

## SUPREME COURT CATALYSING OVERHAULING OF ANTI-CORRUPTION INSTITUTIONS - SPECIAL CASE OF CBI

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### I. INTRODUCTION

Each country of the world irrespective of its development level whether under developed, developing or developed and irrespective of its political philosophy whether tilted towards capitalism or communism is afflicted with the grave malady of corruption. Whether it's the national or international agencies like world bank, IMF, Transparency International etc, all are obsessed with the same idea of how to eradicate corruption which acts and spreads like a cancer thereby continuously weakening the immune system of a country by making dent on the social, economic, political and cultural fabric of a nation. It is so rampant in each civilisation permeating through every public or private activities that it has become a way of life. Supreme Court perceives corruption as a violation of human right and a threat to nation's economy.

One of the most precipitating factor which is giving due recognition to the endeavours of Supreme Court in eradicating grand corruption is the soaring public discontent against this curse. The kind of landmark judgments and orders in curbing the menace of corruption is not only manifesting the constitutional legitimacy but also popular legitimacy of judicial activism. While tracing the legacy of social action litigation since 1980s, Public Interest Litigation has come a long way passing through the phases of enriching human right jurisprudence and matters of social concern to anti-corruption litigation with considerable visibility after 2000. A congenial environment of wafer thin majorities of facile coalition government in 1990s with their incapacity and unresponsive attitude to curb scandals involving high officials provided a viable avenue for the Supreme Court to show impactful activism against conscience shocking grand corruptions. It was supported by public spirited lawyers and awakened civil society which played a crucial role to exhort Apex Court's activism.

### II. ROLE OF SUPREME COURTS AND ITS EXPANDING JURISDICTION TO CURB CORRUPTION

The *modus operandi* of Supreme Court in its fight against corruption can be categorized into three legal remedies. *Firstly*, stringent and insightful directions and orders to bring systemic overhauling of anti-corruption institutions

to augment their capacity, efficacy and impartiality through suitable appointment procedure, methods of working and giving due recognition to their instructional capacity. *Secondly*, by invoking new judicial techniques like continuous mandamus as suitable alteration to its existing writ of mandamus for ongoing judicial oversight of investigation into high profile corruption cases to bring them at their logical end. *Thirdly*, sticking to its traditional legal remedy of quashing the executive actions if vitiated by vice of illegality without pronouncing any compensatory orders.<sup>1</sup>

#### A. Structural and functional overhauling of CBI

For every successful criminal prosecution to meet its logical end of convicting the accused, investigation, which largely comprises of collection of incriminating evidences, must be fair, impartial and devoid of any external influences. Where the question involves the investigation by premier investigation agency of the country like CBI, then it itself instil a public confidence of an impartial inquiry irrespective of the high and mighty who committed the offence. But this untarnished image of CBI has suffered a serious jolt shaking the conscience of the people at large when instances of its acting on behalf of political masters came to the light and lamented by the Supreme Court as parrot in the cage in popularly called Coalgate scam.

The Apex court has emphasized upon three pronged strategy to strengthen the CBI at structural and functional level. *Firstly*, the Court enunciated a new method of judicial scrutiny by suitably altering the traditional writ of mandamus to the writ of continuous mandamus. This procedural innovation empowered the court to keep a continuous vigil on the course of investigation by the agency through issuing of mandamus orders during the investigation to keep it on the track. Supreme Court draws constitutional legitimacy for issuing such interim orders from Article 32 of the Constitution read with Article 142 which explicitly empowers the Supreme Court to do complete justice. By executing this innovative writ, Supreme Court asserted and assumed power to itself for monitoring the investigation till a police report pertaining to such investigation is filed under section 173 of Criminal Procedure Code, 1973. Frequent issuing of interim orders kept the CBI to be accountable at each stage of investigation. At the same time, it assures an impartial and effective inquiry as it acts as a bulwark against any political or administrative pressure on investigating officer.

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<sup>1</sup> Arghya Sengupta, ANTI-CORRUPTION LITIGATION IN THE SUPREME COURT OF INDIA (Open Society Foundation, March, 2016).

