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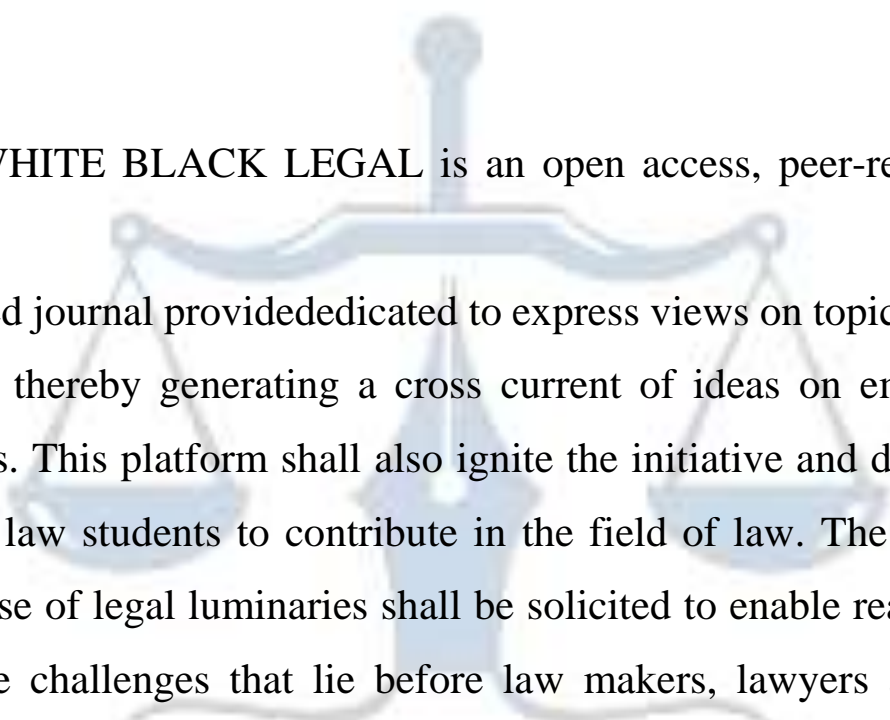


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ROLE OF CENTRAL BUREAU OF INVESTIGATION IN CRIMINAL JUSTICE SYSTEM IN INDIA: A STUDY OF EMERGING TRENDS**

AUTHORED BY: - SHRUTI KUMARI

## **ABSTRACT**

The criminal justice system in India operates through a network of various institutions, including the judiciary, police, and investigative agencies. The Central Bureau of Investigation (CBI) plays a pivotal role in India's criminal justice system, acting as the premier investigative agency with jurisdiction over complex and high-profile cases. This paper aims to study the role of the CBI within the broader framework of India's criminal justice system, exploring how it has evolved and adapted to emerging trends in governance, crime, and society. The paper also explores challenges such as political interference, jurisdictional limitations, and issues related to accountability and autonomy. The study concludes that because the CBI is directly under the direction of the Central Government and operates under the supervision of the Ministry of Personal, Pension, and Public Grievances, its lack of independence is to blame for the agency's insufficiency and inefficiency. In the context of recent legal and policy shifts, this study highlights the agency's adaptability to changing societal and governmental needs.

## **Keywords**

Central Bureau of Investigation, criminal justice system, investigation, emerging trends, autonomy, political interference, accountability.

## **INTRODUCTION**

Criminal justice system includes the collection of procedures, organizations, and institutions that work to maintain or reestablish social control<sup>1</sup>. The latter may be defined as “the organized ways in which society responds to behavior and people it regards as deviant, problematic, worrying, threatening, troublesome and undesirable”<sup>2</sup> Administration of Criminal Justice mainly breaks on police, prosecution, courts and prisons. These four organs are engaged in the

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<sup>1</sup> Francis Pakes, *Comparative Criminal Justice* 1(2<sup>nd</sup> Edi., Willan Publishing 2010).

