

The Central Bureau of Investigation and its Credibility **G.P.Joshi¹**

The CBI has recently been prominently in the news, receiving bouquets from some and brickbats from others. The Indian society has been having some sort of a love-hate relationship with this organisation. The CBI has often been criticised for its alleged failure to function impartially and objectively as an agency of law, but simultaneously there has always been an ever-increasing demand for investigation of complicated cases involving influential persons to be handed over to the CBI. This happens despite the fact that the record of CBI in such cases has not been very laudable.

What does this contradiction in attitudes towards the CBI show? Despite the fact that the Police are a state subject, the public do not have faith in their own police forces. The public want a police organisation, which would not allow anyone to rise above the law of the land. They expect the CBI to always do better investigations than their own police forces.

Two things are needed for quality investigations- skill and impartiality. Are the CBI better equipped than the state police forces in respect of these two factors. Let's take the investigation skill first. Some people feel that the CBI has achieved its eminence as a premier investigating agency in the country by default. The CBI is great because the state police forces are poor. After all, the majority of senior officers and a large number of other ranks and men in the CBI are on deputation from the state police forces- the same forces that are considered inferior to the CBI.

There are, however, a few significant differences between the CBI and the state police forces. One, the CBI is a specialised agency, doing only crime investigation work, while the state police have to perform multifarious tasks. Two, the level at which crime investigation work is done and supervised is higher in the CBI than what it is in state police forces. Three, the CBI does not have to interact with the public as closely and frequently as the state police forces do. In any case, the organisation, unlike the state police, is not required to confront the public in many adversarial roles, requiring use of force.

What about the objectivity and impartiality of investigations? The CBI is definitely not very effective when it comes to dealing with crimes committed by serving politicians belonging to the party in power. There have been many cases where the CBI has shown either reluctance to take up cases against ruling party politicians, or when forced to do so, adopted dilatory tactics. Judeo case is not the first of its kind. In the Havala case, the Supreme Court pulled up the CBI for showing "inertia" to investigate offences involving influential persons. The CBI is also alleged to have been involved in cases instituted mainly to harass and intimidate political opponents. The way the CBI was manipulated and misused during the Emergency is now a part of history. Even later on, its handling of many cases, like Bofors, HDW Submarine, the Airbus 320, Czech Pistol, Nusli Wadia, S Gurumurthy, St Kitts, Chandraswamy, Lalloo Bhai Pathak, JMM, Mumbai Port Trust etc did not win it public confidence. The CBI's role in these cases was considered controversial, if not suspect.

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The crooked politicians take advantage of the public perception that the CBI in its work is occasionally influenced by political considerations. Even where action taken against them is perfectly legitimate and is as per the law, they invariably pose as victims of political vendetta and witch hunting.

The CBI's misfortune is that it is a police organisation. Like all police forces in the country, it has been open and amenable to undesirable illegitimate influences from its political masters. The Supreme Court's judgement in the Havala case has not provided it the type of insulation it required. The handing of Judeo-Jogi cases by the CBI clearly proves this.

The Government of India has never wanted this organisation to become strong and effective. The need to have an investigating agency at the Centre had been felt as early as in 1948, as seen in the entry "Central Bureau of Intelligence and Investigation" included in the Union List of the Seventh Schedule to the Constitution. The CBI was established only on 1.4.1963 and till date no law has been enacted to govern its functioning. It is still being governed by an outdated Act of Second World War vintage, called the Delhi Police Establishment Act, which was enacted in 1946 to regulate the functioning of the Special Police Establishment. This Establishment, now merged in the CBI, was set up in 1941 to investigate cases of bribery and corruption involving purchases and supplies during the World War II.

From time to time, the central government has issued orders scuttling the powers of the CBI so that it becomes a toothless tiger and highly dependent on the government even in conducting its operations. During Rajiv Gandhi's time, a Single Directive was issued by the government, prescribing that no case against an officer of the rank of Joint Secretary and above would even be registered without written permission from the head of the government. In the Havala case, the Supreme Court struck down the Directive as illegal, but the Government of India has again brought it back by including it in the Central Vigilance Commission Act of 2003, which was passed recently by the Parliament. Earlier, it was only a set of executive instructions; now it has become a part of law.

If the CBI has to function as an impartial and effective organization, certain measures are essential. One of these is to enact a law, which must define the status, functions and powers of the CBI, lay down safeguards to ensure the objectivity and impartiality of the organisation and not allow anyone to enjoy impunity.