

# The CBI as Police

■ Dr. M.N. Buch

The scheme of the Constitution of India is that freedom is the rule and restriction of freedom, including personal freedom, is the exception and subject to the law in this behalf. That is why the Code of Criminal Procedure categorically states the circumstances under which the freedom of an individual may be restricted by lawful arrest and judicially ordered detention. Any restriction, arrest or detention contrary to this basic principle of law is strictly prohibited. In fact, Article 21 categorically states, “No person shall be deprived of his life or personal liberty except according to procedure established by law”. This applies to every agency, Police or otherwise, which may have the legal power to detain a citizen or restrict his movement. Regardless of the agency which detains an individual, it is the Code of Criminal Procedure which lays down how an arrest is made, before whom an arrested person must be produced within twenty four hours of arrest, how the crime alleged will be investigated and what will be done when investigation is completed. In the investigation of offences and their prosecution it is the process prescribed in CrPc which will govern every investigating agency and there are no exceptions to this rule.

In the division of powers between the Union and the States, in the VIIth Schedule framed under Article 246 List 1 is the Union List for which Parliament has the legislative competence, List 2 is the State List for which State Legislatures have the legislative competence and List 3 is the Concurrent List in which both the Parliament and State Legislatures have legislative competence. Entry 8 of List 1 empowers Parliament to enact legislation on the Central Bureau of Investigation and the Intelligence Bureau. Hitherto Parliament has not enacted a law for either agency, though IB has been in existence since British days and CBI was constituted in 1963. Public order and Police are at entries 1 and 2 of the State list and here exclusive legislative jurisdiction vests in the State Legislatures. Parliament may legislate under entry 2 of List 1 for both the military armed forces and the civil armed forces of the Union. For example, the Border Security Force Act legally creates an entity called the Border Security Force, which is a civil armed force of the Union. The Police, however, can only be created by the State Legislature and our Constitution recognises only the Police as an agency competent to both prevent crime and to investigate it. To circumvent this problem the Government of India caused the enactment of the Delhi Special Police Establishment Act, 1946 and created the Delhi Special Police Establishment. This force originally had jurisdiction over centrally administered territories and employees of the Central Government, which jurisdiction was expanded from time to time through laws such as the Prevention of Corruption Act and by empowerment of DSPE by various state Governments through consent in specific cases or general authority by notification under section 5 of the DSPE Act. The DSPE, therefore, is a legal entity, a police force and, therefore, an agency competent to investigate. In this behalf it acts as a duly empowered police force and enjoys full police powers as prescribed by CrPc. while investigating offences entrusted to it. When courts refer to investigation by CBI either they subliminally refer to DSPE, or they are confused about the distinction between CBI and DSPE. As the law stands today the judgment of the Guwahti High Court that CBI has no legal status and no legal powers is perfectly correct. Whether it can be fully upheld must depend upon whether CBI used its authority as DSPE while investigating an offence or whether it made the cardinal error of assuming for itself a police status which as CBI it does not enjoy.

CBI was created by a Government of India resolution, bearing number 4/31/61-T dated 1-4-1963. The stated objective of this resolution was to establish a CBI to handle cases then under investigation by DSPE. The simple way would have been to enact legislation under entry 8, List 1, VIIth Schedule of the Constitution so that CBI was given legal cover. Instead, by executive notification an agency called CBI was constituted with six divisions, of which the investigation division consists of DSPE, a legal entity and five other divisions, technical, crime records, research,

law and administration which only have existence as an executive agency. CBI as such has no competence to arrest anyone or to investigate an offense, because it is not a police force, it is not an organisation empowered by law, in contrast with the Forest Department whose officers are empowered by the Indian Forest Act and the Wildlife Protection Act to investigate and prosecute forest offenses. Therefore, to state that CBI has been asked to investigate an offence is totally wrong in law. Only DSPE has this power.

CBI is not a police force. It is not a specialised agency duly empowered by law to investigate offences notified to be in its jurisdiction, it is not the executive superior of government servants performing executive functions and it not an ombudsman. The April 1963 notification may be all right for internal consumption, but by itself it does not create an agency which has any legal existence. The best way forward, therefore, would be:-

1. For the Supreme Court to uphold the judgment of the Guwahati High Court while directing that the cases under investigation by CBI should either stand transferred to DSPE or, where DSPE does not have jurisdiction, then to the State Police.
2. For the Central Government to enact legislation creating a Central Bureau of Investigation and subsuming DSPE into it.
3. For the newly constituted CBI to be given a specific jurisdiction.
4. For CBI to stop sitting in judgment over executive actions and decisions and restricting itself to investigation of offences where there is a FIR about the commission of a cognisable offence.

Then and then alone will CBI function within a framework of legality. Today it works as anything but a police agency. Its officers, who are not competent or qualified enough, question and sit in judgment over the policy and decisions of senior officers and ministers. CBI officers virtually lord it over top businessmen they preen themselves before the media as persons of superhuman power, they hide behind the skirts of courts, generally by acting as martyrs hampered in their duty by the executive, while willingly acting as the handmaidens of the party in power to selectively investigate, or drop, cases against political rivals that the party is trying to either woo or overawe. In the process the corruption of CBI itself is hidden behind an obfuscating mist of self-righteousness. CBI does need reforming. It needs a law to give it a legal status and to prescribe to bounds and it needs strict accountability. This the judiciary cannot do because enactment of law lies in the legislative domain and supervising the police is in the domain of the executive.

\*\*\*