

The Hullabaloo Over CBI

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The Central Bureau of Investigation (CBI) has no legal status as a police force called CBI because it was created in 1963 by a resolution of government and not by any law. The legal entity which works under the name of CBI is actually the Delhi Special Police Establishment (DSPE) created by the Delhi Special Police Establishment Act, 1946. This force has jurisdiction over the centrally administered areas (UTs), but its jurisdiction can be extended under section 6 of the DSPE Act with the consent of the State Government concerned. DSPE functions as a police force having jurisdiction in the area of operation as if it were the police of that area and the police stations of DSPE are deemed to be police stations of that area. In law DSPE is a legal entity enjoying police powers.

In April 1963 government created the Central Bureau of Investigation by a resolution. The resolution gives certain functions which could have been given to any other government agency as part of the Executive. However, in the matter of investigation and prosecution of offences there is no juridical person called CBI. Under Entry 8 of List 1 of the Seventh Schedule of the Constitution Parliament has the competence to legislate for a Central Bureau of Investigation and an Intelligence Bureau. Parliament in its wisdom have not enacted such legislation and, therefore, CBI over whose control different monkeys are fighting, does not exist in law. At best it is an adjunct organisation to the Executive, which created it.

DSPE is police force and like any other police force in India it acquires authority to investigate offences under the provisions of Chapter XII Cr.P.C. The investigation of any offence, whether under IPC or any special law, has to be done as per Chapter XII Cr.P.C. and it is only the provisions of this Chapter which authorise an agency to investigate any offence. The police cannot investigate noncognisable offences. Therefore, before an offence gets investigated there has to be a FIR which gives information about the alleged commission of a cognizable offence. The FIR under section 154 Cr.P.C. is the gateway to investigation and it applies to CBI/DSPE, the National Investigating Agency and every other police force in India. The procedure of investigation is given and in any offence which DSPE has been authorised to investigate, including under the Prevention of Corruption Act, this is the procedure which will have to be followed. Chapter XII Cr.P.C. will apply even to any investigation ordered by or done by the proposed Lokpal.

An officer investigating an offence is immunised from all kinds of pressure, political, administrative or judicial. The only person who can give any direction to an investigating officer is a superior officer acting under section 36 or section 158 Cr.P.C. A competent court can direct an investigation to be conducted under section 156 Cr.P.C, it may take cognisance of an offence on the basis of a report of the police officer on completion of an investigation under section 173 Cr.P.C, it can permit closure of a case or it can order further investigation. Otherwise no court can give a direction to an investigating officer to close a case or put up a challan, because these are two actions which lie within the jurisdiction of the police. This applies to DSPE also. Under law the police is totally independent in the matter of investigation. Why, then is there such an uproar about autonomy of the police in general and the DSPE in particular?

The Constitution recognises three pillars of the State, the Executive, the Legislature and the Judiciary. Part V, Chapter 1 of the Constitution relates to the Executive, Chapter 2 and 3 to the Legislature and Chapter IV to the Judiciary. These provisions apply mutatis mutandis under Part VI,

Chapter 2, 3, 4 and 5 in the matter of the States. Every other agency or authority created under the Constitution, including the Comptroller and Auditor General, the Public Service Commission and the Election Commission, are all adjuncts of the Executive, regardless of the fact that they enjoy constitutional autonomy. If a Lokpal is created that organisation will also be an adjunct of the Executive, though it may be accountable only to Parliament. The police is very much a part of the Executive. It is created by the Executive through legislation enacted in this behalf and it can be called to account by the Executive.

The police is the coercive arm of government and its officers, because they have the right to deprive a person of his liberty, are more prone than other departments of government to misuse this power. This applies to DSPE also. It is the duty of government to prevent such abuse of power. Therefore, superintendence over the police vests in government and there is no reason why the DSPE should not be subject to superintendence by government. Regardless of the autonomy enjoyed by the police questions can be raised in the Legislature about its behaviour and the misconduct of its officers. Can any government state that the organisation is so autonomous that it has no control over it and cannot redress grievances? The ensuing uproar would blow away government. This applies to DSPE also. We should read this in the context of the fact that the police investigates every kind of offence, including murder. Is corruption a more heinous offence than murder? Does it mean that it is permissible to have the normal police, which investigates even murders, under the superintendence of the Executive, but to exempt from such superintendence an agency which investigates corruption? The CBI at present is a creation of the Executive, which can abolish it by recalling the resolution of creation. Even DSPE can be abolished by repealing the Act. The Constitutional role of the Executive cannot be diluted by taking away its authority to supervise its own creatures.

We have to make our police force professional, competent and fully empowered to investigate and prosecute offences without any interference by politicians, bureaucrats and judges. However, so far as accountability is concerned, the police has to be administratively accountable to the Executive and in investigation of offences it has to be accountable to the judiciary. On this there can be no compromise, Anna Hazare notwithstanding. Therefore, the CBI must continue under the superintendence of government, but suitably empowered in the matter of registration of offences, their investigation and prosecution. It cannot be under the proposed Lokpal, subject to its whims and fancies.
