

Independence of Anti-Corruption Agencies

A Comparative Study of South Africa and India

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ABSTRACT

The article attempts to dissect the independence of anti-corruption agencies and the reasons for their operational successes and challenges. This brief examination of legislative and regulatory frameworks is important as a reflection of their impartiality and effectiveness. The case studies upon which the research is based, are the Special Investigating Unit (SIU) in South Africa, and the Civil Bureau of Investigation (CBI) in India. In the process, their key functions, operations, financial independence and priorities are examined. The research undertaken is based on the qualitative, interpretative frame of reference that is based on the thorough study and analysis of primary and secondary documents and person to person interviews with nationally and internationally-based researchers and experts on the issues under investigation. The analysis relies on a comparative examination of the agencies in terms of a number of issues of national and international importance as related to the fight against corruption. The comparison indicates that different

levels of independence exist, and that a number of issues and problems present serious challenges in a successful fight against corruption.

Key words: Corruption; Independent anti-corruption agencies; South Africa; India

ABBREVIATIONS

- **ADB–OECD** (Asian Development Bank–Organisation for Economic Co-operation and Development)
- **CBI** (Civil Bureau of Investigation)
- **DPCI** (Directorate for Priority Crime Investigation)
- **HAWKS** (Directorate of Priority Crime Investigation)
- **ICAC** (Independent Commission against Corruption)
- **IIU** (Internal Integrity Unit)
- **NPA** (National Prosecuting Authority)
- **OECD** (Organisation for Economic Co-operation and Development)
- **SCORPIONS** (Directorate of Special Operations)
- **SIU** (Special Investigations Unit)
- **UNCAC** (United Nations Convention against Corruption)

INTRODUCTION

To say that corruption in South Africa and India are a major problem and challenge will be an understatement. An international phenomenon of major proportion, both the South African and Indian versions are replete with diversity, different levels of deviance and greed, and a wide variety of anti-corruption legislative measures and agencies that have proven to be insufficient as mechanisms to decrease or stop this social and economic malaise. As one of the greatest challenges that the people of these countries and people throughout the world face, corruption has detrimental effects on the relentless efforts for democratic stability, societal sustainability, and economic growth and development. Key legislation and regulatory frameworks lay the foundations of the fight against corruption and independent anti-corruption agencies lead the fight. Amongst the key ingredients in their success, but not the only one, is their independence. The comparative study of two anti–corruption agencies in South Africa and India will attempt to shed light on problems and challenges facing them.



ON ANTI-CORRUPTION AGENCIES' INSTITUTIONAL INDEPENDENCE: THE FUNDAMENTALS

Anti-corruption agencies, as suggested by the OECD (2008:31), are generally grouped into three models: multi-purpose with law enforcement powers; law enforcement type (single-function); and preventative, policy development and co-ordination institutions. In this regard, single-function agencies have investigative responsibilities, while multi-purpose agencies operate with two or more (usually all) of the full range of anti-corruption functions identified by the OECD (2008:9), which include policy development, research, monitoring and co-ordination; prevention of corruption in power structures; education and awareness raising; and investigation and prosecution. South Africa currently has several institutions mandated to investigate, and prosecute corruption. The most prominent of them being the Hawks, the Public Protector and the SIU (RSA, National Anti-Corruption Forum, 2005; Woods and Mantzaris 2012).

There is no doubt that over the years the South African and Indian governments has adopted a wide range of legal and statutory measures aimed at an intensification of efforts against corruption. Simultaneously, these governments have attempted to improve the functionality of institutions charged with investigating and combating corruption. Within South Africa, these efforts emanate from the provisions provided in Section 181 of Chapter 9 of the *Constitution of the Republic of South Africa Act 108 of 1996* (RSA, the Constitution, 1996b), which requires that institutions supporting constitutional democracy should be strengthened. This, in light of the argument by United Nations Office on Drugs and Crime (2014), seeks to protect the fundamentals of democracy, meaning that agencies charged with an anti-corruption mandate, or at least one of the key agencies, should be strengthened, through legislation, resourcing and/or budgetary support. This means that the intensification of anti-corruption efforts in South Africa, India and throughout the world almost certainly cannot be successful unless its anti-corruption agencies are independent from political influence.

