

‘ROLE OF THE POLICE
IN
STRENGTHENING JUSTICE DELIVERY’

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Dignitaries

Officers of the Central Bureau of Investigation

Ladies and Gentleman

I. Introduction - Public Institutions and Governance

1. It is often said that the historical trajectory of a nation, is determined by the quality of its public institutions. Seven decades ago, India emerged from the ashes of colonialism, and attempted to build a democratic republic grounded on the ideals of equality, liberty, dignity and fraternity, and striving to secure justice for its people in all its manifestations. A progressive constitution outlined the social, economic and political philosophy for the governance of free India. But effective governance not only demanded effective public institutions but also

robust organisational structures providing the context within which these institutions operated and evolved newer dimensions. To that end, India laid foundations of public institutions with the hope of transforming ideals of yesterday into reality of tomorrow.

2. Over the past three quarters of a century India has witnessed multifarious changes that have fundamentally reshaped both its society, politics and economy. These changes severely challenged existing structures requiring novel solutions from public institutions. The concern was complicated by an increasingly diverse society generating myriad challenges, requiring institutions to mediate complex problems, and elicit widespread social acceptance. Some were able to rise up to the challenge; some failed. These ‘pockets of success’ only exacerbated governance challenges and starkly highlighted the deep malaise that many institutions suffered from, and the urgent need to address them. Past governance crises in our country have shown us that current crisis in our public institutions present as much of an opportunity for improvement as they pose a threat for the future. In that

context today's topic attains much significance. The in-depth attention and reference to the CBI in the course of the next about half an hour or so may be understood to be symbolic to all police establishments of the country. What holds good for the CBI in strengthening justice delivery holds equally good, if not more, to the entire police establishments of the country.

3. Central Bureau of Investigation (CBI) is the premier federal investigating agency in the country, and during its more than 5 decades of existence, it has discharged its duty with honour and distinction. Credit for the agency's eminence in large measure lies with the exceptional calibre and broad vision of its illustrious founding Director late Sh. Dharamnath Prasad Kohli, who imbibed the agency with core values of *integrity, industry and impartiality* – the motto of this elite organisation. There cannot be a more befitting tribute and acknowledgement of the distinguished services rendered by Late Shri Kohli than instituting an annual memorial lecture in his memory. It is therefore only appropriate that we imbibe in our act of remembrance an

introspection of this unique and crucial institution's objective, vision and future directions. It is this journey of introspection that I urge you to embark upon with me today.

4. In India, administration of justice draws its legal sanction from the Constitution of India, which secures to each individual, justice – social, economic and political, thereby affirming the nation's aspirations that substantive justice should be secured to all irrespective of their caste, race, sex, religion or place of birth. It is a solemn acknowledgment of the fact that an individual cannot in the true sense be free unless all three facets of justice are secured unto him. Even though various stake holders including the judiciary, police and prosecution go on to constitute the criminal justice system, the need for expeditious and effective investigation of offences as contributing to the achievement of the goal of speedy justice cannot be gainsaid. The investigating agencies have an important role to play in the administration of criminal justice. The Law Commission in its 154th

Report on the Code of Criminal Procedure 1973, made the following observation:

“Investigation of crime is a highly specialised process requiring a lot of patience, expertise, training and clarity about the legal position of the specific offences and subject matter of investigation and socio-economic factors. It is basically an art of unearthing hidden facts with the purpose of linking up different pieces of evidence for the purpose of successful prosecution. It requires specialisation and professionalism of the type not yet fully perceived by police agencies.”

5. Central Bureau of Investigation (CBI), legally known as Delhi Special Police Establishment, is one of the few investigative agencies that has managed to carve out for itself a special place. As a multi-faceted, multi-disciplinary investigative agency, with a wide range of work, it has for most part of its existence enjoyed tremendous trust

among the citizenry. Unfortunately, attention is more often than not drawn to failure than success of any public institution. True, in a number of high-profile and politically sensitive cases the agency has not been able to meet the standards of judicial scrutiny. Equally true it is that such lapses may not have happened infrequently. Such instances reflect systemic issues and indicate a deep mismatch between institutional aspirations, organisational design, working culture, and governing politics.

6. Given the intense scrutiny that working of the CBI is being subjected to, public perception of the agency must be of the highest degree. Not long ago, an investigation from CBI was all that was asked for by those seeking to secure justice. Such was the trust people reposed on this institution. Any gap between public perception and the quality of institutional performance, would adversely impact the governance of the nation, which we can ill afford.

