

FEDERALISM UNDER INDIAN CONSTITUTION VIS-A-VIS CBI INVESTIGATION

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ABSTRACT

The article deals with the concept of federalism vis a vis CBI the central agency for the investigation. Indian constitution is federal where the separation of power is the basic principle which is being followed by centre and states for the proper functioning of the system. However, the centre and states often come in conflict on the question of Investigation by CBI. This article deals with the working of CBI concerning the Federal Mechanism of the constitution. Further, the paper also highlights the various judicial precedents concerning the states and CBI. Further, the article throws light on the recent happenings in the country as a consequence of which the questions were raised on working of the federal system and also deals with the repercussions on the withdrawal of consent by states and recommends certain measures to overcome with the problem in its concluding points.

Keywords: Federalism, Federal Structure, CBI Investigation, DSPE Act, Consent, Parliament.

INTRODUCTION

Federalism is a mechanism that signifies the separation of powers between the Union and the States to stand independent in their respective spheres. Prof.K.C. Wheare Describes *India* as “quasi-federal” system as *the constitution of India is federal in structure but unitary in its spiritⁱ because of its inequitable distribution of powers between centre and states. The seventh schedule of the constitution reflects that the centre is empowered with subjects of national importance as mentioned in the union list like defence, citizenship, external affairs, etc. The centre also has overriding authority over the concurrent list and even the residuary powers are vested with the centre.* Under the aforesaid schedule List 1, Entry 8 Parliament has authority to legislate on the creation, structure and working methodology of the Central Bureau of Investigation and Intelligence Bureauⁱⁱ. However, the establishment of CBI can be traced before the enactment of the constitution by the Government of India Act 1935 which was named as Special Police Establishment (War Department). In 1946 the Government of India enacted the Delhi Special Police Establishment Act, 1946 (herein referred to as DSPE Act 1946) which mutated the Special Police Establishment into the Delhi Special Police Establishment.

CBI was established by Government of India through a resolution dated 1st April 1963 which derives its power from DSPE Act 1946. The jurisdiction of CBI stretches over the Union Territories as per DSPE Act 1946 which may extend to any State by the order of Central Government as per sec 5 of the aforesaid act. However, CBI is authorised to investigate only in the specified offences in states wherein it requires the consent of the respective state government under sec 6 of the DSPE Act. This section was inserted by Amendment Act 1952 to retain the spirit of federalism between Centre and state as well as to prevent any arbitrary interference of centre into state matters because the Police is already a subject matter of state under list II entry 2 of the seventh schedule of the constitution.

JUDICIAL PRECEDENTS REGARDING HANDING OVER THE CASES TO CBI

There have been many instances where the provision regarding sec 6 of the Act is challenged in the court of law which relates to the consent of the state before handling any case to CBI. *In the case of State of West Bengal vs. The Committee for Protection of Democratic Rights,*

West Bengalⁱⁱⁱ it was held that the higher judiciary can direct the Central Bureau of Investigation (CBI) to conduct an inquiry on public order, police etc which falls exclusively in the domain of the state government even without its consent. However, it was contended that the Courts by handing over the investigation to the CBI without the consent of the concerned State Government violate the federal structure of the Constitution, the Supreme court rejected the contention stating that there is a distribution of power in a federal structure between the Parliament and the State Legislature which sets limitations on legislative power. To ascertain whether such limitation is reasonable or not, an authority other than the Parliament is required. Therefore, the Courts act as guardians if in case the federal structure is or likely to be violated by any legislative action. In such matter, the judiciary empowered to interpret the Constitution and provide an effective remedy under Articles 32 and 226 of the constitution.

R.S. Sodhi, Advocate vs State Of U.P^{iv} popularly known as Pilbhit firing case where the SC held that when the allegations are against the state machinery, they cannot be given the charge of investigations as there will be chances of bias creep in. It is immaterial of the fact that even if the local police may carry out the investigation faithfully, this will lack credibility as the allegations are against them.

Further in **Gurnam Singh Vs. State^v** The court opined that even if the consent was not properly given, a defect or illegality in investigation however serious will not vitiate the competency or the procedure relating to the cognizance of the trial of an offence. The Supreme Court considered the question as to whether consent envisaged under 6 of the D.S.P.E. would not be a condition precedent in a case where the court has given a direction to the Central Bureau of Investigation (C.B.I.) to investigate the case.

The idea behind the doctrine of separation is to decentralise the power rather than concentrating it in a single institution. However, the application of the absolute separation of power is not possible in a modern political system, its value depends upon the checks and balances. Therefore, whenever there is a threat to the basic structure of the constitution i.e. federalism then the Judiciary being a pillar of Indian democracy act as guardian by ruling out the arbitrary actions and upholding the rule of law.

COMBAT BETWEEN STATES AND CBI

India is a union of states and these union of states forms a federal relationship with the centre. This federal arrangement has worked efficiently for decades but recently there had been incidents which tend to threaten the basic structure of the constitution. The CBI is one of the central investigation agencies in the country often comes into conflict with states concerning its powers of investigation. One of such incidents could be traced in connection with the Saradha chit fund scam where Kumar, who headed a Special Investigation Team (SIT) to probe the scandal was called by CBI for interrogation. Since the officer did not turn up, the CBI team landed in Kolkata where the whole team was manhandled and arrested by the state police. This whole episode is considered as an unprecedented event in history and is a sheer dent on the federal structure of the constitution.