<sup>2</sup> id., cf. S. Cohen, *Visions of Social Control* (Cambridge Polity Press, 1985).

vital task of prevention, detection, prosecution and penalization of offenders in society. An effective Criminal Justice machinery ensures a safe and peaceful society. In fact, the entire existence of an orderly society depends upon sound and effective Criminal Justice machinery<sup>3</sup>. One essential element of criminal justice is the police. The specialized group of individuals known as police are responsible for performing "organized forms of order maintenance, peacekeeping, rule of law enforcement, crime investigation and prevention and other forms of investigation and associated information brokering."<sup>4</sup> Amongst all the functions, the task of investigation is the most crucial, as it has its impact on the accused and the society at large. "Investigation is the bedrock of the Criminal Justice System and it is, therefore, most crucial component to run the criminal justice system. Any investigation speaks only with evidence. Any flaws or defects in investigation are fatal and cannot be corrected by any judiciary, however, committed to justice and truth."<sup>5</sup> In India, investigation is generally entrusted to State agencies, being a matter in Schedule 7 List II, State List, entry 2 of the Constitution.<sup>6</sup> However, the Central Government, by virtue of its powers under Schedule 7 List I, Union List, entry 8<sup>7</sup> has created a specialized investigation body, the Central Bureau of Investigation.

### **BRIEF HISTORY OF CBI**

The Central Bureau of Investigation has its origins in the Special Police Establishment (SPE), which was established in 1941 by the Government of India. The role of the SPE was to investigate cases of bribery and corruption in communications with the War Department and the Department of Supply. India during World War II. The management of the SPE was entrusted to the War Ministry. Even after the war ended, there was a need to set up a central government agency to investigate cases of bribery and corruption among government officials. The Delhi Special Police Act was introduced in 1946. Under this Act, the control of the SPE was transferred to the Ministry of Home Affairs and its functions were extended to cover all departments of the Government of India. The jurisdiction of the SPE extends to all Union Territories and may be extended to States with the consent of the State Governments concerned. The DSPE acquired its present name, the Central Bureau of Investigation (CBI), by a Ministry of Home Affairs resolution dated January 4, 1963.

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<sup>3</sup> Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India (2003).

<sup>4</sup> Supra note 1, at page 42

<sup>5</sup> U.S. Misra, CBI-Role and Challenges, Vol.57 No.1 NPA Journal 13 (January to December, 2005).

<sup>6</sup> INDIA CONST. schedule 7 List II (State List) entry 2-Police (including railway and village police) subject to the provisions of entry 2 A of list I (Union List).

<sup>7</sup> INDIA CONST. schedule 7, List I (Union List), entry 8 - Central Bureau of Intelligence and Investigation.



At first, central government officials' corruption was the primary offense that the central government recorded. With the establishment of numerous public sector projects, the staff of these projects were eventually placed under the jurisdiction of the CBI. Likewise, the Public Sector Banks and their staff were brought within the purview of the CBI after the banks were nationalized in 1969. The CBI was further strengthened by adding the Economic Offences Wing by the Government of India Order dated 29.2.1964. At that time, the CBI had two investigative wings, one called the General Offences Wing which dealt with cases of bribery and corruption involving Central Government/PSU employees and the other called the Economic Offences Wing which dealt with cases of violation of fiscal laws. Over the years, the Central Bureau of Investigation has emerged as the country's premier investigative agency, earning the trust of the people, Parliament, the judiciary and the Government. Over the past 75 years, the organisation has evolved from an anti-corruption agency into a multi-disciplinary central police and law enforcement agency with the capacity, powers and legal authority to investigate and prosecute crimes anywhere in India. Despite its national prestige, the CBI is often accused of being a "caged parrot" and of political interference, raising questions about its impartiality. Thus, the status of an institution in the criminal justice system is determined not only by the legal framework but also by its accountability, effectiveness and independence.

### **EXPANDING THE ROLE**

As the CBI has established itself over the years as an impartial and competent institution, it has been asked to look into more cases of common crimes like murder, kidnapping, terrorist crimes etc. Apart from this, even the Supreme Court and various High Courts of the country have also started entrusting the investigation of such cases to the CBI on the basis of petitions filed by the victims. CBI is not only India's leading anti-corruption investigative agency but is also experienced in handling high profile traditional crimes, economic crimes, bank frauds and cross border related crimes. CBI is designated as India's National Central Bureau for ICPO-INTERPOL. The agency often takes up cases at the request of state governments or on the directions of the Supreme Court or other high courts.

### **ORGANIZATIONAL STRUCTURE AND POWERS**

The functioning of the CBI is primarily regulated by the Delhi Special Police Establishment Act, 1946 (DSPE), which provides for its establishment and powers. The CBI has acquired

powers under this Act to investigate cases and is administered by the Department of Personnel and Training (DoPT) under the Ministry of Personnel, Public Grievances and Pensions, giving it a certain degree of autonomy in its operations. According to the Vineet Narain judgment<sup>8</sup>, the term of office of the CBI Director is two years, ensuring a degree of independence in the running of the CBI. However, the legal status of the CBI is often questioned as it is dependent on executive decisions, and the lack of legislative autonomy has been a long-standing issue.