II. CBI and crucial concerns

7. Of the issues ailing the working of a complex institution such as the CBI, following seem to be imminent concerns:

- a. **Legal ambiguity** – constitutional and legal ambiguity surrounding federal institutions is not entirely unheard of, but lack of clearly demarcated spheres of functioning and overlapping areas of influence severely comprises both the integrity and efficacy of the institution. For instance, under the Delhi Special Police Establishment Act 1946, for conduct or continuance of investigation into offences committed with the territory of a state, consent of the state is crucial. Given vested interests or bureaucratic lethargy, such consent is often either denied or delayed, severely compromising the investigation. Additionally, a patch work of legislations governing the functioning of CBI adversely affects inter-institutional coordination, both horizontally and vertically. The result of

multiplicity of institutions results in an aggressive competition for scarce resources and inter-institutional ‘turf-war’. These set of issues arise in large measure from lack of a comprehensive statute protecting the agency’s autonomy.

b. **Weak human resource** – an underlying weakness of public institutions is the lack of adequately qualified and competent workforce. The gap is both qualitative and quantitative. CBI is no exception. Such gaps exist not merely on the operational end but also on the command side with 15% posts in Executive Ranks, 28.37% in Law Officers and 56.17% in Technical Officer lying vacant.¹ This is a matter of concern as it results in overburdening of work which not only reduces the effectiveness and efficiency of the agency personnel but also induce psychological distress. Potential ramifications may compromise both the quality of investigations and the policy design, formulation and implementation efforts.

¹ Parliamentary Standing Committee on Personal, Public Grievance, Law and Justice, 95th Report (2018-19), presented in March 2018

c. **Lack of adequate investment** - Inadequate investment in various facets of the force is the next issue. Inadequate investment in personal, training, equipment or other support structures, adversely hampers professional discharge of duties. High quality research and training are crucial for maintaining an effective modern police force imparting it with the operational ability to meaningfully respond to ever changing societal needs.

d. **Accountability** – in the past few decades massive strides have been made in imbibing traits of transparency and accountability into public life and institutions. Public institutions have progressively opened their working to external scrutiny. Such action also seems to be have been articulated from a desire on the part of institutions to improve visibility of their deliberations and working with invested stakeholders. Of equal importance is the need to maintain morale of the force by enforcing stringent internal accountability, concerning all aspects of the

working of the institution – decision making, procedure adopted, finance, performance evaluation, etc.

e. **Political and administrative interference** – Why is that whenever there are no political overtones to the case, the CBI does a good job. A reverse situation led to the celebrated case of **Vineet Narain v. UOI**, wherein the SC expressing concern at the state of affairs, laid down explicit guidelines for protecting the integrity of the force. However, given that the superintendence and control of the agency continues to, in large measure, lie with the executive by virtue of Section 4 of the Delhi Special Police Establishment Act 1946, the possibility of it being used as a political instrument remains ever present. I have no doubt that there is more than enough strength within the organisation to deal with any such situation.

8. Each of the above noted concerns carries the potential of adversely denting the autonomy of the police force as

a whole, the faith reposed in the working of the agency and the integrity of its functioning. This turn has severe ramifications on the ability of the agency to play a constructive and positive role within the justice dispensation system.

III. Supreme Court and the CBI

9. It has been a constant judicial endeavour to preserve, maintain and further the integrity, and independence of CBI. Time and again the Supreme Court has utilised its constitutional authority under Art.142 read with Art 14, 32, 141 and 144 to do complete justice, so that the agency can perform its role as the premier investigating and prosecuting agency without any fear or favour, and in the best public interest.

10. It all began with a Public Interest Litigation necessitated by continuing failure of successive governments to initiate reforms that had been recommended by numerous committees aimed at instilling autonomy, accountability, and professionalism

into the working of the agency. These cases (Vineet Narain v. UOI,² Prakash Singh v. UoI,³ Dr. Subramanian Swamy v. Director CBI,⁴ Common Cause v. UoI,⁵ among others) marked the beginning of concerted efforts by the Judiciary to remedy some of the maladies suffered by the agency. Acknowledging various shortcomings in the functioning of the police force as a whole and also the CBI, the court issued extensive guidelines to secure its functioning from excessive political interference. The court on numerous occasions reiterated that the commitment, devotion and accountability of the police force had to be only to the Rule of Law. The supervision and control had to be such that it ensured that the police and the agency served the people without any regard, whatsoever, to the status and position of any person while investigating a crime or taking preventive measures. Its approach had to be service oriented, its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of agency, the Rule of

² (1998) 1 SCC 226

³ Writ Petition (Civil) 310 of 1996

⁴ Writ Petition (Civil) 38 OF 1997

⁵ Writ Petition (Civil) 1315 OF 2018

Law became a casualty, the guilty personnel were brought to book and appropriate action taken without any delay.

Current challenge & Roadmap for the future

11. It is indeed heartening to see that many of the recommendations offered by the Judiciary to reform the functioning of CBI have been accepted as is by the Central Government. Other initiatives having a positive bearing on the functioning of CBI, such as the passing of the Lokpal and Lokayuktas Act 2013, and the recent operationalisation of the Lokpal, are indeed promising. However, given the entrenched afflictions, the current challenge is to ascertain how to make CBI functional as an efficient and impartial investigative agency fully motivated and guided by the objectives of service to the public at large, upholding the constitutional rights and liberty of the people, and capable of performing in increasingly complex time.