There have been voices that have seriously questioned the independence or the lack thereof of key corruption-fighting agencies, including the Hawks, the Special Investigating Unit (SIU), the Public Protector, and the National Prosecuting Authority (Hartley 2012; Tamukamoyo 2013:12; Hawker 2015). It can be understood that such independence can only be guaranteed by the state's political will, devoid of political interference which in most cases is the major contributor to lower levels of independence within anti-corruption agencies (Tamukamoyo 2013:19). The key elements of an anti-corruption agency's independence are organisational, i.e. the least possible political interference in appointment of authorities, implementation of functions and decision-making; functional meaning that there is no interference of third party/parties

or the executive; financial that refers to the impossibility of the government to impede or restrict the agency's activities by reducing its budget and/or budget of other associated agencies (Institute of Supreme Audit Institutions – INTOSAI in Hussman, Hechler and Penailillo 2009:29). The above mean that the independence of anti-corruption agencies is synonymous to autonomy, and they should not be subject to the influence, control, action or jurisdiction of others in the execution of their work. This article will focus specifically on the independence and functionality of anti-corruption agencies within South Africa, and particularly for the SIU and its Indian counterparts.

THE RESEARCH METHODS

The case studies utilised the qualitative research approach, consisting of the study of primary and secondary sources, as well as semi-structured personal interviews with SIU managers as well as Indian researchers and academics in the field. The selection of the interviewees was based on a judgemental sampling frame as the participants had to have been knowledgeable and competent to provide specific detail of their on-the-job and research experience relating to aims and objectives of the project.

In respect of the SIU members questions and the recording of responses did not contain personal details of the respondents in order to maintain anonymity and to ensure that they would be more open and amenable to providing objective responses. Participants were given the assurance of confidentiality in respect of their responses. In many ways for the principle investigator it was an action research experience, “an orientation to knowledge creation that arises in the context of practice, and requires researchers to work with practitioners” (Huang 2010:93). The highest ethical standards were maintained in terms of sensitivity of all information collected.

THE SPECIAL INVESTIGATIONS UNIT

The SIU was established in 2001 by virtue of Presidential Proclamation R118 of 2001 (RSA, Proclamation R118, 2001) which repealed proclamation R72 of 1997 (RSA, Proclamation R72, 1997), that established the Heath Commission. It grew from a staff compliment in 2001 of sixty seven members, to currently more than five hundred (Walker 2013) and it has made contributions towards the investigation of fraud, corruption and maladministration within and against the public sector. Over the years, the agency has been able to facilitate prompt prosecutions through a multi-agency approach with the Scorpions/Hawks and National Prosecuting Authority, and made disciplinary recommendations against public servants suspected of having defrauded



the public sector, as well as recover ill-begotten gains from identified fraudsters and corrupt public servants (Somiah 2016). The SIU has been without a permanent Head for considerable periods of time throughout the years and faced, on occasions, lack of adequate funding despite the existence of service level agreements that contributed to the agency's budget. These situations had a negative effect on the SIU's financial independence and ability to investigate maladministration, fraud and corruption within and against government (Somiah 2016). Following the enactment of the Judicial Matters Amendment Act, the SIU's financial capability has been enhanced significantly but not completely (Lubita 2016). There has also been criticism in regard to the SIU's reliance on the President for the appointment of the Head of the Unit (Tamukamoyo 2013:16–17; Schafer 2013).

A seminal study on anti-corruption agencies in South Africa (Pereira, Lehmann, Roth and Attisso 2012:9) pointed out several key issues. These include the significance of the Constitutional Court's ruling in respect of the need for an independent anti-corruption body with structural and operational autonomy; the reality that South Africa's comprehensive anti-corruption architecture composes of a range of important institutions which address corruption from different angles; and that the rules and regulations are sometimes unclear and not transparent and therefore undermine the effectiveness of the anti-corruption architecture of South Africa and thus hinder the independence of the anti-corruption institutions. The report's key recommendation was that ensuring the independence and impartiality of the institutions comprising the anti-corruption architecture of South Africa is an imperative.

