

SUNDAY INTERVIEW

'Establishing the Lokpal is to create Big Brother for the CBI

Taking the Lokpal debate forward, former CBI director Dr Trinath Mishra discusses the issue of independence and autonomy for the CBI in this interview with Pramod Kumar

Do you think the Central Bureau of Investigation (CBI) will play the role of an independent investigative agency with the creation of the proposed Lokpal?

With the creation of Lokpal, a new turf war will begin. This will create confusion. I personally feel that rather than creating an institution like Lokpal, the government should empower the Central Vigilance Commission (CVC). Making the CBI more independent financially as well as administratively can be the best option to handle the current situation.

What do you mean by "make the CBI more independent"?

Independence should be given in terms of resources, finances and, of course, functioning. Since it is the premier investigating agency, its head should not depend on a certain ministry for discharge of financial and certain administrative requirements. Make it like the Election Commission of India or the Comptroller and Auditor General of India (CAG).

Is the independence you speak of sufficient for the efficient discharge of the CBI's duties, or should the agency be given proper autonomy in order to handle corruption in high places?

Independence and autonomy are separate things. As far as autonomy is concerned, no authority can interfere with the CBI's functioning. It is clearly defined in our Criminal Procedure Code (CrPC) that only the police (CBI) can investigate cases.

No authority has the right to interfere in the investigation aspect of the CBI's work. Even the judiciary cannot interfere. The CBI functions on the basis

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of criminal justice and investigative system. What will be the role of Lokpal in an investigation after it refers a case to the CBI? There is no mention in the CrPC of this. Yes, the agency does need independence in terms of finances and administrative functioning.

But sections of civil society have been demanding that the CBI should be brought under the Lokpal's administrative control. They say the CBI is misused by the government at the Centre.

Who or what is civil society? We are all part of civil society. We should not forget that laws cannot be made on the streets simply based on the emotional outburst of a few people. One cannot ask the government to hand over the CBI, or split it, by sitting at Jantar Mantar or anywhere else.

Even if the CBI is brought under the Lokpal, or is split up, the investigators will continue to be police officials. And it will not be binding on CBI officials to update the Lokpal on day-to-day developments of an investigation. Unless the CrPC is amended, investigators are not allowed to report to anyone except to their superiors and the courts.



Trinath Mishra, former CBI director

G.N. JHA

Civil society is saying that monitoring of the CBI should be done by the Lokpal.

From the Lokpal Bill recently tabled in Parliament, it is not clear what the mode of monitoring will be. I will definitely say that day-to-day monitoring will be counter-productive. In certain cases premature disclosure can adversely affect the investigation. Therefore, monitoring should be properly defined.

I must say that establishing the Lokpal is simply the creation of another Big Brother for the CBI, like department of personnel and training, CVC, and to some extent the Union law ministry. Lokpal will also exercise general superintendence over the CBI.

Won't the proposed Lokpal check corruption in high places?

If Lokpal can check corruption in high places, then why not the CBI? In fact, the word "corruption" should be properly defined in our law books. There is a need to bring certain changes even in the Prevention of Corruption Act.

Action against corruption should not end with the submission of the chargesheet. Hundreds of corruption cases in which chargesheets have been filed have been pending before the courts for several years. As we know, justice delayed is justice denied. So, simplify procedures and create more courts. Evidence cannot be preserved for so long. Who will solve these problems? The Lokpal? Don't create an authority just for the re-employment of a section of people.

So, there should not be a Lokpal?

I am not saying that. But merely creating an authority is not the solution. The objective should be fulfilled. The government should not create a constitutional authority under the pressure of a few select people. It should be created after a detailed and thorough debate. The government should constitute a commission or a committee and fix a deadline. The CVC was constituted on the recommendations of the Santhanam Committee.

In a word, how would you explain the Lokpal Bill tabled in Parliament on Thursday?

A couplet of the famous Urdu poet Akbar Allahabadi is well suited here: "Sadiyon talak falsaphe mein chunan ki chuni rahi, lekin khuda ki baat jahaan thee wahin rahi" (People have been discussing the message of God for centuries, but the understanding of His message remained where it was). Nothing has changed. Of course there is one good thing that has been recommended in the bill — the appointment of the CBI director by a panel comprising the Prime Minister, the Leader of the Opposition and a constitutional authority, the Chief Justice of India.

Don't you think that there should be a separate cadre for the CBI to make the agency stronger?

No. I think the CBI is India's premier investigative agency only because there is no cadre. The agency requires diversity of expertise which only deputations can provide. Another example is the Special Protection Group (SPG). It is an elite central security force, which is a 100 per cent deputationist force.