12. Any attempt of reform must adopt a systematic and holistic approach driving the institution from unbridled

discretion to public reason, secrecy to information, and opacity to accountability. Thus, the roadmap for future must be forward looking and innovative, and focus on critical areas such as technological scaling up, capacity building, infrastructure augmentation, and organisational autonomy.

a) **Technological scaling up** – New age crimes require new age responses! Efficient investigation presupposes induction of scientific work culture. Rapid advances in science and technology necessitates modernisation through adoption of newer technologies including use of Artificial Intelligence, for tackling sophisticated crimes. CBI needs to be knowledge and technology driven. There is a dire need for systematized training for investigating officers in scientific methods of investigation. Additionally, scientific facilities and imparting regular in-service training at periodical intervals would go a long way in equipping personals with adequate wherewithal to conduct effective investigation. In this regard, urgent steps must be taken to expedite works on the proposed Centre for

Excellence in Investigation, Centralised Technology Vertical (CTV) and Centre for Excellence in Forensic Science.

- b) **Human Resources** – People are an organisation’s most valuable asset and the key to its success. An increasing number of cases pertaining to diverse areas like internal security, cybercrimes, corruption, financial irregularities, etc are now being handled by CBI. An understaffed organisation is an ill-prepared organisation. Continuing vacancies of crucial personals is likely to adversely impact the performance of the agency. Proactive steps, therefore, must be taken to fill the vacancies, simplify the service rules, reduce procedural bottlenecks afflicting recruitment and make deputation to CBI more rewarding. This would enable the agency to retain capable officers and attract best officers from the State Police Forces, Central Para Military Forces, Intelligence Bureau, etc.

- c) **Enhancement of Effectiveness** – Effectiveness of CBI in discharging its functions could further be

enhanced by *first*, re-equipping personals with skills required to perform jobs that go beyond investigating conventional crimes. And *secondly*, by engaging with various educational centres of excellence to attract young talented individuals trained in various disciplines including information technology, forensic science, etc, within its fold. At present, private sector tends to attract a much greater share of the talent, therefore appropriate incentives must be devised to make working for the State an attractive proposition. To truly transform into a multidisciplinary crime investigation force, it must also invite within its fold experts from diverse fields such as finance, banking, procurement, insurance, engineering, etc. Inputs from experts drawn from diverse disciplines will empower the agency with crucial domain knowledge to proficiently meet current and future challenges.

- d) **Administrative Autonomy** – Efforts must be made to delink crucial aspects of CBI from the overall administrative control of the government. CBI should be given statutory status through legislation equivalent

to that provided to the Comptroller & Auditor General (CAG). The legal mandate of CBI must be strengthened by having a comprehensive legislation addressing deficiencies relating to organisational structure, charter of functions, limits of power, superintendence, and oversight. Further, to address an increasing incidence of interstate crimes, an argument could be made for including ‘public order’ in concurrent list, for the limited purposes of investigating such crimes.

e) **Financial Autonomy** – administrative autonomy without financial autonomy makes for a toothless tiger! A persistent demand of the agency has pertained to securing of its financial autonomy. Ironically, however various committees including the Parliamentary Committee⁶ has on numerous occasions pointed to the slow pace of fund utilisation, which in turn led to steep reduction of funds. This does not augur well for the numerous projects undertaken by the CBI on the Revenue side, including establishment of Technical and

⁶ Parliamentary Standing Committee on Personal, Public Grievance, Law and Justice, 95th Report (2018-19), presented in March 2018.

Forensic Support Units, etc. Such and similar capacity enhancements were designed to play a key role in inducing efficacious investigation, and absence thereof would only hamper conduct of investigation.

f) **Accountability** – Autonomy without accountability would endanger the very objectives that animated the formation of the institution. Increased autonomy must be accompanied by enhanced accountability. Such accountability must be both internal and external. Internal accountability must be based on a self-disciplining approach, with senior officers leading the way with integrity and competence. Additionally, effective operationalising the Lokpal would go a long way towards restoring public confidence in the working of the agency.

IV. Conclusions

13. Working of any institution is difficult when burdened with limited legal mandate, inadequate human resources and scarce financial wherewithal. It is

therefore also important to acknowledge the remarkable work done by CBI over the years. It could not have been possible without the quality, calibre, commitment and professionalism of its personals.

At the commencement of the lecture, I had said that we were embarking upon the path of introspection. I sincerely hope that this journey has resulted in awareness of the present needs and future challenges facing this prestigious institution which would be reflective of all police establishments all over the country. These needs and challenges must in all seriousness be engaged with. But any engagement must be guided by two overriding principles - *first*, in a constitutional democracy, law is supreme; and *second*, 'we are dealing with right bearing citizens and not subjects.' Only strict adherence to this mantra will ensure that the public institution of police in India lives up to the role and expectations of the legislature and enjoy public confidence to the fullest measure.

I am confident that in times to come the agency would continue to maintain high-standards and serve the nation and its people with utmost industry, fervent impartiality and highest integrity. I wish CBI every success in its future endeavours.

Thank you, Jai Hind.