It is important to note that the SIU is one of three agencies in South Africa that is tasked with an anti-corruption mandate. The other two are the Directorate for Priority Crime Investigation (DPCI) and the Public Protector. The mandate as anti-corruption units is derived from the respective pieces of enabling legislation i.e. the SIU Act, Public Protector Act and the SAPS Amendment Act, which empower all three agencies to investigate matters certain offences which are criminalised by the Prevention and Combatting of Corrupt Activities Act (PACOCA) Act (RSA, Special Investigating Unit Annual Report 2010–2011, 2011:7). The mandate of the SIU, as identified in Table 1, is executed by virtue of its founding and enabling legislation, the SIU Act as well from Presidential Proclamation that gives effect to the exercise of these powers.

Critically, the SIU cannot exercise its investigative powers in the absence of a Presidential Proclamation (Maharaj not in reference list 2016; Special Investigating Unit 2016). The SIU operates with three core business divisions i.e. Business Management; Business Operations; and Business Support, that complement each other and fall under the direct supervision of the Head and Deputy Head of the Unit (SIU Annual

Table 1: Powers of South African Agencies that Investigate and Prosecute Corruption

Powers to...	HAWKS	SIU	Public Protector	NPA
Investigate	X	X	X	X
Search and Seizure	X	X	X	X
Arrest;	X	-	-	-
Require from any person, particulars & information,	X	X	X	X
Subpoena any person to produce books, documents or objects	X	X	X	X
Subpoena and question any person under oath or affirmation at one of its own proceedings	-	X	X	-
To compel a person during its own proceedings, to answer any question which may expose him/her to a civil action/criminal charge (such evidence however may not be used in subsequent criminal proceedings)	-	X	-	-
Institute and conduct civil proceedings in its own name or on behalf of a State institution in a Special Tribunal or any court of law	-	X	-	-
Prosecute	-	-	-	X
Attach assets through civil litigation	-	X	-	-
Charge and recover fees from a State Institution for investigations/work done	-	X	-	-
Members qualified and admitted as advocates/attorneys, may perform such work in a Special Tribunal or any court of law on behalf of the Unit or a State institution	-	X	-	-
Make systemic recommendations to state institutions	-	X	X	-
Make recommendations for disciplinary action	-	X	X	-
Make recommendations for civil action to the state attorney or to state institutions	-	X	-	-
Develop policy, research, monitor and co-ordinate anti-corruption efforts	-	-	-	-
Prevent corruption in power structures	-	-	-	-
Educate and raise awareness	-	-	-	-

Source: Adapted from the SAPS Act (1995), SIU Act (1996a), NPA Act (1998) and Public Protector Act (2004), Chetty (2016)



Report 2012–2013 2013:7). It has a national presence in all nine provinces and each office comprises of a Regional Head and several project teams. Legal support is present at all offices, while the Cyber and Data Forensics divisions are situated at the Unit's Head Office in Pretoria. The Accounting CoE has limited capacity but is available in some of the Unit's offices and are utilised as and when required. As deduced from *Table 1* the SIU powers to investigate and prosecute corruption are wide-ranging and diversified as they encompass both investigative and civil litigation powers, where no other agency has the powers of litigation. The agency, however, lacks powers of arrest and prosecutorial powers.

With the exception of the Legal Centre of expertise and the Project Management Office, all other centres of expertise work with the project teams as and when required by the Programme and Project Managers. The Legal Centre of expertise and the Project Management Office provide support to the teams from inception until finalisation of a project. All respective centres of expertise are experts in their fields and can provide expert evidence and testimony in any court.

