

TRIFLING WITH CBI

- by Shri Prakash Singh, Former DG, BSF

We should be having a Lokpal in the near future. The long wait for this institution should soon be over. It would be a tragedy if the parliament falters this time – apart from the fact that such a default may lead to serious confrontation between the government and the civil society. Everyone agrees that we must have a Lokpal - and an effective one at that - though there is controversy over his jurisdiction and the powers he should exercise. One of the issues which is generating considerable heat is the placement of CBI in the Lokpal scheme. The Anna team wants the CBI to be “completely” under the Lokpal. The parliamentary committee is of the view that the CBI should not be subordinate to the Lokpal, though it may be subject to his general superintendence.

It has been our unfortunate experience that the reform process is sometimes distorted to introduce regressive measures. The Bihar Police Act is a classic example of that. The legislation, instead of complying with directions of the Supreme Court, has clauses which are even worse than those in the antiquated Police Act of 1861. We shall have to be careful that while setting up the institution of Lokpal we do not devastate the CBI. Not that all is well with the organization. Justice J.S. Verma, the author of a historic judgment which governs the functioning of CBI today, expressed his sadness over the fact that “the CBI continues to disappoint the people whenever it deals with cases against the powerful”. However, in fairness to the CBI, it must be said that barring such cases where the rich and/or powerful are involved, the organization has given by and large a good account of itself. A ticklish case in any part of the country - and there is invariably a demand for the investigation to be handed over to the CBI.

The CBI has essentially three different wings – the anticorruption division, economic crimes division and the special crimes division. These wings function as an integrated unit and not in water tight compartments. The complicated cases generally require coordinated functioning and effort by more than one wing of the CBI. The crusaders who want one wing of the CBI to be hived off and placed under the Lokpal betray ignorance of the functioning of the organization. Such a surgical operation would have a crippling effect on the CBI. The supervisory control over the entire organization may be shifted to the Lokpal but placing it partly under the Lokpal and partly under the government would lead us nowhere. Whether it is desirable to place CBI under the Lokpal is, of course, another question.

The CBI definitely needs an overhaul – and the government is entirely to blame if that has not happened so far. The Special Police Establishment Act of 1946 should have been replaced by a proper CBI Act; the organization should have been given a proper statutory basis; it should have been vested with federal jurisdiction and given complete functional autonomy. Successive committees made recommendations on these lines. As far back as 1978, the L.P. Singh Committee expressed its dismay over the fact that the CBI was powerless to act outside the Union Territories without the consent of the state governments. It recommended the “enactment of a comprehensive Central Legislation to remove the deficiency of not having a central investigative agency with a self-sufficient statutory charter of duties and functions”. The 19th report of the Parliamentary Standing Committee (2007) also recommended that a separate Act should be promulgated for the CBI “in tune with the requirements of the time to ensure credibility and impartiality”. The Second Administrative Reforms Commission observed that “a new law should be enacted to govern the working of the CBI”. The 24th report of Parliamentary Standing Committee (2008) expressed its unanimous opinion that “the need of the hour is to strengthen the CBI in terms of legal mandate, infrastructure and resources”. It even stated that “vesting CBI with appropriate statutory backing to take *suo motu* cognizance of crimes would in no way affect the essentials of our federal structure”.

Government’s sins of omission are coming home to roost. The Jan Lokpal wants to swallow the CBI. Must we destroy an institution built over the last sixty years to create another? The parliamentary committee has also tripped in suggesting the approval of Lokpal before the submission of charge sheet/closure report.

The parliament would do well to remember certain basic principles: the Lokpal should be saddled with only as much as it can properly cope with; concentrating too much power in the hands of a single individual/organization would be fraught with complications and that a decentralised structure would have better chances of success in a country of India’s size and population; the existing institutions which have served reasonably well should not be tampered with, though minor structural changes could be made in the light of experience gained; that any change which impinges on the basic character of the Constitution must not be entertained; that we should have an integrated anti-corruption mechanism in the centre and the states; and that the sanctity of the investigative process must not be sullied by any external agency. If there is clarity and agreement on these fundamentals, it should not be difficult to arrive at a consensus in finalising the Lokpal Bill.

(The writer has been campaigning for police reforms)