

"National Security" for whom?

How the Intelligence Bureau functions

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The Intelligence Bureau, owing to the lack of a standard protocol of operations and accountability, often oversteps its limit to go into areas in which it lacks expertise. Unless the government is serious about laying down a charter of duties for the IB its reports will always be used by vested parties to further their own interests.

A secret Intelligence Bureau (IB) report (perhaps officially leaked) on the anti-development impact of non-governmental organisations (NGO) activities in India has come into the public domain and was debated extensively by the media. This has been quickly followed by the ugly role played by the IB in scuttling, no doubt at the behest of the government, the appointment of Gopal Subramaniam to the Supreme Court, a report again perhaps officially leaked.

Neither the IB nor the Research and Analysis Wing (RAW) or the other intelligence agencies in India have a clearly established and credible accountability mechanism. The IB lacks a proper legal framework and charter of duties. This led to many abuses during the Emergency (1975-77), which were exposed by the Shah Commission set up by the Janata Party government in 1977 after the electoral defeat of the Congress party. Abuses by the police were also exposed in the reports of the Commission. The Janata government set up the National Police Commission (1979-81) for police reforms and the LP Singh Committee (1981) for reforms of the IB and the Central Bureau of Investigation (CBI). However, the return to power by the Congress party in the elections of 1980 prevented the implementation of the recommendations.

What is "national security"?

The concept of "national security", uncritically used by the IB in its classified reports on various subjects, needs to be defined properly. The IB, a secret intelligence agency headed by generalist officers of the Indian Police Service (IPS), often strays into subjects without the required expertise.

The economic impact of NGO activities in the country are best examined by the concerned ministries such as the Ministry of Home Affairs, Ministry of Environment and Forests (MoEF) or by the Planning Commission. The report and recommendations of the committees set up by these ministries need not be classified. [The 2008 Experts Group Report on "Development Challenges in Extremist Affected Areas" report](#) published by the Planning Commission, dealing with Maoist violence in central India, was not a classified report and is available to the general public. However this report has been largely ignored by the MHA, in favour of a classified IB report characterising the Maoist violence as the "biggest internal security threat" in India. Based on the latter report, the MHA undertook massive deployment of central paramilitary forces in tribal India with far-reaching deleterious consequences.

History and development of the IB

Historically, the origins of the IB go back to the Thuggee and Dakaiti (T&D) Department set up by William Sleeman in 1835 in the government of India. In 1887, two years after the formation of the Indian National Congress, the department was given the additional duty of collecting "secret and political" intelligence in a branch known as Central Special Branch (CSB). The IB of today is the natural development from the new and expanded functions of the T&D Department. The CSB collected, collated and interpreted intelligence gathered by Provincial Special Branches set up the same year in the provincial police headquarters. In 1920 for the first time the CSB was renamed the IB whose functions were briefly spelt out under Section 40(2) of the Government of India Act, 1919. On this basis in 1924, the IB was asked to work on matters related to the security of India and report directly to the governor-general. The Rowlatt Act of 1919 was based on the evidence marshalled by the Bengal and central units of the Special Branch. In 1935, Central Intelligence Officers (CIOs) were placed in selected provinces under the IB. In 1945, it was clarified that the IB was the intelligence agency of the government of India in the security field; that it exercised no police powers; and that its powers were vested in the director appointed by the governor-general who had special areas of authority under the Government of India Act 1935. When the Constitution of India 1950 came into force, the secret files of the central and provincial IBs were destroyed or sent abroad.

The director of the IB under Jawaharlal Nehru (1950-64), B N Mullik played a key role in the preventive detention of Sheikh Abdullah (1953); the deployment of the army in Nagaland (1955); the "forward policy" in the India-China border (1959); and the dismissal of the communist government in Kerala (1959). The role of the IB in these and other matters was graphically described by Mullik himself in his three-volume autobiographical account published in the 1970s described as the "most indiscreet memoirs" ever written by an intelligence official. The role of the IB in political developments under Indira Gandhi and after was colourfully brought out in 2005 in a book by M K Dhar, another top IB official. A later and more insightful book on the workings of the RAW was produced in 2007 by a senior official B Raman.

As a secret police organisation functioning in today's India, the work of the IB should be limited to police subjects such as terrorism, sabotage, subversion, espionage, counterintelligence and other law and order matters. It should avoid subjects such as economic consequences of NGO activities. Further, over-classification is one of the major problems of the IB, which led the former Home Secretary L P Singh to set up the R&P Division in the ministry to write independent reports. One of its earliest reports on Maoist violence was termed "Causes and Nature of Agrarian Tensions" (1969). The division fell on bad days after the departure of Singh and was eventually wound up depriving the ministry of vital policy inputs. The ministry earlier also dealt with the development and protection of scheduled castes and tribes, among other subjects. The ministry appears today to have deteriorated into an essentially paramilitary outfit.