It has been widely acknowledged that over the years the SIU had a highly positive impact on the investigation of fraud, corruption and malfeasance in the public sector as is depicted in the annual performance report of the SIU's Annual Report 2011–2012 (2012:8–9). This becomes more evident in the comparative figures for the period 2004/2005 to 2010/2011. The SIU Annual Report 2010–2011 (2011:10) presented the performance successes of the SIU from the period 2004/2005 to 2010/2011. It prepared evidence for 24 299 matters for criminal prosecution and evidence for 28 485 matters for disciplinary proceedings. In addition, the Unit prepared evidence for other remedial action totalling 563 536, which included recommendations for driver's license cancellations and removals from the Social Pension System (SIU Annual Report 2011:10). In this way the SIU assisted in cleaning up the department's systems of fraudsters, and in so doing, improved the integrity of the respective department's governance systems and processes. In addition it effected future savings of R 16 435m, considering all social grants recommended for removal from the Socpen system annualised over a 10 year period at an agreed rate. Lastly, the actual value of acknowledgement of debts or civil litigation, as well as non-acknowledgement of debt recoveries, for example, admission of guilt was R332m (SIU Annual Report 2010–2011, 2011:10).

During the period 2009 to the end of 2014, there were R799m in potential cash recoverable; R113.8m in actual value of cash/assets recovered; R111m in actual savings; R27.5m in value of contracts set aside; R1.3b in value of expenditure in procurement matters where financial misconduct was identified; 13 298 matters referred for criminal prosecution; and 10 591 matters referred for disciplinary action (SIU's 2013–2014 Annual Report

(2014: iii). What is clearly evident from the above examples, is that the SIU with both its investigation and litigation powers is an important force in the anti-corruption domain, and is considered a key player amongst South Africa's law enforcement agencies and anti-corruption efforts to curb the scourge of corruption in the country. This is the case despite the fact that it is an investigation unit whose primary responsibility is law enforcement and adopts an investigative model that does not embark on full-blown prevention or even public education exercises (Somiah 2016). It has its own enabling legislation, the SIU Act, which empowers it with all but the powers of arrest and detention, and contributes through close collaboration, and cooperation with the DPCI and the Asset Forfeiture Unit to complement its lack of powers to arrest, seize and forfeit property. It lacks in solid budgetary support or financing unlike for example the renowned ICAC (Independent Commission Against Corruption) agency of Hong Kong which has been extremely well financed by government annually (Heilbrunn 2006:137).

The SIU does not have prevention and community relations departments, but rather Business Management and Business Support, like the ICAC. The ICAC's Corruption Prevention Department funds corruption-related studies, conducts seminars and assists both public and businesses to find corruption-prevention strategies. Its Community Relations Department "builds awareness on the societal costs of corruption" with business and the community (Heilbrunn 2006:137). The SIU has no such focus and has not endeavoured into awareness building programs like the United Nations body, the United Nations Convention Against Corruption UNCAC's (2004:10), on the other hand, is guided by article 6 of their Act, where State Parties are required to "ensure the existence of a body or bodies" that prevent corruption by implementing anti-corruption policies; and "increasing and disseminating knowledge about the prevention of corruption". There is thus a gap in the role of the South African SIU, which in line with UNCAC's guidelines and provisions, suggests that the SIU should reconsider its roles and responsibilities in this regard. This will ensure that South Africa is in line with its international obligations in terms of its UNCAC ratification.

The SIU like the ICAC, maintains a strong degree of integrity with its members and operations, so much so that it has its own Internal Integrity Unit (IIU) set up within the confines of its Business Management division (Somiah 2016). This division ensures that the SIU recruits and maintains staff of the highest calibre by subjecting them to stringent annual vetting processes. In relation to reporting of corruption to the ICAC by citizens, while the ICAC according to Heilbrunn (2004:3), is able to freely investigate any allegations of corruption with specific police powers to investigate and prevent corruption, the SIU cannot investigate as freely as its mandate or terms of reference emanates only from Presidential Proclamations, without which the Unit may not exercise its powers (Maharaj 2016).