The tussle between states and CBI could also be seen where the Andhra Pradesh government withdrew its consent given to CBI to exercise its authority in the state by making serious allegations that centre was misusing CBI to target its opponent.

Therefore, it can be said many state leaders do not have faith in CBI as they believe it is being politically used by the centre to target adversaries.

A recently different approach was taken by Supreme court in Rhea Chakraborty V. State of Bihar^{vi} where the conflict aroused between two states regarding the power of investigation in veteran actor Sushant Singh Rajput's death case. The Bihar police alleged that the Mumbai police are not investigating the case in the right direction and even they are not cooperating with Bihar police concerning FIR filed at Patna Police station. In pursuant to that Bihar government demanded CBI probe in the matter. The honourable Supreme court while dealing with the case observed that both the states are making vicious allegations against each other due to which the legitimacy of the case has come into suspicion. Therefore, there is a need for the fair, competent and impartial probe and the thus handed case was handed over to CBI.

WITHDRAWAL OF GENERAL CONSENT BY STATE GOVERNMENTS

The CBI for investigation in the boundaries of a State requires the prior consent of that State as per Section 6 of the DSPE Act. The Central Government can authorize the CBI to investigate

a crime in a particular State but only in a condition where the consent has been received by the concerned State Government. The Supreme Court and High Courts, however, can order CBI to investigate such a crime anywhere in the country without the consent of the State. This means that CBI cannot take suo-moto cognizance of the case except in union territories and when the question arises for conducting the probe in state and if that state does not give his consent, then the agency can approach to the court for the grant of permission for conducting the inquiry in that state.

Following the procedure mentioned under the DPSE Act a CBI can take over the criminal case from the state in the following circumstances:

Firstly, when the concerned state government makes a request to that effect and the centres upon receiving the request approves the CBI to take over the investigation. Secondly, the state governments issue notification of the consent under sec 6 of the DPSE Act and that similar notice issued by the centre and finally when the supreme court or high court directed the CBI to conduct an investigation.

But when general consent is withdrawn by state government then the CBI could not investigate cases in these states which implies the fact that CBI will not be able to register any fresh case involving any central government employee or a private person in that state. However, the withdrawal of consent does not affect the ongoing probes in that state. It means that CBI would still have the power to deal with the cases which have been already registered at the time when such general consent existed. In the case of *Kazi Lhendup Dorji v. CBI*^{vii}, the three judges bench held that general consent issued by a state under Section 6 of the Delhi Special Police Establishment Act, 1946 can be withdrawn, with prospective effect. The decision was given in this case clearly shows that withdrawal of the consent will not operate on the cases which the CBI is already investigating.

When the question is about the case registered anywhere else in the country except the state which has withdrawn its consent but involving people stationed in such state for instance like Andhra Pradesh and West Bengal which has drawn the general consent then in that case CBI is allowed to extend its jurisdiction in these states. In the case of *Anand Agrawal vs Union of India and ors.*^{viii} The Delhi High Court passed an order that CBI has the jurisdiction to probe anyone in the state that has withdrawn the general consent if the case is not registered in that

state. Hence, in this case, CBI was ordered to investigate the corruption case without the prior consent of the Chhattisgarh government since the case was filed in Delhi.

Therefore, withdrawal of consent will only bar the CBI from registering a case within the jurisdiction of the concerned state however will continue to probe in above-mentioned circumstances.

CONCLUSION

The recent happenings in the country regarding the CBI investigation highlights the problems and issues being faced by this central agency. From time and again the CBI has been alleged of politicization, there had been serious charges against the various chiefs of CBI, delays in carrying out the investigation. In addition to this, the CBI is also lacking the core competence and domain knowledge and expertise required to investigate the high-profile cases. Therefore, to refute these allegations, the central government must come up with the stringent legislation to protect this agency from losing its credibility and it shall be the responsibility of the agency to conduct the fair investigation without being biased or influenced by the central government because the very purpose of the federal system to prevent the arbitrary actions of the governments

In the federal system, the centre and state must work in coordination and cooperation with each other which will ultimately lead towards the development of a strong relationship between the centre and state. An essence of trust must exist between the governments while performing their functions which seems lacking when the questions is about the Central Bureau of Investigation and the cooperation of states with the agency. The agency needs to be more transparent and efficient while discharging their duties so that they could gain the trust and credibility of the states as well as of the public. Even the honourable Supreme Court in case of *Manohar Lal Sharma vs The Principal Secretary and others*^{ix} while Excoriating the agency's investigation of the coal scam, it described it as a **caged parrot** who works according to the wishes of the government in power.

ENDNOTES

ⁱ K.C Wheare, Oxford University Press 1946

ⁱⁱ The Constitution of India, 1950, Schedule VII

ⁱⁱⁱ (2010) 3 SCC 571

^{iv} AIR 38, 1994 SCC Supl. (1) 143

^v 1981 Cr. L.J. No. C 46 (Raj)

^{vi} Transfer Petition (Cr.) No.225 of 2020

^{vii} 1994 Supp (2) SCC 116

^{viii} W.P.(CRL) 791/2018 & CrI. M.A. No. 4962/2018

^{ix} 2014 (3) SCC 163