## COMPOSITION

The central bureau of investigation is led by a director. He is supported by a special director or an additional director, along with numerous joint directors, deputy inspector generals (DIG), superintendents of police (SP), and various other police ranks.

### Appointment of CBI Director

Prior to the enactment of the Lokpal Act, the appointment of the CBI director was governed by the DSPE Act. Currently, the Lokpal Act regulates the appointment process for the CBI director.

The central government selects the director based on the recommendations of a search committee that includes:

1. The Prime Minister serving as the chairperson
2. The Chief Justice of India (or a Supreme Court judge)
3. The Leader of the Opposition.

## ROLE OF THE CBI IN THE CRIMINAL JUSTICE SYSTEM

The CBI acts as the nexus between the investigative and judicial processes in India. Its investigation reports and chargesheets are often key to determining the outcome of trials, especially in cases involving public interest or serious offences.

- **Independence of investigations**

A key aspect of the CBI's role in the criminal justice system is its mandate to investigate cases independently and objectively. However, many cases, such as the 2G Spectrum case and the Coalgate scam, have highlighted the pressure of political influence on the agency.

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<sup>8</sup> AIR 1998 SUPREME COURT 889, 1998 AIR SCW 645, 1997

Judicial review has emerged as one of the key ways to mitigate this phenomenon, with courts directing CBI investigations in cases involving prominent politicians and organised crime.

- **Prosecution and conviction rate**

The conviction rate is a crucial measure of the CBI's efficacy. Over the years, the CBI has maintained a relatively high conviction rate compared to state police forces, but cases such as the Aarushi Talwar and Bofors scandals have undermined its credibility due to accusations of sloppy investigations and media sensationalism, shaking public faith in the government's ability to ensure justice.

- **Role in sensitive and high-profile cases**

The CBI is often called upon to investigate significant cases that attract national attention. These cases often involve politicians, government officials or matters of widespread public concern, such as large-scale corruption scandals, bank frauds, cases related to terrorism or organised crime. Due to its expertise and perceived independence, the CBI is seen as a reliable agency capable of investigating such matters objectively.

- **Combating corruption and economic crimes**

One of the most important roles of the CBI was to investigate cases of corruption at various levels of government. The CBI's anti-corruption wing handles cases involving senior government officials, including members of parliament and senior civil servants, contributing to the CBI's reputation as an anti-corruption watchdog.

- **Relationship with state police**

The jurisdiction of the CBI often overlaps with that of state police, creating tensions over control and authority. Typically, most criminal investigations are handled by state police, while cases that require specialised investigation or have interstate connections are handled by the CBI. The issue of conflicting jurisdictions is a recurring theme in discussions about the role of the CBI.

- **Coordination with Other Agencies**

The CBI often collaborates with other investigative agencies such as the Enforcement Directorate (ED) and the National Investigation Agency (NIA) in cases of economic crimes, terrorism, and money laundering.

However, jurisdictional overlap has sometimes led to friction, as seen in the Saradha Chit Fund scam, where coordination between state agencies and the CBI was strained.

## **Emerging Trends in the CBI's Role**

In recent years, the CBI's role has expanded significantly, both in terms of the types of cases it handles and the growing public demand for its involvement in investigations. This section explores some of the key emerging trends shaping the CBI's role in the criminal justice system.

- **Increasing Judicial Scrutiny and Activism**

The Supreme Court and various High Courts have become increasingly active in directing the CBI to investigate cases, particularly those involving political corruption and human rights violations. Judicial activism has, at times, expanded the CBI's role in ensuring accountability in governance. However, this trend has also sparked debates over the limits of judicial intervention in the investigative process.

- **Autonomy vs. Political Interference**

One of the most significant emerging trends is the growing debate over the autonomy of the CBI. Critics argue that the CBI's functioning is compromised by political interference, particularly in cases involving high-profile political figures. The agency's dependence on the executive for the initiation of investigations and appointment of officials has led to perceptions of bias and misuse. The Supreme Court's description of the CBI as a "caged parrot" in a landmark judgment reflects this concern.

- **Technological Advancements and Cybercrime**

The rise of cybercrime has posed new challenges for the CBI, requiring the agency to adapt its investigative techniques. The use of digital forensics, surveillance technology, and data analytics has become essential in investigating modern crimes like hacking, financial fraud, and cyber-terrorism. The CBI has responded by establishing specialized units to tackle cybercrime, although there remains a need for more advanced technological capabilities.