While the ICAC appears to have generated a reputation for combating corruption, the SIU too has, thus far, been very successful in the execution of its mandate with minimum criticism and maximum praise as reflected in a parliamentary statement issued by Khubayi (2016), where the Parliamentary Committee on Telecommunications and Postal Services welcomed the SIU's progress made on the investigation into tender irregularities, irregular appointments, theft, fraud and corruption. Parliament felt reassured that investigations were progressing swiftly, and that matters had been referred to the National Prosecuting Authority, while the Asset Forfeiture Unit and civil processes were underway. In fact what is significant in this regard, is Parliament's support of the set-up of a Special Tribunal which can be convened to deal with any civil litigation matter brought before it by a Special Investigating Unit, thereby enhancing the Unit's ability to promptly deal with, and dispose of its matters through a dedicated court.

THE INDIAN EXPERIENCE

The key legislation under which anti-corruption agencies operate in India are the Central Vigilance Commission Act, 2003 (also known as the CVC Act), the Delhi Special Police Establishment Act, 1946 (the DSPE Act,) and the Lokpal and Lokayukta Act (LLA). The CVC is an important anti-corruption agency in the country, as it is instrumental in monitoring all reporting, all vigilant activity in the country, and advising on the execution of vigilance work pertaining to the Central Government. The CVC is legally empowered to inquire into all offences to be found in the Prevention of Corruption Act, 1988 (the PCA) (Social Issues India 2011:4). All CVC proceedings are legally-bound judicial proceedings, and the organisation has all powers and proceedings of a criminal and/or civil court.

The Central Bureau of Investigation (CBI), which is in many ways the equivalent of the SIU in South Africa, is founded upon the dictates of the DSPE Act, and has a specialised section, the Anti-Corruption Division, whose main responsibilities include, investigation of a wide variety of corruption cases, fraud, bribery, gratifications, and all other types of organisational and departmental irregularities committed by public servants operating under the auspices of the Central Government and the wider public service (CBI 2014:6). The Division of Economic Offences was added in their investigative responsibilities with speciality on fiscal laws, while the Division has been dealing with food offences, such as black marketing, corruption, bribing smuggling and profiteering. The last two were later amalgamated into the Economic Offences Wing.

The initial successes and expansion of the unit's activities led to the creation of the anti-corruption and special crimes divisions, as well as the economic crimes section. Finally, the Special Crimes Division was responsible for handling terrorism cases, bomb

blasts, homicides, kidnapping, and organised crime (CBI 2010:3–4). The CBI, thus, has a wide range of powers dictated by the DSPE Act, which also outlines the wide array of duties, responsibilities, liabilities and privileges of the officials who investigate the offences. It is considered to be the most important anti-corruption investigative authority operating under the auspices of the Central Government, and especially under the Ministry of Personnel, Pensions & Grievances. It is important to note that no investigation can commence at any state levels without the permission of the relevant central state entity. However, the High Courts and the Supreme Court can instruct the CBI to conduct investigations (Asian Intelligence 2016:2).

Given the fact that the Prevention of Corruption Act is India's key legislation against corruption, the unit's main objective is to fight against public administrators' attraction to solicitation of bribes, gratification and fraud while on duty. On the other hand, it also investigates the role and actions of 'mediators', intermediaries in their actions. Prosecution under the Act, however, cannot take place without the permission of the 'higher authority in charge'. This, and the perpetual collusion amongst different executive branches relegate their successes into obscurity, in most cases. (Quah 2009:814). It is understandably the busiest of all anti-corruption agencies as the legislation's definition of a 'public servant' encompasses state, central and government-owned organisations and entities, elected officials, the whole spectrum of the public service and everyone who performs what has been called a "public duty". Although, initially it was established as principally, and even exclusively, as an anti-corruption agency, at present its duties and responsibilities have been expanded to more diversified cases such as pure criminal act and terrorism.

