Dynamics of Indian Democracy

Revisiting the Seven Decades

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Jitendra Sahoo

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Revisiting the Seven Decades

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Editorial Note

Indian democracy is heavily influenced in its institutional construct, operating procedures and fundamental instincts by Britain's Westminster model. The extreme diversities of India entailing the divides of race, region, religion, socio-economic status etc. have all been afforded the priceless ventilation and empowerment of participative democracy to manage the potential cohabitation conflicts and aspirations within the sovereign entity. Seventy-one years after independence, India is still practicing vibrant and thriving system that prides itself as the 'world's largest democracy'.

India had passed through many a testing time since Independence. Attempts were made to stifle political opposition. National Emergency was imposed in 1975 on the ground of internal rebellion. The country saw the assassinations of its top political leaders, Mandal reservations and Mandir controversy in the 1990s pushed the country into deep trouble. The country had to restructure its economy in the wake of collapse of socialist states and adjust to the new logic of free market economy and globalization over the last two decades. However, India came out of these testing times successfully.

Some said that democracy would not survive in India because of its bewildering diversity. They thought that clash of identities based on region, language, caste,

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religion, ethnicity and tribe would flare up and India gets consumed in these fires. But no such calamity had happened. It is true that over the past seventy-one years India faced several formidable challenges to its unity and survival as one nation. Overall, the idea of India as one country enjoys overwhelming support among vast sections of people.

But we cannot say all is not well with India's democracy. While we take pride in the fact that India is the world's largest democracy, certain challenges stare in our face. The first challenge is political and administrative corruption. Many political leaders see politics as business to amass wealth. A second challenge is dynastic succession. Political leaders see political power as personal property to be passed on to their sons, daughters and close relatives. A third challenge is personalization of political power in both parties and government.

The post-Cold War project of globalization is changing the established notion of liberal democracy and local governance. The political autonomy of the liberal state is being increasingly compromised in favour of market forces and local governance more and more exposed to direct penetration by global and corporate power structures. This change has far-reaching implications for the future of democracy, particularly in the Third World. Aware of this challenge, new social movements in India, active at the grass roots of politics, are resisting global penetration of local communities, using new political spaces opened up by the retreat of the state from socioeconomic arenas. Through an inventive politics of struggle over issues concerning local communities and their empowerment, they articulate a vision of democracy as a creative political process, operative primarily at the local level. Their politics are addressed to establishing direct access and control of

people over their immediate environment—economic, social, and cultural. To ensure that, they seek to transcend old dichotomies between state and society, global and local, political and social—and open up new possibilities for democracy in India.

This work is possible with the blessings of my parents ***Sri Ekadasi Sahoo*** and ***Smt. Chandramani Sahoo*** and the inspiration, love-affection of my wife ***Smt. Rasmiranjita Sahoo*** and son ***Sri Dibyajyoti Sahoo (Omm)*** whose continuous inspiration guided me for publishing this book in time. As a whole the book got the complete shape because of the good will of all the faculty members of the Department of Political Science, University of Gour Banga, Malda, and the contributors without their papers it could not be possible. Finally, I do hereby declare that the papers contributed by the contributors are of their own views; if any discrepancies or legal issues arise out of this publication the contributors will be responsible for this; the editor or the publisher will not bear the responsibility.

Dr. Jitendra Sahoo

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The Central Bureau of Investigation: An Instrument of Partisan Politics

Dr. Shiladitya Chakraborty

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Introduction

Corruption is undeniably one of the most consequential issues in the process of governance in most developing countries including India. While corruption was not invented by the Indians, there is no denying the fact that it is ubiquitous. Corruption is in fact not a modern-day development in India. Kautilya, the famous thinker of ancient India had once observed in his book Arthashastra:

> *Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out [while] taking money [for themselves]* (Shamasastry, 1960: 70)

Perhaps this prophetic observation made by Kautilya 2,500 years ago holds true even today in 21st century India. To deal with this ubiquitous phenomenon,

several institutional measures, both legal and administrative, have been established by the Government of India. Among the many anti-corruption institutions that we have in India, perhaps the Central Bureau of Investigation (CBI) can be regarded as foremost among them. Unfortunately, despite emerging as a credible anti-corruption institution the CBI has not been able to stem the rising tides of corruption in India. On the contrary, excessive political interference in the functioning of CBI has led to the gradual erosion of its operational impartiality and has hampered its investigative capability. Another disconcerting trend has been the use of CBI by the political executive to subvert the democratic process in India. The CBI is often used by the political party in power for witch hunting and settling political scores against the members of the Opposition. All this has led to the gradual erosion of the impartial image and credibility of the CBI as the premier anti-corruption institution of India. This article would discuss in this context the factors behind the gradual politicization of the CBI and how the CBI is being used to subvert our political system. The article would conclude by recommending certain important policy measures that can depoliticize the CBI, thereby making it more effective in its fight against corruption.