*Secondly*, the Supreme Court tried to make the judicial proceedings truly participatory by allowing the counsel for the petitioner and interested parties to be appointed as amicus curiae to make their representations in brief to the court. *Thirdly*, it emphasized the urgent need to overhaul the structural and functional aspect of CBI as an institution and gave judicial directions by expansive interpretation of Article 32 and 142 of the Constitution to do complete Justice.

### **(i) Tailoring Structural Reforms**

Though structural alteration of CBI should come from the legislature or executive but Supreme Court found the constitutional justification to reform CBI on the principle that where the executive fails to fill the lacuna in legislation then judiciary must come forward to provide a reliable solution till it gets a formal enactment from the legislatures.<sup>2</sup>

The inactive and indolent altitude of apex crime investigative agencies like CBI which was reeling under the political pressure and not more than a weapon used in the hands of ruling government succumb the rivals came into question in a much hyped case, *Vineet Narain v. Union of India*<sup>3</sup> also popularly known as Jain hawala diary case, involving high and mighty in a politician, official and criminal nexus threatening national security, sovereignty and public breach of trust. A public interest litigation was filed by an investigative journalist alleging the future of CBI to nab the culprit on after seizure of diaries containing high profit nexus between politicians, bureaucrats and terrorist organization compromising national security. Justice J. S. Verma who authored the judgment, came down heavily on futile attempt of CBI in its prosecution by adopting an indolent attitude in its investigations.

The real issue to be contested was whether the court under its review jurisdiction can interfere in the ongoing investigation through judicial oversight especially when these agencies are accountable to the executive. Supreme Court taking cognizance of the matter explicitly remarked the inability and servitude of crime prosecuting agencies in matters where high profile people are involved. Despite the overall control and responsibilities of functioning of these investigative agencies is subjected to executive direction but a dire need to insulate these agencies ever from their controlling authorities was emphasized.

Supreme Court came out with stringent directions to the government for the overhauling of investigating agencies like CVC, CBI and Enforcement Directorate. The Apex court envisioned the path breaking structural reforms in

<sup>2</sup> *Supra* n.1.

<sup>3</sup> AIR 1998 SC 889.

these agencies and asked the government to make them autonomous body devoid of any executive influence. Supreme Court was very conscious of the need to liberate the CBI from influence of whims and fancies of the government therefore it directed the government to drastically reform the structure and functioning of the premier investigation agency. To make the CBI free from clutches of executive and to infuse probity in its functioning, director of the CBI should be selected from the panel of experienced IPS officers in criminal investigation with impeccable integrity and recommended by committee headed by Central Vigilance Commissioner and Home Secretary and Secretary (Personnel) as members. Opinion of the incumbent CBI Director should be taken care of. Final call of the selection shall be done by cabinet committee of appointment.

Supreme Court directed the government to accord statutory status to CVC and making it a multi-member body. Head of this institution should be screened through a panel of high integrity civil servants prepared by cabinet secretary and to be recommended by a committee comprising Prime Minister, Minister of Home Affairs and Leader of Opposition in Lok Sabha. Such recommended candidate shall be appointed by President. CVC should be entrusted with the responsibility of supervising the functioning of CBI to maintain its independent investigation.

Supreme court also made observations regarding Enforcement Directorate to make it more effective by selection of the director on recommendation of multi member committee comprising Central Vigilance Commissioner as a head and Home Secretary along with Secretary (personnel) and Revenue Secretary as members . He should be appointed for minimum two years and there should not be any premature information given to the press.

### **(ii) Removing Functional Hiccups**

For a fair, impartial and independent investigation of crime where suspects constitute a coterie of high profile influential, a dire need was felt to obliterate functional hiccups of CBI. Apex Court lamented on the functioning of CBI in *Vineet Narain Case* and urged that to function effectively and without fear. Director of the CBI should be given a stability of tenure of two years from the date of joining irrespective of his superannuation. He should not be transferred except any other important task assigned to him. He should be free to appoint heads of investigation teams under him. The procedure of investigation, search, seizure or arrest must be complied with criminal manuals of Criminal Procedure Code , 1973 and any deviation from it should attract disciplinary action.

To make the functioning of CBI more transparent and responsive to people, a document containing its working should be made public within three months of start of investigation and genuine grievances of the public should be redressed without compromising the operational requirements of the agency. Supreme Court was very strict on time frame provided for sanctioning for prosecution by the government to be within three months with additional one month in exceptional cases after consultation of Attorney General or any law officer of his office.

