

Functioning of Lokpal and the CBI:- Need for Synergy

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The Director CBI in a presentation before the Standing Committee of the Parliament now deliberating over the Lokpal Bill has strongly argued against the vivisection of the CBI and merger of its anticorruption wing with the Lokpal. CBI Director and his senior officers strongly feel that this will seriously cripple the core functioning of the CBI and reduce it to irrelevance. An organization built over last 60 years comprising competent professionals should not be subsumed under Lokpal. CBI officers concede that in some sensitive political cases there is of course interference from the government, but in respect of an overwhelming majority of cases CBI functions, unfettered and uninfluenced by extraneous considerations. For this reason there is an ever increasing demand for CBI investigation from all-over the country in respect of important cases.

Under the Jana Lok Pal bill drafted by Anna and his team, Lokpal will have its own investigation wing for investigation into acts of corruption by public servants as well as private entities which are parties to the act. It will also enquire into public grievances and investigate complaints by the whistleblowers. For this Lokpal needs a powerful investigation wing manned by tested and tried professionals. According to team Anna's view, lower

bureaucracy should also come under Lokpal because common man is more affected by corruption at the lower levels. Only Group-A officers are covered by the Lokpal bill drafted by the Government. Anna's team wants the anti corruption wing of the CBI should be merged with Lokpal. CBI's point of view is that to hive off the anti corruption wing of the CBI will cripple it grievously and make it effete and irrelevant. Through CBI at present takes up investigation of various other types of cases like economic offences, violent crime, organized crime, crime having inter-state and international ramifications, anticorruption investigation continues to constitute the core functions of CBI.

CBI's paper argues that the Director CBI should be made an ex-officio Lokpal member entrusted with control and investigations undertaken by Lokpal. Lokpal will exercise general supervision and control in anti corruption cases through the Director CBI. In respect of corruption cases after investigation CBI will file a final report in the competent courts. Investigation and prosecution will remain in the hands of the CBI. Thus there will be no vivisection of CBI and no need for a separate investigation wing under the Lokpal. Creation of two investigating wings, namely one under CBI and one under Lokpal with the same mandate is likely to lead to overlapping of work, conflict of jurisdictions, and demand for more resources. Functional autonomy of the CBI as well as its credibility has been eroded over the years and effective steps are necessary to restore its full functional autonomy.

However, the hard fact that cannot be wished away is that no powerful and effective anticorruption body can function without an investigation wing. Otherwise, it will be a toothless tiger. The proposal to induct the Director CBI after a very careful selection as ex-officio Lokpal is likely to encounter opposition from legal and judicial fraternity and other members of the Lokpal some of whom are likely to be Justices and Chief Justices of Supreme Court and High Courts. So instead of toying with the idea of bringing the anticorruption wing of the CBI under the Lokpal a better and more pragmatic alternative will be to entrust CBI with the investigation of corruption cases referred to it by the Lokpal. This measure will ensure avoidance of the vivisection of the CBI and consequent weakening of its core competence, and at the same time insulate it from extraneous pressures, at least in respect of anticorruption cases referred to it by the Lokpal. Lokpal will closely monitor the cases investigated by the CBI. This will enable the Lokpal to utilize all the resources of the CBI towards anticorruption work and not the resources of the anti-corruption wing only. CBI's anti-corruption unit will be ineffective without the support of the other units of the CBI. For effectively combating corruption CBI and the Lokpal should act in tandem and the similar model can be replicated in respect of state Lok Ayakutas.

Of course, the Lokpal can buildup gradually its own investigation wing by getting officers on deputation from the police and the CBI. This will be a time-consuming affair. Further, transfer of officers lock stock and barrel from the CBI will not be possible without the consent of the individual

officers. There will be reluctance of the officers to opt for service under the Lokpal as this will not be a service under the state and officers of Lokpal will not enjoy rights under Article 309 and 311 of the Constitution.

The need of the hour is to invigorate the CBI and give it a statutory basis, strengthen its functional autonomy and insulate it from extraneous pressures and influences. This was the recommendation of L.P. Singh Reform Committee in 1978 and Parliament Standing Committee on Personnel, Public Grievances Law, Justice in 2008. The committee was against the creation of another anticorruption agency because creation of another agency will lead to overlapping of jurisdiction, conflict of interest, lack of synergy, and creation of massive infrastructure, and facilities which may not give the desired results and demand more resources which are already scarce. In the proposed anticorruption architecture CBI has to play an important role and for this purpose it should be strengthened by giving functional autonomy and not divided by taking away its anticorruption wing.

However, the larger issue to be borne in mind is that the creation of powerful a institution of Lokpal, though a very important measure, is not the only antidote to corruption. China has severest punishment (execution) for those charged with corruption after running summary trials. But it has not reduced rampant corruption there. If there are sufficient gains from a transaction, the bribe-giver will seek to tempt the bribe-taker by increasing the size of the bribe and the latter may feel that the risk is worth taking. This

will be a paradoxical and unintended outcome of having a strong anticorruption agency.

Further, the Lokpal bill should be one of the electoral and governance reforms that should be on the agenda of the Parliament. Implementation of Supreme Court's directives on police reforms brooks no delay. For delivery of swift and fair justice Judicial Standards and Accountability and Rights to Justice Bill is equally vital. There is also need for electoral reforms so that legislators with criminal background and antecedents cannot contest the election. A Loksabha tainted by 76 criminally charged MPs diminishes Parliamentary democracy and sullies the Constitution.