- **Global Cooperation in Criminal Investigations**

Given the transnational nature of many modern crimes, such as terrorism, human trafficking, and drug smuggling, the CBI has increasingly collaborated with international law enforcement agencies.

The CBI is India's designated point of contact for INTERPOL, facilitating cooperation on extraditions, international warrants, and cross-border investigations.

## **Challenges Facing the CBI**

Despite its vital role in India's criminal justice system, the CBI faces several challenges that hinder its effectiveness. This section discusses key issues like political interference, jurisdictional limitations, resource constraints, and questions of accountability.

- **Political Influence**

Political influence over the CBI remains a major challenge. Governments, both at the state and central levels, have been accused of using the CBI as a tool for political vendetta. The appointment process for the CBI director and other top officials is a particularly contentious issue, often raising concerns about neutrality and independence.

- **Lack of Statutory Status**

Unlike agencies such as the National Investigation Agency (NIA), which was established under a dedicated legislative framework, the CBI continues to operate under the Delhi Special Police Establishment Act. This lack of statutory backing makes the CBI more vulnerable to executive influence and raises questions about its autonomy.

- **Delays in Investigation and Prosecution**

The CBI has been criticized for delays in completing investigations, leading to prolonged trials and delayed justice. While some delays can be attributed to the complexity of cases, there is also criticism of inefficiencies within the agency and a lack of adequate manpower and resources.

## **Legal Developments**

Recent legal updates have had significant ramifications on the CBI's operations:

1. The **2nd Administrative Reforms Commission** recommended the enactment of a new law to govern the operations of the Central Bureau of Investigation.
2. The **2008 Parliamentary Standing Committee (24th Report)** stated that granting the Central Bureau of Investigation appropriate statutory authority to initiate Suo motu action regarding offenses would not alter the fundamentals of our federal structure.
3. **Central Vigilance Commission (Amendment) Ordinance, 2021**

This amendment extended the tenure of the CBI Director beyond the traditional two-year period, raising concerns about potential political influence. Critics argue that while longer tenures could enhance stability, they could also expose the agency to deeper political control.

### **The Supreme Court's Judgments**

The Supreme Court of India has played a crucial role in interpreting the scope of the DSPE Act and the CBI's jurisdiction. A series of landmark judgments have expanded the powers of the CBI, while also ensuring that its operations remain subject to judicial oversight.

- In the *Vineet Narain v. Union of India*<sup>9</sup>(1997) case, popularly known as the Hawala case, the Supreme Court established guidelines for ensuring the independence and impartiality of the CBI. The Court ruled that the director of the CBI must have a fixed two-year tenure, preventing arbitrary transfers and providing continuity of leadership. This judgment also established the Central Vigilance Commission (CVC) as a statutory body to oversee the functioning of the CBI, although the CBI remains technically under the administrative control of the Ministry of Personnel, Public Grievances, and Pensions.
- In the *State of West Bengal v. Committee for Protection of Democratic Rights*<sup>10</sup>, the Supreme Court ruled that the CBI could investigate offenses in a state without its consent if directed by the judiciary, thus bypassing the requirement under Section 6 of the DSPE Act. This judgment empowered the judiciary to intervene in cases where state governments were seen as obstructing justice.
- CBI's investigations in politically sensitive cases such as the Babri Masjid Demolition case<sup>11</sup>and the Telgi scam<sup>12</sup>. In the recent Prashant Bhushan case<sup>13</sup>, the Court questioned the CBI's autonomy, referring to it as “a caged parrot,” signaling concerns over its independent functioning.

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<sup>9</sup> AIR 1998 SUPREME COURT 889, 1998 AIR SCW 645, 1997

<sup>10</sup>(2010) 3 SCC571

<sup>11</sup> AIR 2019

<sup>12</sup> AIR 2003

<sup>13</sup>(CRL.) NO.1 OF 2020

## Rise of New Forms of Crime and Its Impact on CBI Functioning

The evolving nature of crime, driven by technological advancements and globalization, has significantly influenced the CBI's functioning.

### 1. Cybercrime

With the advent of the digital age, cybercrime has become one of the fastest-growing challenges for law enforcement agencies worldwide, including the CBI. The rise in digital financial transactions, data breaches, ransomware attacks, online fraud, and cyberterrorism have outpaced traditional forms of crime. The CBI has had to adapt to this new reality by investing in new technology and training its personnel to handle cybercrime cases.

