

Will apex court's scheme ensure CBI autonomy?

Times of India

18/03/1998

A dispassionate study of the recent judgment of the Supreme Court about the superintendence and control over the Central Bureau of Investigation (CBI) evokes a mixed response. The judgment welcome on two counts—first for focusing on the need to insulate the CBI from “extraneous influences” and secondly, for quashing the infamous “Single Directive” on the grounds of it being bad in law. However, the institutional and other arrangements suggested to replace the existing system may not provide the type of insulation required for the CBI to function as an effective but a fair and impartial organization.

The court had felt that allegations of a “definite nexus between a crime and corruption in public life at high places in the country” and the CBI and other investigating agencies showing “inertia” in investigation offences involving influential persons revealed a grave situation that posed a serious threat “even to the unity and integrity of the nation”. It considered it necessary to issue orders that would activate the CBI and other agencies to “at least commence a fruitful investigation.”

It took up the responsibility of monitoring the progress of investigations and directed the CBI not to report progress to the person occupying the “highest office in the political executive.” It reiterated the basic tenet of rule of law: “Be you ever so high, the law is above you” and stressed that investigations into accusations must therefore, be completed expeditiously, irrespective of status or position of the accused.

Another significant result of the judgment has been to quash a part of what is termed as the Single Directive by which the Government had debarred the CBI from undertaking any enquiry against any officer of the rank of Joint Secretary or above in the Central Government, including those in Public Sector Undertakings, Reserve Bank of India, SEBI and nationalized banks, without prior sanction of the Secretary of the concerned ministry / department.

In addition to quashing the Single Directive, the judgment issues directions aimed at insulating the CBI from “extraneous influences” and here it raises more questions than it answers. While the Court entrusts the responsibility of exercising superintendence over the CBI's functioning to the Central Vigilance Commission (CVC), it simultaneously holds that the concerned minister shall be ultimately responsible for its efficient functioning to Parliament. The charters of responsibility of the Central Government and the CVC to exercise supervision over the CBI are to clear. It appears that the Court has made a distinction between the Government's general responsibility and the CVC's specific responsibility to ensure an efficient and impartial functioning of the CBI. The line of distinction, however, is too thin to be observed and maintained in practice.

It has been held by the Court that none of the minister's powers can extend to interfering with the course of investigation and prosecution in any individual case. Investigation is to be governed strictly by the provisions of law. In fact, the process of investigation, including “the initiation and manner of investigation of the offence.” has not been regarded by the

Court as “an area which can be included within the meaning of superintendence in Section 4 (1)” of the Delhi Special Police Establishment Act 1946. In this respect, the CVC’s authority of exercising superintendence would be no different from what has been in case of the Central Government.

At present, the CVC has neither any constitutional nor statutory bases. It was set up by the government of India in February 1964 on the recommendation of the Santhanam Committee on Corruption. The Commission is a part of the executive and has invariably been headed by a senior bureaucrat serving or retired. Its functions are mainly advisory and it is up to the central government to accept its advice in vigilance and corruption cases involving Central Government employees. The fact that corruption amongst public servants at the Centre has increased considerably since the commission was set up indicates that it has not been successful in achieving its objectives.

The CVC’s experience or expertise is limited by its charter of dealing only with corruption or vigilance matters. The CBI on the other hand deals not only with corruption cases but also with major crimes having inter-state or international ramifications.

Thus neither the structure of the Commission nor its charter nor its record inspire any confidence that the new arrangements suggested would really insulate the CBI from wrong and illegitimate influences.

The directions given in the judgment about selecting officers for the posts of Central Vigilance Commissioner and Director CBI only strengthen this apprehension. Selection of the Central Vigilance Commissioner is to be made by a Committee consisting of the Prime Minister, the home minister and the Leader of the Opposition from a panel of “outstanding civil servants and others of impeccable integrity” to be furnished by the Cabinet Secretary. Selection of the CBI Director shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. Thus while a committee of politicians will select the central vigilance commissioner, a bureaucrats’ board will choose the CBI Director. This board would also have the power to extend or prematurely terminate the tenure of officers up to the rank of Joint Director in the CBI.

The judgment has the effect of enhancing the powers of civil servants over an important organization like the CBI. This should not cause any worry to politicians as most illegitimate political control over the police organizations in this country has not been direct; it has been exercised through senior bureaucrats.

The judgment directs that the CVC shall be given statutory basis. Legislation enacted for this purpose must provide for enough checks and balances to ensure that the CBI’s functioning serves the law of the land and not the vested interests of politicians or bureaucrats. The minimum that should be done is to give the CVC a quasi-judicial status or to provide that the head of the CVC shall be a judge, serving or retired, at least of the High Court.