### ***B. Purposive Statutory Interpretation liberates CBI of mandatory prior approval***

The major obstacle which the premier investigation agency was suffering from in its functioning was the prior approval of the government to initiate an investigation. This became handy weapon for the ruling governments to deliberately delay the inquiry whenever there were influential people involved. To eradicate the malaise of corruption, another procedural reform for the effective investigation against person holding high public offices was the obliteration of single directive which was done by the Honourable Supreme Court in *Vineet Narain Case*.<sup>4</sup> Apex Court held that where the allegation of corruption against any privileged officer is direct and substantiated by *prima facie* evidence then differentiation of persons depending on their status lacks rational basis. Therefore, requirement of single directive need not be stressed in such cases but where allegations of corruption seem to be suspicious and with corrupt motive, then this statutory safeguard of single directive can be invoked.

However the government was quick to respond as it led to dilution of its authority to control the investigation by CBI which could be used as a targeted weapon against their political opponents and consequently added section 6A as a mandatory requirement for CBI to investigate a case against person above the rank of joint secretary. Whether the CBI as a premier investigation agency is insulated enough in its working from those who are close to this establishment, R.K. Raghavan, the former Director of CBI, answered it in negative. He described CBI as an appendage of the executive because of the restrictions imposed on it which tie its hands. The foremost restriction is, it finds itself crippled and lacks jurisdictional authority to investigate suo-motto any crime which involves any government officer above the rank of joint secretary as per Section 6A of Delhi Special Police Establishment Act, 1946<sup>5</sup> which mandates the prior sanction

of central government before initiating investigation which more often is deliberately withheld or at least delayed.<sup>6</sup>

In *Subramanian Swamy v. Director, Central Bureau of Investigation and another*<sup>7</sup>, judgment authored by Chief Justice of India, R.M. Lodha on May 6, 2014 reiterated the earlier position of *Vineet Narain case* by declaring single directive of the central government regarding CBI investigation invalid. Defining corruption as the enemy of nation and holding the position that public offices cannot be the workshop for personal gains, Apex Court strengthened the CBI by declaring that it does not require prior sanction of the government before conducting investigation against those who are at the higher echelons of the administrative hierarchy. It said :

Section 6-A(1), which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the PC Act, 1988 where such allegation relates to (a) the employee of the Central Government of the level of Joint Secretary and above and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the provision contained in Section 26 (c) of the Act 45 of 2003 to that extent is also declared invalid.

In another landmark decision of Supreme Court in *Manohar Lal case*<sup>8</sup>, CBI's functioning got smoothed by removing the major hiccup requirement of prior sanction of government in case involving government servant above the rank of joint secretary under section 6A of Delhi Special Police Establishment Act. This filtration mechanism has been done away with in all court monitored CBI investigation. CBI's functionality got another boost after the Supreme Court verdict in a similar case justifying the High Court's order of CBI investigation without approval of state government as mandated by Section 6 of the Act.<sup>9</sup> In this case Supreme Court dismissed the argument and held that section 6 of Special Police Act itself confer jurisdiction on CBI to investigate an offence committed within territorial jurisdiction of the State with its prior approval. Section 6 in no way curtail or dilute the power of judicial review exercised by High Court and irrespective of existing statutory restriction

<sup>6</sup> R.K. Raghavan, *CBI not Subordinate to CVC, Supreme Court Order not a Reflection on its Working*, THE TRIBUNE, Feb. 4, 2012.

<sup>7</sup> (2014) 8 SCC 682.

<sup>8</sup> *Manohar Lal Sharma v. Principal Secy.* (2014)2SCC53.

<sup>9</sup> *State of W.B. v. Committee for Protection of Democratic Rights* (2010) 3 SCC 571.

<sup>4</sup> *Vineet Narain v. Union of India*, AIR 1998 SC 889.

<sup>5</sup> Delhi Special Police Establishment Act, 1946, s.6A.

imposed by this section on court, High court is not bound in its exercise of judicial review powers and can fairly order CBI inquiry even without approval of State government.