The L P Singh Committee report (1981) recommended a charter of duties for the IB whose overall task was said to be to collect, collate and disseminate intelligence having a bearing on "national security", the security of the state and the protection of the Constitution. Its main activities were to include protection of the sovereignty and integrity of India from espionage, sabotage and subversion; prevent subversion of the loyalty of public servants; report on inter-state tensions, activities inimical to friendly relations with foreign states and so on. The committee's report failed to clearly specify the meaning of the concept of national security, which is now the need of the hour. Some senior intelligence officials erroneously argue that their work relating to loosely defined national security need not be bound by the Constitution of India. They have even defended the extrajudicial executions of Ishrat Jahan and others by the Gujarat police. The CBI is investigating the case under the supervision of the Supreme Court.

Appointment of Gopal Subramaniam

In the case of Gopal Subramaniam's appointment to the Supreme Court, it is important to remember that there is an established procedure in India whereby "inputs" are obtained on a regular basis from IB/Central Bureau of Investigation about the prospective candidates for appointment as judges of the Supreme Court. This was perhaps part of the practice in British India in order to keep nationalist political influences out of the Indian judiciary at that time. The procedure is institutionalised in the MHA via a joint secretary who deals with judicial matters and coordinates with the Supreme Court.

This procedure has revealed its ugly features in the case of Gopal Subramaniam selected by the Supreme Court collegium for appointment as a judge. The government of India claims that Subramaniam's relations with lobbyist Niira Radia and his actions in connection with the 2G investigations were the factors behind their disinclination to go along with the Supreme Court collegium's preferred option. On the contrary Subramaniam himself claims that his role as amicus curiae in the Sohrabuddin fake encounter case in Gujarat and the resulting Supreme Court order preventing the BJP leader Amit Shah from entering his home state were the real political reasons behind the government's reluctance

to approve his appointment. This is a first rate political controversy.

The collegium of the Supreme Court which selected Subramaniam for the post has remained intriguingly silent after the outbreak of the controversy. It was the Court itself, which had in the first place, appointed Subramaniam as amicus curiae in the Sohrabuddin case. It would therefore be appropriate for the Supreme Court collegium to stand up to the government and insist on having Subramaniam on the bench. This exhibition of weakness on their part affects the credibility of the highest court in the land.

MI5 - Secret service in the UK

A publication of the UK government (Her Majesty's Stationary Office, 1996) provides details of the activities of its secret service MI5 based on a clear and unambiguous legal framework, which includes a parliamentary oversight committee. The security service, as the MI5 is called, exists under the authority of the Home Secretary who answers to Parliament for the Service. The provisions of the Security Act 1989 were amended by the Intelligence Services Act 1994. The Director General of the MI5, appointed by the Home Secretary in consultation with the prime minister, is responsible for i) the ensuring the operations and efficiency of the service; ii) ensuring that it does nothing to further the interests of any political party; and iii) that it discloses information only in accordance with its functions; and iv) that it make an annual report to the prime minister and the Home Secretary. The internal mechanisms of the service are designed to ensure that i) the rule of law is paramount; ii) the methods of investigation must be proportionate to the threat; and iii) the more intrusive the means of investigation, the higher are the level of authorisation for its use.

The UK Intelligence Service Act (ISA) 1994 also established the Intelligence and Security Committee (or "Oversight Committee") to "examine the expenditure, administration and policy" of the Security Service, the Secret Intelligence Service (SIS) and the Government Communications Headquarters (GCHQ). The committee consists of nine members from both Houses of Parliament. The prime minister in consultation with the leader of the Opposition appoints the committee. No current minister can be a member. The committee's annual report is placed before Parliament subject to any exclusion on security grounds. The DG of the service has a statutory duty to provide the committee with any information required by it excluding "sensitive" information. The parliamentary oversight committee in the UK has worked well without damaging the operational secrecy of the intelligence agencies.

Way forward

In India in 1999, the National Security Council (NSC) system chaired by the prime minister was established. It includes the Strategic Policy Group (SPG) headed by the cabinet secretary; the National Security Advisory Board (NSAB) consisting of independent experts; and the National Security Council Secretariat (NSCS) responsible for evaluation of the performance of intelligence agencies. However there has been no significant change that

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has been implemented in the organisation itself.

The lack of professional autonomy within the IB is essentially the hand maiden of the ruling party of the day. It is a pity that the Supreme Court of India has not yet found a way of avoiding murky police enquiries, reminiscent of colonial-era practices, against its own fraternity and established independent procedures of selection of its judges on the basis of judicial lessons drawn from advanced countries such as the UK and US.