Corruption was made an offence in the Indian Penal Code in 1860 and defined as "acceptance by public servants of any gratification, other than remuneration, in exchange for an official act". India began her battle against corruption with the creation of the Special Police Establishment (SPE) in 1941. The ordinance which lapsed on September 30, 1946, was replaced by the Delhi Special Police Establishment Act of 1946, from which the CBI continues to derive its investigative powers. The CBI was established by the Government of India (GOI) in April 1963 by incorporating the DSPE as the Investigation and Anti-Corruption Division, with these

five divisions: Technical Division; Crime Records and Statistics Division; Research Division; Legal and General Division; and Administration Division. (Quah, 2016, p. 18)

Over the years, the Central Bureau of Investigation (CBI) was time and again reorganized. Pursuant to the direction of Hon'ble Supreme Court in Vineet Narian and others vs. Union of India, the existing Legal Division was reconstituted as the Directorate of Prosecution in July 2001. As on date, CBI has the following Divisions: Anti Corruption Division, Economic Offences Division, Special Crimes Division, Directorate of Prosecution, Administration Division, Policy & Coordination Division and Central Forensic Science Laboratory. In the last seventy years, the organization has evolved from an anti corruption agency to a multi faceted, multi disciplinary central police – law enforcement agency with capability, credibility and legal mandate to investigate and prosecute offences anywhere in India. But the main thrust of CBI continues to be investigation of anti-corruption cases. *(Divisions in CBI)*

Factors behind the Politicization of CBI

Political independence is the sine qua non for enhancing the effectiveness of all anti-corruption agencies (ACAs), including the CBI. Unfortunately, the politicization of the CBI which started under the prime ministership of Mrs. Indira Gandhi continues even today. This has resulted in the gradual erosion of the image of the CBI as a credible anti corruption institution. The CBI is being used as a political weapon against the enemies of the incumbent government whereby corruption investigations have become weapons in partisan conflicts and tactics of reprisal. This has happened because of the appoint politically pliant bureaucrats to sensitive positions within the CBI especially as the director of CBI. The appointments of

Shri Ranjit Sinha and his predecessor A.P. Singh during the UPA regime are some instances to quote a few. The BJP as the Opposition had criticized the UPA government and derided the CBI as the "Congress Bureau of Investigation". (Varma P.K., 2015) When the BJP came to power in May 2014, it continued with the same policy of appointing bureaucrats who were allegedly close to the BJP into important positions within the CBI. The Director of the CBI is the head of the organization. The Director supervises all the work in the CBI and is responsible for constitution of investigating teams for probing cases. It is the determination of the Director of CBI as the executive head, which can thwart unwarranted political interference and preserve the operational independence of the organization. Unfortunately, despite the amendment of the Delhi Special Police Establishment Act, 1946, in 2014 and the introduction of the bipartisan process of appointment of the director CBI, it could not completely insulate the process from political intercession. This is because under section 4A(3) of the DSPE Act, the collegium consisting of the Prime Minister, the Leader of Opposition and the Chief Justice of India or any Judge of Supreme Court nominated by him can only discuss the names and recommends its choices. It cannot take the final decision which is taken by the Appointments Committee of the Cabinet headed by the Prime Minister. This move has established a very dangerous precedence of bypassing the opinion of the Leader of the Opposition in appointing the Director of CBI. Recently, Rishi Kumar Shukla, a 1983- batch IPS officer of Madhya Pradesh cadre was appointed the Director of the Central Bureau of Investigation in February 2019. Despite the note of dissent from the Leader of the Opposition Mallikarjun Kharge, Mr. Rishi Kumar Shukla was chosen from a shortlist of over 30 contenders. In his dissent note Mr Kharge stated that

committee had violated the Delhi Special Police Establishment Act (DSPE) that governs the CBI by including officers who did not have experience in dealing with corruption cases. (Tiwari. V, 2019) This proves the point that the bipartisan appointment process for the post of Director, CBI with the presence of a high judicial functionary may not be enough to thwart political stratagems.