Similarly, setting aside the mandatory requirement under section 6A of prior sanctioning of government, Apex Court justified its reasoning on the basis that the purpose of section 6A is to protect the persons at decision making level from malicious prosecution or vexatious enquires and to check frivolous complaints and the same purpose can be served by approaching the Court which monitored such CBI investigation by the victim officer to protect himself. Court monitored investigation ensures an effective check on CBI to misuse its investigating powers. Once the court orders the CBI to inform it about the progress in investigation regularly which though an exceptional order in extraordinary situation where large public interest is at stake, then procedural formalities like section 6A cannot impede the legitimate exercise of constitutional power by Supreme Court under Article 32, 136 and 142 of the constitution.

Apex court draw a parity of reasoning by stating that when inspite of mandatory requirement under section 6 of the Act, High Court is within its jurisdiction to order CBI injury into a case happened to be in its territorial's jurisdiction without the approval of State government, then section 6A on the same principle cannot be invoked to inhibit exercise of power by Supreme Court within its constitutional limit. Besides court monitored investigation not only put a check on ulterior motive of CBI to unnecessarily harass or implicate innocent senior officer but also check the misuse of delaying tactics or deliberately prolonging the investigation.

### ***C. Asserting Power to order CBI Inquiry –Guarding Public Interest***

Another weapon in the armoury of Supreme Court to strengthen CBI and to shed its dependence on government is its assertion and assuming power of executive to order CBI inquiry and to lead the impartial investigation to its desired end by continuous judicial scrutiny of the course of investigation and its progress albeit the power to be used sparingly.

In *Committee for Protection of Democratic Rights* case<sup>10</sup>, contention raised regarding jurisdictional overreach by the High Court in ordering CBI inquiry into a cognizable offence committed within the territorial jurisdiction of a state without invoking the prior approval of that state government was dismissed by Supreme Court. Apex court explicitly declared that High Court's power was exercised within the constitutional jurisdictional limit and finds its legitimating

<sup>10</sup> *Ibid.*

basis under Article 226 of the Constitution. The allegation of infringing the federal structure of the Constitution and violation of constitutional principle of separation of power was without any basis. Constitutional Courts, i.e., Supreme Court and High Court, possess not only powers and jurisdiction but also are under constitutional mandate to protect fundamental right zealously and vigilantly.

However the Apex Court was very quick to define the contours of this power in ordering CBI investigation and advocated a self-imposed ban on such exercise of powers otherwise CBI will be flooded with cases of routine nature and credibility of this premier agency will be at stake due to unsatisfactory investigations. Though court was reluctant to prescribe any inflexible guidelines where courts of high and highest judicature can order such inquiry by CBI but it should be used sparingly. This extraordinary power under Article 32 and 226 must be used cautiously and only in extraordinary circumstances when there is a need to infuse credibility and instil confidence of people in investigation or where crime committed has national and international ramifications and in situation to do complete justice and ensuring protection of fundamental rights. This sparing exercise of power by the High Court is an earlier reiteration of the Supreme Court in *Minor irrigation case*<sup>11</sup> where Apex court directed the High Court to order CBI investigation only when there is prima facie material on record requiring the CBI investigation.

Supreme Court delineated the purpose of ordering CBI inquiry into an alleged crime by stating that justification of such inquiry rest on the retaining of public confidence in an independent and impartial inquiry. Court monitored investigations are progressed properly to its logical conclusion as such investigation exhibits the absence of biasness and subjectivity.<sup>12</sup>

### ***D. Court Monitored CBI Investigations- Bulwark against Extraneous Influences***

Faulty investigation to screen the offenders resulting in low conviction rate stressed the need to judicially monitor such investigation. Law Commission of Indian in its 239th report<sup>13</sup> particularly dealt with the concern of expeditions investigations against influential public personalities. The commission deliberated on the factors of delay in trial and culled out reasons for such delay like general apathetic attitude of the police in registration of FIR, Investigating officer reeling under the pressure and adopting a pusillanimous attitude when culprit is member

<sup>11</sup> *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya* (2002) 5 SCC 521.

<sup>12</sup> *Manohar Lal Sharma v. Principal Secy.* (2014) 2 SCC 53.

