reforms

- Independence of structure, personnel, finance and power
- There is an urgent need for enactment of a strong legislation to give clarity to the functioning of the institution. The Special Police Establishment Act of 1946 should have been replaced by a proper CBI Act; the organization should have been given a proper statutory basis; it should have been vested with federal jurisdiction and given complete functional autonomy. The 24th report of Parliamentary Standing Committee (2008) expressed its unanimous opinion that "the need of the hour is to strengthen the CBI in terms of legal mandate, infrastructure and resources". It even stated that "vesting CBI with appropriate statutory backing to take suo motu cognizance of crimes would in no way affect the essentials of our federal structure".
- Balancing of Independence and Accountability.
- The Central Government should take all measures necessary to ensure that CBI functions effectively and is viewed as a non partisan agency.
- The CBI Director's appointment must be made more transparent and effective.
- In order to give more accountability to the organisation the number of officers placed on deputation should be reduced .Emphasis must be given to direct recruitment.The problem of vacancies is also acute and need to be tackled immediately.
- There must be active community participation. The ICAC in Hong Kong has strong mechanisms to ensure its impartiality and integrity. This is ensured through strong public participation To thus ensure the Commission's integrity, its activities are scrutinized by four independent committees made up of citizens from different sectors of the community appointed by the Chief Executive. India should also have a similar set up.

³¹ KLITGAARD, ROBERT, CONTROLLING CORRUPTION. (University of California Press 1988); SPEVILLE, BERTRAND DE, HONG KONG: POLICY INITIATIVES AGAINST CORRUPTION,(Development Centre of OECD.1977)

³² Transparency International , *Global Corruption Report 2009*.<http://GlobalCorruptionReport.Org.gcr.2009.html>



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