CBI and the Indian Polity

The Congress led UPA government in recent times started the unhealthy trend of using the CBI to subvert the democratic process in India. In 2010 the UPA government faced a cut motion against rising fuel and urea prices. But the UPA government successfully pulled off a big coup by splitting the Opposition by covertly using the CBI against them. A few days before the cut motion, the CBI filed an affidavit in the Supreme Court on 13 April, 2010, saying it has "evidence to prove that Bahujan Samaj Party chief Mayawati and her family members had acquired assets far exceeding their legal source of income". Ten days later, the CBI told the court it "will need time to relook into the whole case" in view of the favourable orders income tax authorities passed. Four days later, 21 BSP MPs helped the UPA government breeze through the Opposition's cut motions. (Chowdhury, S., 2019)

Fallout of the politicization of the CBI has been the gradual loss of functional autonomy, especially in investigation of high profile cases of political corruption. The consequence of such covert politicization of the CBI has been the deliberate delay and misrepresentation of facts in high profile corruption scams like the Bofors, the 2G scam, coal scam. In all these cases the CBI deliberately botched up the investigation due to the invisible pressure of the Government in power at that time. For instance in the Bofors case, the CBI has time

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and again attempted to protect the Italian businessman Ottavio Quattrocchi who had allegedly received Rupees 610 million rupees as commission in the Bofors gun deal during the prime ministership of Mr. Rajiv Gandhi. The CBI not only failed to extradite Mr. Ottavio Quattrocchi in the past twenty five years but have also issued notices to foreign banks to defreeze the bank accounts of Mr. Quattrocchi under the instructions from some invisible power centre. In fact the Delhi High Court judge Vinod Yadav in 2011 put under the scanner the move by the CBI to close the infamous Bofors scam case against Italian businessman Ottavio Quattrocchi. The chief metropolitan magistrate Vinod Yadav had observed -"I agree that there are certain malafide intentions in the case and there is no doubt in that," He further observed- "I understand that several malafide (intentions) were there in defreezing of the bank account (of Quattrocchi) but can you verbally suggest me the ways to secure the presence of Quattrocchi after several attempts of the CBI to extradite him have failed?" Advocate Ajay Agrawal, who had been opposing the CBI move to close the Bofors case in the Delhi High Court, pointed out that the conduct of the CBI and the Congress led government in the Bofors case was questionable especially after the additional solicitor general (ASG) was sent to England to get Quattrocchi's account defreezed even while the matter was pending before the court. Subsequently, the CBI dropped Ottavio Quattrocchi's name from the Interpol list. (India Today, Court sniffs a motive in letting off Q, Mail Today Bureau New Delhi, January 6, 2011) History repeated itself during the investigation of the Coalgate scam. The Supreme Court on 20 November 2014 asked the then Director of the Central Bureau of Investigation (CBI) Ranjit Sinha to recuse himself from and not "interfere" in the 2G spectrum probe. The apex court observed in this context that the CBI was like "a caged parrot

speaking in its master's voice." (Chakraborty. S, 2015, 15) This unhealthy trend of political interference has not only demoralized the organization but also eroded the credibility of the CBI in public eye.

What is even more disconcerting is the fact that these days –"the caged parrot (CBI) bears its claws and uses its curved beak ferociously against those who have the temerity to question the actions of the Gujarat government." (Varma, 2015) The case of Teesta Setalvad, the well-known human rights activist is illustrative of this point. The CBI registered a case on July 8, 2015 against Sabrang Communication and Publishing Private Limited (SCPPL) of Teesta Setalvad and her husband Javed Anand alleging that SCPPL was not registered under FCRA for collecting money from abroad. The CBI claimed that Sabrang Communication and Publishing Private Limited received nearly Rs. 1.8 crore from US-based organization Ford Foundation in violation of the Foreign Contribution Regulation Act (FCRA). Under FCRA it was mandatory for Sabrang Communication and Publishing Private Limited to seek prior approval from the Union Home Ministry for receiving foreign donations which it did not. But what is really preposterous is the fact that CBI has opposed the bail plea of Teesta Setalvad on grounds of "interference towards the internal security and activities of India". (Activist Teesta Setalvad Records Statement Before CBI in Foreign Donations Case, 2015) The CBI's FIR, accuses Ms Teesta Setalvad's organisation of "prejudicially affect(ing)... harmony between communities". At the same time, the FIR appears to contradict itself, saying the organization's activities were to: "Organise public meetings for peace", "Educate lawyers on misuse of criminal law", "create strong civil society voices... to engender peace" and "media advocacy on sensitive reporting on communities". It is perplexing how such activities can be construed as a threat to national security or as an attempt to spark