<sup>13</sup> Law Commission, *Expedition Investigation and Trial of Criminal Cases Against Influential Public Personalities*, LAW COMMISSION REPORT No 239 (March, 2012) paras 2.1-2.7.

of ruling government, large scale corruption in police department to slow the process, lack of expertise, requirement of sanction for prosecution by the government etc. Such delaying tactics often put a considerable impediment in trial as it ensures sufficient time to the accused to win over or intimidate the prosecution witnesses.

To ward of this tendency of investigative agencies like CBI to stifle the prosecution, Supreme Court has adopted a lenient attitude towards allowing a continuous judicial monitoring of investigations. Such judicial oversight on the one hand instil a fear in investigative agency not to adopt a callous altitude and on the other hand it garners the public supports and try to repose the popular faith in criminal justice system.

Though to keep check on grand corruption cases, under Prevention of Corruption Act, constitution of special courts are prescribed to reduce inordinate delays in investigation process but before it reaches to the judicial forum, the state police or CBI has already caused a considerable delay which thwarts the justice delivery system. Therefore, court intervention throughout investigation period by interim orders becomes imperative.

In catena of decisions, Apex Court justified the judicial scrutiny of investigation for securing public interest. In *State of Bihar v. Ranchi Zila Samta Party*<sup>14</sup>, petitioner accused the police to deliberately slow down the investigation into a huge animal husbandry scam where public funds were embezzled. Laxity in filing report against accused and constant external interference from political masters almost halted the investigation process. Patna High Court transferred the case to CBI which was upheld by the Supreme Court and ordered the CBI to report to the Chief Justice of Patna High Court from time to time . Apex court justified its orders on the principle that if investigation shakes the confidence of people in criminal justice system then judicial monitoring of such investigation is a matter of public interest and can be asked for through public interest litigation. Court also observed the unavoidable political influences over local police thereby requires his transfer of case to an independent body like CBI. *Vineet Narain case* was another landmark manifestation where judicial monitored investigation was carried out along with structural and function reforms in the CBI with objective to make it insulated from clutches of ruling central governments.

Judicial oversight of investigations into large scams have acquired an institutional feature of anti corruption agencies. Supreme Court has even widened the scope of investigation by CBI which is already underway to address problem

of stifling prosecution by relatives of public office holders where the Chief Minister of Karnataka B. S. Yeddyurappa and his relatives were involved in illegal sale of land to a mining company which offered an educational institution owned by his relatives a large sum of donation.<sup>15</sup> Supreme Court observed that local police would be unable to make impartial and fair investigation as they are answerable to the Chief Minister of the State. Apex court justified the judicial intervention in investigation process on the ground that it would ensure rule of law over abuse of process of law.

In *coal block allocation case*<sup>16</sup>, Supreme Court delineated the broader contours of judicial intervention in investigation process. It clarified that judicial scrutiny of investigation will be applicable in all cases public interest is jeopardized and it would include in its compass cases where investigation of corruption is hindered by extraneous circumstances including the investigating authority lack of enthusiasm owing to pressure and reluctance on the part of the government to carry out investigation. But to invite Courts jurisdiction for judicial oversight of investigation, petitioner must provide reasonable circumstantial evidence which depicts hindrance in investigation.

The issue raised in this case was whether prior approvals of central government as required in the statute must be obtained by CBI before prosecuting a case. Supreme Court answered this question in negative as such prior sanction is required with the objective to prevent honest public servants from frivolous or motivated allegations of corruption and when the investigation itself is monitored by the court then it impliedly takes care of such safeguard.

Although Supreme Court was very quick to differentiate court monitored investigation from court supervised investigation as the later involves directly executing the task itself which is explicitly barred by law. Monitoring involves proper direction and get acquainted with the facts and circumstances of investigation to curb delaying tactics of influential people and indolent altitude of investigation agency and to assure fair and time bound completion of investigation.<sup>17</sup>

Apex court also delineated the instances which invoke judicial interference in an ongoing investigation. Court presumes the bonafides of police functioning and should not ordinarily interfere in investigation . But in exceptional circumstances where court finds the misuse of investigating powers and malicious investigation generated out of personal animosity and non bonafide function of

<sup>15</sup> *Samaj Parivartan Samudaya v. State of Karnataka*, (2012) 7 SCC 407.

<sup>16</sup> *Manohar Lal Sharma v. Principal Secy.*, (2014) 2 SCC 53.