- **Cybercrime Investigative Units:** The CBI has established specialized cybercrime units to deal with crimes involving information technology, including hacking, digital piracy, and financial frauds perpetrated through online platforms.
- **Technological Upgradation:** The CBI has recognized the need to modernize its investigative techniques. It has invested in state-of-the-art forensic labs and digital investigation tools to gather and analyze digital evidence. However, critics argue that the agency still lags in comparison to advanced cybercrime units in other countries, both in terms of resources and expertise.

### 2. Financial and Economic Crimes

Globalization has increased the scope and complexity of financial crimes, including corporate fraud, money laundering, stock market manipulation, and tax evasion. The Prevention of Money Laundering Act<sup>14</sup> (PMLA), Prevention of Corruption Act<sup>15</sup> (PCA), and the Companies Act have been updated in recent years to better address financial misconduct, and the CBI has played a central role in investigating large-scale frauds such as the Vijay Mallya Kingfisher Airlines fraud case and the Nirav Modi-PNB scam<sup>16</sup>.

- **Challenges in Financial Crime Investigations:** The scale and complexity of modern financial crimes often involve multiple jurisdictions, transnational elements, and the use of advanced digital platforms. While the CBI has collaborated with international law enforcement agencies such as Interpol and the Financial Action Task Force

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<sup>14</sup> Prevention of Money Laundering Act, 2002

<sup>15</sup> Prevention of Corruption Act, 1988

<sup>16</sup> 25 June, 2021

(FATF), the agency faces challenges in extradition processes, asset recovery, and coordinating across multiple legal frameworks.

### **3. Human Trafficking and Organized Crime**

India is a hub for human trafficking, particularly in relation to forced labor, sexual exploitation, and illegal adoption.

The CBI has been involved in several high-profile cases involving trafficking rings that span multiple states and sometimes cross international borders.

**CBI's Role in Tackling Organized Crime:** In recent years, the CBI has expanded its role in dismantling organized crime networks that are involved in trafficking, drug smuggling, and counterfeit goods. These cases require extensive surveillance, international cooperation, and legal dexterity. The Mehul Choksi case<sup>17</sup>, where the CBI was involved in apprehending an individual involved in a large-scale financial scam who fled the country, highlights the complexities the agency faces when tackling transnational organized crime.

## **CONCLUSION AND SUGGESTIONS**

### **Conclusion**

To ensure the CBI can operate as a truly independent and accountable agency, comprehensive reforms are necessary. These could include constitutional amendments to insulate the agency from political interference, independent oversight mechanisms to monitor its functioning, and improvements in transparency and operational efficiency. Only by addressing these challenges can the CBI fulfill its mandate as India's premier investigative body and restore public confidence in the country's criminal justice system. This study comprehensively examined the roles, effectiveness, and challenges of Central Bureau of Investigation Despite these successes, CBI face numerous operational challenges. Political interference, jurisdictional overlaps, and resource constraints often hinder their ability to function independently and effectively. While existing legal frameworks provide a strong foundation for their operations, gaps in implementation and enforcement persist. The functioning and effectiveness of the CBI have been significantly influenced by emerging trends in criminal justice, such as the rise of new types of crime (particularly cybercrime and financial crime), and growing demands for transparency and accountability. While the CBI has made strides in adapting to these challenges by modernizing its investigative techniques and increasing its internal professionalism,

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<sup>17</sup> W.P.(C) 5677/2020 & CM 20540/2020



concerns remain about political interference, jurisdictional limitations, and public perceptions.

### **Suggestions**

To enhance the functioning and effectiveness of CBI in the Indian criminal justice system, several recommendations are proposed:

- It is essential to strengthen legal frameworks. Updating and amending existing legal statutes can provide greater autonomy to CBI, reducing the scope for political interference.
- Establishing mechanisms to safeguard against political manipulation is crucial to ensure that CBI can operate independently and impartially.
- Improving operational efficiency requires the adoption of modern investigative tools. Integrating advanced technologies such as data analytics, forensic tools, and cybersecurity measures can significantly enhance investigative processes.
- Simplifying and streamlining internal processes will reduce bureaucratic delays and improve the speed and efficiency of investigations. Enhancing inter-agency coordination is vital.
- Establishing specialized courts for handling cases investigated by CBI can reduce delays and improve case management.
- Regular reviews and assessments of CBI performance should be conducted to implement necessary reforms based on evolving challenges and crime trends.
- Independent oversight committees can be established to monitor the CBI's functioning and prevent political interference.

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