For many years the upper middle and higher echelons of the unit were selected from state departments for a period of 5 years, but government leaders have the freedom to appoint, on occasions, new recruits at any time, without official or pre-determined official requirements. There are branches of the agency in all of India's states (CBI 2015:6), while simultaneously the country's 28 states have their own anti-corruption branches comprising of police units whose investigating power is rooted in the Police Act (Quah 2011: 97; CBI 2015:4). It is interesting to note that, whistle-blowers are obligated to report corruption cases, not to the CBI, but the Central Vigilance Commission, which has been declared the 'designated agency' for receiving complaints on alleged corruption. This designation also includes actions on the part of the CVC against those who leak names of whistle-blowers and witnesses. This is despite the fact that the CBI has a fully operational online whistle-blowing facility where alleged corruption cases and complaints can be recorded anonymously (Asian Intelligence 2016:2–3).

Despite these realities, the country has no clear legislation of regulatory mechanisms protecting whistle-blowers. This means that the honest voice of potential



whistle-blowers has been mostly silenced. This situation prevails despite the fact that the country is a signatory of the 2001 Anti-Corruption Plan of the ADB-OECD as well as the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime. All these international conventions and agreements are clear that all signatories are obligated to update and formulate their legislative and regulatory frameworks in accordance with internationally-bound norms. This means that that the updating of anti-corruption legislation rules and regulations in regard to whistle-blower protection are obligatory to all signatories (Quah 2008:244).

The fight against corruption and a relatively strong boost for the CBI was related to the passing of the Right to Information Act (RTIA) of 2005, which has opened the gate for every citizen to seek information from any public service entity that is obligated by the law to respond within 30 days. The Act has introduced a measure dictating the measure that all public entities are obligated to have all data bases computerised and ready for public distribution when requested, and to provide easy access of the information to the wider public (Paul 2013:274–275). Civil society organisations, anti-corruption groups and individuals, as well as communities have utilised the facilities over the years.

Despite its self-proclaimed successes, the CBI has faced over the years a number of structural, functional and organisational hurdles that have all but stalled its previous historical successes. The issue of meagre remuneration of low and middle grade public officials in the agency stalls its contribution in the fight against corruption, because its own members use their positions to accept bribes, getting involved as ‘mediators’, especially when the possibilities for a successful prosecution are limited (Godbole 2013:111). In a seminal diatribe on corruption in debt-ridden Greece, Passas (2015) succinctly stated that it is almost impossible to defeat corruption ‘when salaries are below accepted living standards’ or when anti-corruption fighters operate on ‘an empty stomach’. In a key exposition of low civil service salary structures in South Asia, for the International Labour Organisation, Chew (1992) dissected monetary compensations in India, Nepal, Sri Lanka, Pakistan and Bangladesh for a period between 1977 and 1987 and indicated that such salaries were extremely low in comparative terms in respect of international standards. His clear position was that corruption, although unacceptable, became an inevitable response to poverty and degradation because of the low and continuously falling remuneration. Thus corruption had become perpetual, indeed incurable and inevitable (Chew 1992:2–3; 78; 101–102). The corruption in the agency can be explained as a version of a coping mechanism against poverty in the case of India and other countries throughout the world (Lindner 2013:2).

In an address to a National Conference on Fighting Crime related to Corruption, organised by the CBI in 2009, Chief Justice Balakrishnan (2009) pinpointed that the

extreme salary disparity amongst public servants as well as salaried staff in the private sector was a key to corruption and its expansion. In fact Quah (2011:465–466), who described the efforts to curbing corruption throughout Asia as an ‘impossible dream’, has pinpointed empirically that despite the fact that there have been some increases in public service workers salaries in India, they are in comparative terms significantly lower than those in Hong Kong, Taiwan, South Korea and Singapore.

For the CBI or any other investigative anti-corruption agencies to be successful, it is imperative that its strategy and tactics become public knowledge amongst potential offenders so that the message is clear that the fight against corruption will succeed and corrupt public servants will be punished for their deeds and will be made to pay substantially for their actions (Karklins 2005:160–161). Given the meagre salaries and, on occasions, below par operational and systemic organisational challenges, the spectre of ‘insufficient policing’ as exemplified in the historically important work on control of bureaucratic corruption in Asia (Palmier 1985:279–281), becomes a reality that is instrumental in increasing corrupt practices.