<sup>17</sup> *Ibid.*

<sup>14</sup> AIR 1996 SC 1515.

police, then court to protect personal and proprietary right of citizen, does interfere in police investigation.

### III. CBI STILL “CAGED PARROR”

Though supreme court came out with extensive guidelines for the premier investigating agencies having far reaching consequences on their structural machinery and functional autonomy, such directions seems futile and having no impact on their working in the wake of recent large scale scams leading to the loss of lakhs of crores of rupees to the public exchequer. It jeopardised the national interest and threatened the very base of economy. The shoddy probe of CBI in these high profile cases and even to the extent that CBI is sarcastically termed as parrot in the cage by Supreme Court in infamous Coalgate scandal clearly puts a question mark on the credibility of Supreme Court’s directing authority.

Denouncing the India’s premier investigation agency as caged parrot and its master’s voice by Justice R. M. Lodha in *Coalgate scam case*, Apex Court clearly indicated the susceptibility of CBI to external influence in its investigation. Supreme Courts observation clearly vindicated the opposite party’s allegation of misusing CBI as to cover up the wrongdoing of the ruling government, to keep weak coalition partners in line by threatening them to get their parliamentary votes and to keep away political opponents from raising their voices.<sup>18</sup>

The ruling government of present day become the master of CBI and use this so called autonomous and independent agency to subdue the political opponents who try to raise their voice. Be it the threat of disproportionate asset case against Mulayam Singh Yadav and Mayawati or opening of CBI investigation in fodder scam against Lalu Prasad Yadav, the timing and manner of using CBI has made it a whip to carry out nefarious activities of the ruling government. The deafening silence of not appealing against charge sheeted Karnataka Chief Minister by CBI when let off by the court, misuse of bofors scandals by the successive government clearly indicate that CBI has lost its sheen.<sup>19</sup> Even some of the directors of CBI brought disrepute to the organisation who were selected by subverting or tweaking the fair selection procedure and were posted as the protégé of political elite.

<sup>18</sup> Ross Colvin & Satarupa Bhattacharjya, *A “caged parrot” - Supreme Court describes CBI*, REUTERS, May 10, 2013.

<sup>19</sup> Prashant Bhushan, *The CBI has to be placed under an independent body to investigate cases without government interference*, THE HINDU, July 14, 2017.

Misuse of the power given to CBI Director Ranjit Sinha through unfair means of meeting the accused involved in Coalgate scam and distorting the investigation process finally led the Supreme Court directing him to recues himself from the case. Observers draw the similarity of instances of castigating CBI of compromising its independence as was held in *Jain hawala diary case* when the then CBI director Joginder Singh was accused of hobnobbing with some politicians involved in that case. Judicial endeavours to make CBI an independent agency insulated from ruling government in *Vineet Narain case* through continuous monitoring of investigation seemed to be a futile exercise.<sup>20</sup>

Theoretically, CBI seems to be an independent body with motto “industry, impartiality and integrity”. But administratively, it is accountable to Department of Personnel and Training which falls under the supervision of Prime Minister Office. However, in operational matters, agency gets direction from various bosses including courts and anti-graft CVC. The problem with CBI is not only structural but also procedural as well as crippling effect of statutory requirements which though has been eased by the interpretative jurisdiction of the Supreme Court.

The handicap of prior sanctioning of the government as a mandated requirement starts with the very first stage of investigation till appellate stage. The mandated prior sanctioning of central government before initiating any investigation against those handling the affairs of government above the rank of joint secretary responsible for decision making process of the government which has been toned down by the Supreme Court. Even after guilt is established by CBI, prosecution requires nod of the government though such malady has also been cured by Apex Court which directed government not to sit over the requests for sanction for eternity and must dispose of such request within three months. At the appellate stage, where CBI failed to prove the charges in lower court beyond reasonable doubt, it requires the government’s sanction to go for appeal which more often denied due to extraneous considerations.<sup>21</sup>

There should be an independent commission to probe the functioning of CBI to test its independence and integrity. Instead of probing each case since its inception, only 10 high profile cases which it investigated should be probed considering the ruling political parties of that time. CBI has incarnated itself not as a caged parrot but in real as a faithful hound dog of authority. CBI, Income Tax Department and Enforcement Directorate are there blood hound dogs which the government uses to silence agitating voices and to make opponent succumb

<sup>20</sup> V. Venkatesan, *Shackles on CBI*, FRONTLINE, May 31, 2013.

