

LONGER TERM, BETTER IMPACT

Relevant for: Developmental Issues | Topic: Important Aspects of Governance, Transparency & Accountability including Right to Information and Citizen Charter

The Central government's decision to give a five-year tenure to heads of the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED) has drawn a lot of flak. The Opposition smells a rat in the ordinances issued a few days ago. This is unsurprising. Any governmental move to strengthen a powerful law enforcement agency is bound to invite questions and raise suspicion. And the CBI's track record for objectivity and neutrality is anything but straightforward.

It is, however, preposterous to probe the intentions of this major move. How can we suspect the bonafides of the government until we have evidence to prove that the decision was motivated by dishonest intentions? No government is a saint, but to question the intentions behind an administrative decision right after it is made seems unfair. If one perceives politics here, let us remember that only 5-10% of the cases registered by the CBI involve politicians.

When I assumed charge of the position 20 years ago, I was the first beneficiary of the apex court's directive giving a mandatory two-year tenure to the Director of the CBI. This was a fallout of the Hawala scandal. I had an extra four months because my retirement age automatically gave me this benefit.

Prior to my appointment, the government was arbitrary and capricious in choosing the Director. It was not rare to see temporary appointments given to favour some individuals. Seniority was often ignored in appointments and Directors were removed frequently. In 1987, C.M. Radhakrishnan Nair was appointed as the Director. This decision was rescinded within days to give an extension to the man holding the post, Mohan Katre. Could there be anything more demoralising to the officer concerned and to the elite organisation?

The recent ordinances are timely and merited. A two-year tenure for a CBI head is too short for any officer to make an impact on the organisation. The Federal Bureau of Investigation chief in the U.S. gets a 10-year term. This provides them the much-needed continuity that a Director needs in an outfit charged with the task of conducting highly sensitive investigations, which sometimes impinge on the longevity and stability of a democratically elected government.

We will have to wait for a few years to gauge the impact of the change in tenure rules. Any blatantly dishonest interference in the working of the organisation is bound to raise the hackles of those who believe in and carry out straightforward investigations. The government will therefore have to show enormous restraint in its interactions with the head of the CBI.

Of course, as a measure of accountability, the Director will have to keep the government informed of all major administrative decisions. He or she should inform the executive but not take orders from it.

The only problem with the latest ordinance is that, at the end of the mandatory two-year tenure, the government will have to issue orders granting one-year extensions at a time. It would have better if there was a straight five-year term for the Director. The rule about three annual extensions can be misused by a tendentious government. It may be construed as a reward for 'good behaviour', which is a euphemism for an obliging Director.

Successive chiefs have suggested the drafting of a CBI Act to ensure that the organisation is not dependent on the State governments, many of which have withdrawn consent for the CBI to

function in that State. The Supreme Court has recently made caustic references to this objectionable development. Eight States — West Bengal, Maharashtra, Kerala, Punjab, Rajasthan, Jharkhand, Chhattisgarh, and Mizoram — have withdrawn the general consent. The Court termed this a “serious issue”. The CBI should be made to derive its authority for launching investigations from its own statute instead of depending on the Criminal Procedure Code, which makes the CBI a police organisation. Apt analogies are the Income Tax Act and the Customs Act, which enable the officers of the two mighty departments to act on their own, without being at the mercy of State governments.

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