Ahmad and Brookins (2004:29–30) have shown empirically and in comparative terms, that in a number of countries (Sri Lanka, Bangladesh and India) especially India, the existence of large numbers of corrupt acts committed by state officials go unpunished in most occasions, despite strong evidence against the culprits. Their evidence was based on a content analysis of hundreds of reports published in newspapers published in Colombo, Mumbai and Dhaka on a wide variety of alleged corrupt actions of civil officials for a period of two months. In India, in the 119 cases reported in a Mumbai local newspaper, and one of the most widely read in the country (*Times of India*), only 18 cases (15 per cent) had led to punitive action. On the same issue Quah (2011:90–91), has shown that the detection, investigation and punishment probabilities of corrupt officials in the public service in India is low.

The reality is that, unlike the SIU the CBI, is nothing more than a police agency as its key mandate emanates from the DSPE Act, that is based on the fundamentals of British colonialism as articulated by Quah (2007:13–16; Quah 2011:251–252). The CBI faces a number of problems because of the multiplicity of its functions, which its mandate dictates to perform both anti-corruption and non-corruption-related functions, which expand to both economic and other ‘special crimes’, such as terrorism, criminal syndicates and a wide variety of organised crime operations. One of the most important setbacks that the unit has faced over the years is the personnel inadequacies and state lack of funding of its operations throughout the country. CBI’s annual reports (CBI 2005:29; 2006:38; 2008:45; 2010:56; 2011:41; 2012:62; 2015:84) have shown conclusively that its numbers have decreased in real terms from 2013 to 2015. This has been the result



of the unit's inability to fill existing positions as the figures indicate that vacant positions range from 12.1% in 2009 to 1 379 (21.1 per cent) in 2010. Hence the CBI has been characterised as an extremely small organisation trying to solve tens of thousands of corrupt acts (Lall 2007:230–231). The reality is that the CBI cannot investigate corruption cases at the state level because of constitutional stipulations that dictate that law and order come under the jurisdiction of the states (Narasimhan 1997:255).

Additionally, the decline in power of the Congress Party, resulted in a number of state governments to withdraw the consent given by their predecessors, as they feared political embarrassment and vilification. Hence, such fears of political embarrassment, caused by corruption left the CBI at the mercy of politicians fearing for their future. This destabilised the CBI and its leadership because their actions depended on the politicians' mercy (Luce 2013:83). Perhaps the most important weakness and limitation of the CBI is its lack of independence. Because of the legislative and regulatory operational and policy framework, the agency has to serve a wide variety of 'masters' in the field: the Home Affairs Ministry, that is responsible for the Director's appointment, the Ministry of Personnel, Training and Public Grievances that is solely responsible for the budget; the appointment process that is the responsibility of the Union Public Service Commission that appoints all officers above the rank of Superintendent of Police; the Ministry of Law and Justice, which is in charge of paying the salaries of those officers prosecuting corruption cases for the agency; and the CVC which is in charge of supervising its investigation of corruption cases (Tummala 2016:7).

CONCLUSIONS

Both India and South Africa face very serious challenges in their fight against corruption, a serious threat to their developmental goals. Key in these efforts are the anti-corruption institutions and agencies, the existing legislation and regulatory environment, and a number of characteristics upon which such agencies' successes rely on. One of the key ingredients and basis for success is the independence of such agencies from political interference, and on this score the South African entity is in a better terrain when compared to its Indian counterpart. In this, a more comprehensive legislative and regulatory framework in South Africa seems to be one of the key reasons for the difference. In effect, the anti-corruption mandate in South Africa can be described as stronger in comparison, although both face a number of similar problems mainly of a budgetary nature.

Both agencies find themselves more or less within an institutional anti-corruption framework that in a number of ways, suffers from a lack of coordination, overlapping and conflicting mandates between institutions addressing corruption. In India,

key institutions often lack the staff and resources to fulfil their mandate adequately, and they struggle to protect themselves from political interference in the absence of preventive activities. A future research endeavour can pinpoint possibly the need for a number of legislative amendments which would not only serve to enhance the agencies' independence, but will improve their positioning in both countries.

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