<sup>21</sup> R.K. Raghavan, *CBI not Subordinate to CVC, Supreme Court Order not a Reflection on its Working*, THE TRIBUNE, Feb. 4, 2012.

to its pressure. Factors which lead to failure of CBI in getting convictions must be probed from the angle of political pressure and corruption in the institution itself etc.<sup>22</sup>

#### IV. REFORMS IN CBI

Despite the Supreme Court always coming to rescue the CBI and striving to accord maximum autonomy, it has not performed up to the mark. There is dire need to assert the functional autonomy by the CBI itself. Three wings of CBI which cater to individual area of concern like anticorruption wing, to check economic offences wing and to curb heinous crimes wing, all are integrated and must cooperate with each other as most of the crime spreads to all the three jurisdictional Wings. Apex Court too urged for cooperation of different investigation agencies in a coordinated manner to curb the menace of corruption. CBI & Enforcement Directorate shall share information and work in a coordinated manner so as not to hamper their investigation in any manner. Courts ordered CBI to have full autonomy in its investigation without being influenced by any person or state instrumentality irrespective of their high profile status or rank of person to be investigated or probed. This was the another instance of court monitored investigation where CBI and Enforcement Directorate was directed to submit their progress in investigation in a sealed cover envelope.<sup>23</sup>

Another major reform it requires is to accord statutory status with comprehensive central legislation by substituting the existing handicapped Delhi Special Police Establishment Act, 1946 which crippled its wings as it is mandated to get previous sanction of the state government before it proceeds its investigation in any state. This reform was also endorsed by L.P. Singh committee and 19<sup>th</sup> report of the Parliamentary standing committee (2007). 2<sup>nd</sup> Administration Reform Commission also advocated for enactment of new statute to completely govern CBI. 24<sup>th</sup> Report of Parliamentary Standing committee 2008 unanimously exhort the necessity to strengthen CBI in its legal framework, infrastructure and resources and augmented the idea of conferring powers to take suo-motto cognizance of offences.<sup>24</sup>

There is dire need to insulate the CBI from political interference and to delink it from the administrative control of Government. So long as the powers

<sup>22</sup> Madhav Nalapat, *CBI not a Caged Parrot but a Hound Dog of Authority*, THE SUNDAY GUARDIAN, available at <http://www.sunday-guardian.com/analysis/cbi-not-a-caged-parrot-but-a-hound-dog-of-authority> (last visited Nov. 15, 2016).

<sup>23</sup> *Centre for Public Interest Litigation and Others v. Union of India and Others* (2011)1SCC 560.

<sup>24</sup> Prakash Singh, *Trifling with CBI*, available at [http://cbi.nic.in/articles/pdf/article\\_dg\\_bsf\\_trifling.pdf](http://cbi.nic.in/articles/pdf/article_dg_bsf_trifling.pdf) (last visited Nov.12, 2017).

of transfer and posting of their favourite officials on deputation to CBI will continue, it would be impossible to make its functioning autonomous.<sup>25</sup> CBI must be accorded a statutory status and required legal mandate coupled with requisite manpower of its own can bring it back to the recovery path. To ensure CBI as an impartial, robust and credible agency, a transparent mechanism for the selection of directors and their fixed tenure must be chalked out. Their induction on deputation to CBI should be in transparent manner.<sup>26</sup>

#### V. CONCLUSION

To conclude, there is no fault in the organisation itself as its prestige of being a premier investigation agency of India to which every citizen of India look at with faith of successful investigation can not be lowered. Even today despite of its structural and functional hiccups, this agency is looked at with reverence and even the Apex Court makes no delay in ordering CBI inquiry whenever a case of larger public interest or public faith is involved and CBI has earned it with its skilled and impeccable personnel. There is a need of an efficient leadership and a feeling of faith in this organisations to remove its identity tags of being caged parrot.

<sup>25</sup> *Supra* n. 19.

<sup>26</sup> Navneet Rajan Wasan, *It would not be Fair to Damn an Organisation for its Ignominious recent Performance and Ignore its Long Term Record*, THE HINDU, July 14, 2017.