

A CANDID CONVERSATION ABOUT THE 'CAGED PARROT'

Relevant for: Developmental Issues | Topic: Regulatory & Quasi-Judicial bodies

Getting back on track | Photo Credit: PTI

The Chief Justice of India (CJI), Justice N.V. Ramana, must be lauded for his [candid appraisal recently of the pathetic state of India's investigating agencies](#). Last week in Delhi, while delivering [the annual \(and the 19th edition\) D.P. Kohli Memorial Talk](#) organised by the Central Bureau of Investigation (CBI), the CJI minced no words in condemning the utter subordination of agencies to the executive and its disastrous consequences for the cause of justice.

D.P. Kohli was the first Director of the CBI after the agency was renamed the CBI in 1963 from the earlier Special Police Establishment. A man of impeccable character, he was faceless and fearless, and a model to be emulated by his successors.

The CJI has not said anything new at the lecture that we in India do not already know. But coming as it did from the head of the Indian judiciary, his stern warning that investigating agencies will pay a heavy price for their utter willingness to stoop to please politicians should be taken seriously by all outfits, especially the CBI, which has had a patchy record with regard to political interference in sensitive investigations. The CJI called upon investigators to stand up to unethical pressures in order not to betray the trust reposed in them by the public. He even dropped a hint that if middle- and senior-level investigators deviated from the path of objectivity and neutrality, they would pay for it dearly. We have already seen how the Supreme Court of India and High Courts have often admonished investigators for their sloppiness and deviation from ethics. Therefore, we need a strong Supreme Court and equally strong High Courts to keep our investigators on the straight and narrow path.

There is no denying the fact that the CBI has been grossly misused by successive governments. This is why in December 1997, another fearless judge, Justice J.S. Verma had lambasted the then CBI Director in the so-called Hawala case, rebuking him for stalling the investigation at will, thereby sending inappropriate signals to his subordinates in the crucial investigation.

Justice Verma was so provoked by state of affairs that he went on to prescribe a new clinical procedure for the selection of the CBI chief, giving him also a much needed and fixed tenure of two years during which he could not be removed by the government. It may not be an exaggeration to say that earlier, CBI Directors were changed at will almost like how one would wear new garments every day. This mandatory tenure was meant to insulate the CBI Director from the caprice of the executive. This process has since been expanded to include the CJI in the selection panel.

It will be incorrect to assert that all this has transformed the CBI into an apolitical and objective body. Meticulous supervision by the Supreme Court in some important cases has made more than a marginal difference to the honesty of investigation. There is palpable fear among CBI officers that the judiciary could intervene were an aggrieved person to prove that an investigator had been arbitrary and dishonest. It will be unfair to the CBI to say that its investigation has not acquired any greater uprightness than before even after the many reprimands it had received from the higher judiciary. My view is also that the allegation of political interference has been blown out of proportion, because only about 10% of cases handled by the CBI have political overtones.

The CBI now has some of the brightest Indian Police Service officers in its higher echelons. None of them may be expected to be reckless and sacrifice their careers by bending to unethical pressures from their Director or from the government's echelons. However, it is not enough if the middle-rung supervisors alone are straightforward. There needs to be a strong and virtuous leader who will not only be honest but also stick his neck out to protect his deputies if and when confronted by an unscrupulous political heavyweight. If the CBI has to tread the path of virtue, it should have the strongest leader with a distinct belief in the law and ethics.

Unfortunately, in recent years, at least two Directors brought ignominy to the CBI. This has proved that whatever the courts may do to enforce discipline and adherence to the law, there are the odd leaders who could subvert the system. Little can be done to move away from this unfortunate situation unless there are bold and enlightened persons heading investigation agencies, and who will be firm with the executive if it tries to intimidate junior officers.

My own experience is that if one stands up and explains to a Prime Minister why a particular course of action suggested by a junior Minister or someone in the ruling party was unacceptable, then one has shown the right path to one's subordinates within the organisation. It is equally true that a Prime Minister will support you nine times out of 10 if you present your view in a rational and reasonable manner. If a Director is unable to display even this element of courage he should not be heading the organisation. If this honest approach to investigation does not get fused internally, mere tinkering with the criminal law and the procedure to appoint heads of important criminal justice organisations will be of no avail.

It is not that the CJI and the other judges are unaware of some investigating officers swerving from the right path at the instance of a small-time politician. But they are helpless in their efforts to stem the rot because many in the higher judiciary do not want to exceed their brief and upset things.

There have also been some big fish who have been caught in the net of investigators — a former Chief Minister of Bihar and a former Home Minister of Maharashtra, are examples. But given the magnitude of the problem, the steps taken so far to check dishonesty in the higher echelons of the government are only cosmetic. This is why I am still cynical: however much the judiciary stands by law enforcement outfits, little will change in terms of the public servant (including popular and elected Ministers) curbing the unabated corruption in the country.

Finally, I do not endorse the CJI's proposal of an umbrella organisation that will oversee all investigating agencies. This idea was meant to avoid having multiple agencies looking into the same set of allegations. Apart from its impracticality, such a novel body could generate its own problems — of turf wars and ego clashes. I would rather have the focus on weeding out the dishonest among officers and rewarding those who have shown and proven themselves to be honest and professionally innovative.

R.K. Raghavan is a former CBI Director who now teaches Policing and Criminal Justice at the Jindal Global University, Sonapat, Haryana

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